

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPA24010-URC001
Claimant:	Department of Fish & Wildlife: Oil Spill Prevention and Response (OSPR)
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$70,322.19
Action Taken:	Denial

EXECUTIVE SUMMARY:

On May 22, 2024 at 09:30 local time, United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification that a vessel was sinking in the Little Potato Slough, a tributary of the San Joaquin River, a navigable waterway of the United States. The vessel that sank was the AURORA; a 293-foot steel-hull vessel that was carrying an unknown amount of petroleum products and hazardous substances.²

USCG Sector San Francisco was the Federal On-Scene Coordinator (“FOSC”) for the incident. A California Department of Fish and Wildlife Office of Spill Prevention and Response (“OSPR” or “Claimant”) crew dispatched to the spill site as the State On-Scene Coordinator (“SOSC”). USCG Sector San Francisco’s Incident Management Division (IMD) arrived on scene and observed the AURORA discharging oil. Due to the vessel’s size, the unknown quantity of oil onboard, its proximity to sensitive sites and raw water intakes, and the owner/operator’s lack of financial resources, the FOSC accessed the Oil Spill Liability Trust Fund (“OSLTF”)³ and hired Global Diving & Salvage to stabilize the AURORA.⁴ A Unified Command (“UC”) was established that included the USCG, the California Department of Fish and Wildlife Office of Spill Prevention and Response (“OSPR”), and the City of Stockton.⁵

The Coast Guard identified two potential responsible parties, Mr. (b) (6) and Mr. (b) (6). On May 22, 2024, a Notice of Federal Interest (“NOFI”) and a Notice of

¹ This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant’s rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant’s rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

² Unified Command Aurora Concurrence Memorandum dated June 27, 2024.

³ Federal Project Number (FPN) UCGPA24010.

⁴ USCG Incident Commander Statement dated April 23, 2025.

⁵ Unified Command Aurora Concurrence Memorandum dated June 27, 2024.

Federal Assumption (“NOFA”) were issued to Mr. (b) (6).⁶ On May 23, 2024, a written NOFI and a verbal NOFA were issued to Mr. (b) (6).⁷

Approximately 21,765 gallons of oily water were pumped from the vessel which was primarily located in the engine spaces and was removed using the Oil Spill Liability Trust Fund (“OSLTF”) – Federal Project Number (“FPN”) UCGPA24010. An additional 3,193 gallons of hazardous substances were removed from the vessel using the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA” Project Number) - UCGPC24019.⁸ Ultimately, 1.3 million gallons of water were removed from the AURORA.⁹ The combination of the layout of the vessel, fluctuating tides, the freely communicating water between the ship’s compartments, and various holes in the ship, caused the mixed release of oil and hazardous substances into the water.¹⁰

On May 8, 2025, the California Department of Fish & Wildlife Office of Spill Prevention and Response (“OSPR”) presented its removal cost claim to the National Pollution Funds Center (“NPFC”) for \$70,322.19.¹¹

The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that the claim is not compensable under OPA and, as such, must be denied.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹² As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement. When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.¹³ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁴ If there is conflicting evidence in the

⁶ See, Department of Homeland Security, US Coast Guard Notice of Federal Interest issued to (b) (6) dated May 22, 2024, and US Coast Guard Notice of Federal Assumption to (b) (6) dated May 22, 2024.

⁷ See, Department of Homeland Security, US Coast Guard Notice of Federal Interest issued to (b) (6) dated May 23, 2024. See also, FOSC Statement dated April 11, 2025.

⁸ See, FOSC Statement dated July 10, 2025.

⁹ Id. See also, Incident Commander Statement dated July 3, 2025.

¹⁰ See, FOSC Statement dated July 10, 2025. See also, Incident Commander Statement dated July 3, 2025. See also, Uniform Hazardous Waste manifests # 026770039 JJK dated July 2, 2024; #026770040 JJK dated July 2, 2024; #026770049 JJK dated July 2, 2024; #026770051 JJK dated July 2, 2024; #026770053 JJK dated July 9, 2024; Straight Bill of Lading T#1885 dated June 25, 2024.

¹¹ OSPR Original Claim submission received on May 8, 2025.

¹² 33 CFR Part 136.

¹³ See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), “[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views.” (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

¹⁴ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

II. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On May 22, 2024 at 09:30 local time, United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification that a vessel was sinking in the Little Potato Slough, a tributary of the San Joaquin River, a navigable waterway of the United States. The vessel that sank was the AURORA; a 293-foot steel-hull vessel that was carrying an unknown amount of petroleum products and hazardous substances.¹⁵

On May 22, 2024, the FOSC accessed the OSLTF under Federal Project Number UCGPA24010 to respond to the oil discharge.¹⁶ On June 21, 2024, the FOSC accessed the Superfund under CERCLA Project Number UCGPC24019 to remove the hazardous materials.¹⁷ Initially, the administrative record was unclear as to whether the oil that discharged and the hazardous materials that were on the vessel were discrete and segregable or whether the oil and hazardous materials had commingled during the event. In an effort to obtain further granularity, the NPFC specifically queried the incident commander. His response confirmed the commingling of oil and hazardous materials during the event.¹⁸

Responsible Parties

The Coast Guard identified two potential responsible parties, Mr. (b) (6) and Mr. (b) (6). On May 22, 2024, a Notice of Federal Interest (“NOFI”) and a Notice of

¹⁵ Unified Command Aurora Concurrence Memorandum dated June 27, 2024.

¹⁶ USCG CANAPS message dated May 22, 2024, opening Federal Project Number UCGPA24010.

¹⁷ USCG CANAPS message dated June 21, 2024 opening CERCLA Project Number UCGPC24019.

¹⁸ See, email summary of phone conversation between NPFC and the Incident Commander dated August 7, 2025, to wit:

To provide additional clarity... previous statements provided referred to ‘sealed containers’ of hazardous substances and the accompanying pictures that showed the same, [the NPFC] wanted to focus on whether there was any indication that any of the aforementioned ‘hazardous substances’ had been released into the water. One interpretation from the previously provided material could lead one to conclude that. Another interpretation is that there was no photographic and very limited circumstantial evidence of this critical fact. [The NPFC] sought additional granularity. To this end, [the NPFC] asked the [incident commander] if he recalled any instance where a hazardous substance was found on the deck of the ship once it had been dewatered. This would indicate that some amount of hazardous substance leaked into the water at some point during the incident. [The incident commander] recalled that after the ship was de-watered, he walked through a previously-underwater storage area aft of amidships. He further recalled that the bottom of his coveralls were covered in paint and other substances. [The NPFC] then asked him to confirm whether the space he was referring to was ‘freely communicating water’ as he used that term in his July 18th, 2025 email to the NPFC. [The incident commander] confirmed that it was. [The NPFC] also asked him to confirm his definition of ‘freely communicating water’ to ensure we understood that term similarly. [The incident commander] described ‘freely communicating water’ as water the not only would be able to move freely within the ship but also had the ability to enter and exit the skin of ship through the various holes and other ingress/egress points.

Federal Assumption (“NOFA”) were issued to Mr. (b) (6).¹⁹ On May 23, 2024, a written NOFI and a verbal NOFA were issued Mr. (b) (6).²⁰

Mr. (b) (6) was identified primarily because during a previous federal pollution response in the same area involving the Tugboat MAZAPETA, all indications to the Coast Guard were that Mr. (b) (6)²¹ was the owner and operator of the AURORA.²² The MAZAPETA response took place from September 4, 2023 until mid-January 2024. During this period of time, USCG Sector San Francisco pollution responders noticed Mr. (b) (6) onboard the AURORA every time the responders would come to change out boom and during the final MAZAPETA refloat and oil removal.²³ Mr. (b) (6) was the primary point of contact for the AURORA and allowed USCG responders onto the AURORA’s rear deck to view the MAZAPETA operations during every visit.²⁴ Mr. (b) (6) was identified as a responsible party because he was onboard the AURORA when it began to sink.

On July 28, 2024, USCG Sector San Francisco queried the USCG National Vessel Documentation Center (“NVDC”) to determine ownership of the AURORA. The NVDC provided information indicating that a bill of sale was filed on October 25, 2023.²⁵ The documentation shows that Mr. (b) (6) sold the vessel to Mr. (b) (6) and the bill of sale was terminated on November 6, 2023 because the requisite fees were never paid.²⁶ In August 2024, after the USCG Sector San Francisco IMD presented the NVDC’s documentation to Mr. (b) (6) and Mr. (b) (6) and explained that Mr. (b) (6) is still the legal owner of the AURORA, Mr. (b) (6) and Mr. (b) (6) sent documents to USCG San Francisco IMD that purported to contain lost vessel documentation and ownership transfer.²⁷ Mr. (b) (6) and Mr. (b) (6) claimed that the ownership documents were lost when the AURORA sank.²⁸

Recovery Operations

The FOSC contracted Global Diving and Salvage to conduct containment, recovery, and source control operations. The response included the deployment of containment boom, the removal of accessible oil product, and efforts to dewater the vessel where safe and feasible.

Despite challenges associated with the vessel’s size and deteriorated condition, response teams were able to contain and remove pollution hazards. Pollution responders successfully refloated the vessel, preventing further environmental damage and removed approximately

¹⁹ See, Department of Homeland Security, US Coast Guard Notice of Federal Interest issued to (b) (6) dated May 22, 2024, and US Coast Guard Notice of Federal Assumption to (b) (6) dated May 22, 2024.

²⁰ See, Department of Homeland Security, US Coast Guard Notice of Federal Interest issued to (b) (6) dated May 23, 2024. See also, FOSC Statement dated April 11, 2025.

²¹ Mr. (b) (6) is also identified as Mr. (b) (6) “(b) (6)” in some documents in the administrative record.

²² USCG Incident Commander Statement, dated April 23, 2025.

²³ USCG Incident Commander Statement, under Ownership Background section, dated April 23, 2025.

²⁴ *Id.*

²⁵ See, NVDC Documents Sent to USCG Sector San Francisco which is inclusive of (1) Abstract of Title 7/23/2024 (3 pages), (2) Bill of Sale 11/01/2023 (2 pages), and a Certified Copy of a COD 2/1/2023 (1 page).

²⁶ Terminated Bill of Sale, dated November 11, 2023 [Note: The AURORA was built in West Germany in 1955 and was originally named “WAPPEN VON HAMBURG”].

²⁷ USCG Incident Commander Statement, under Ownership Background section, dated April 23, 2025.

²⁸ Sector San Francisco’s review of the documentation and attendant circumstances led it to cast doubt on the veracity of Mr. (b) (6)’s claims.

21,675 gallons of oily water, and 3,193 gallons of hazardous waste. The pollution responders confirmed no observed impact on wildlife as a result of the incident.²⁹

III. CLAIMANT AND NPFC:

On May 8, 2025, the California Department of Fish and Wildlife Office of Spill Prevention and Response (“OSPR”) presented its removal cost claim to the National Pollution Funds Center (“NPFC”) for \$70,322.19.³⁰ OSPR’s claim included the optional OSLTF Claim Form and several supporting documents.³¹ The claim sought compensation for OSPR labor costs in the total amount of \$62,600.37 from May 22, 2024 through July 22, 2024; OSPR operating expenses in the amount of \$1,430.25 associated with vessel costs and fuel; OSPR vehicle mileage in the total amount of \$3,941.46; chemical laboratory costs in the total amount of \$1,340.00; and administrative costs in the total amount of \$1,010.11.³²

IV. DISCUSSION:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.³³ An RP’s liability is strict, joint, and several.³⁴ When enacting OPA, Congress “explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim’s recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills.”³⁵ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. Removal costs are defined as “the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident.”³⁶ The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”³⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such

²⁹ USCG FOSC Statement dated April 11, 2025.

³⁰ OSPR Original Claim submission received on May 8, 2025.

³¹ See, “OSPR Fed Claim Request Letter”, “OSPR Activity 214 Logs”, “OSPR Fed Claim Mileage Logs”, and “My Aurora Fed Claim Supplemental Documents.”

³² OSPR Original Claim submission received on May 8, 2025.

³³ 33 U.S.C. § 2702(a).

³⁴ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁵ *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (*citing* S. Rep. No. 101-94 (1989), *reprinted in* 1990 U.S.C.C.A.N. 722).

³⁶ 33 U.S.C. § 2701(31).

³⁷ 33 U.S.C. § 2701(30).

³⁸ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

claims.³⁹ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.⁴⁰

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan;⁴¹
- (d) That the removal costs were uncompensated and reasonable.⁴²

Before NPFC can authorize payment from the OSLTF for any claim, the claimant must show that the costs claimed are compensable under OPA.

OPA defines a “claim” to mean “a request made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident.”⁴³

OPA defines “oil” as “oil of any kind or any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC § 9601) and which is subject to the provisions of that Act [42 USCA Section 9601 et seq].”⁴⁴

OPA defines “incident” as any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil.”⁴⁵ Accordingly, OPA only applies to incidents involving oil, and, by definition, excludes those involving CERCLA hazardous substances. The incident evidence obtained by the NPFC demonstrates that the vessel contained hazardous substances that were housed in compartments within the vessel that were submerged when the vessel sank.⁴⁶

³⁹ 33 CFR Part 136.

⁴⁰ 33 CFR 136.105.

⁴¹ 33 CFR 136.203.

⁴² 33 CFR 136.203; 33 CFR 136.205.

⁴³ 33 U.S.C. § 2701(14).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *See*, Email from Incident Commander to NPFC dated May 30, 2025, that stated most rooms on the vessel were underwater. *See also*, Hazardous material manifests that include the identification of sulfuric acid identified as Chemical Abstracts Service (CAS) # 7664939, acetic acid identified as Chemical Abstracts Service (CAS) # 64197, and ethyl glycol identified as Chemical Abstracts Service registry Number (CASRN) # 107-21-1 which are all identified in the list of CERCLA hazardous substances can be found at 40 CFR 302.4.

CERCLA defines “hazardous substance” broadly.⁴⁷ However, the definition of “hazardous substance” under CERCLA specifically excludes “petroleum, including crude oil or any fraction thereof...”⁴⁸ Further, the definition goes on to exclude “natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas).”⁴⁹ A mixture, or commingling, of oil and hazardous substances is not “oil” within the meaning of the OPA.⁵⁰

A Commingled Spill

Notwithstanding the statutory definitions, a question sometimes exists when the release involves a mixture of oil and hazardous substances that have commingled before substantially threatening to discharge, or discharging into a navigable waterway, such as the facts in this case.

The analysis of these types of releases must begin by analyzing the purpose of each of the statutes and how Congress and the agencies intended them to apply.

OPA’s legislative history clearly highlights the intent of Congress that OPA liability and, by extension OPA claim compensation, only applies to discharges of “oil” and not “oil mixed with hazardous substances.”

The definition [of oil] has been modified... to clarify that it does not include any constituent or component of oil which may fall within the definition of "hazardous substances," as that term is defined for the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). **This ensures that there will be no overlap in the liability provisions of CERCLA and the Oil Pollution Act.**⁵¹

The legislative history of CERCLA likewise is instructive: “The reported bill [CERCLA] does not cover spills or other releases **strictly** of oil.”⁵² Contemporaneous congressional debate further elucidated how it intended CERCLA to apply to spills of oil mixed with hazardous substances.⁵³ Both Representative Edgar and Senator Randolph specifically discussed oil slicks that were mixed with

⁴⁷ 42 U.S.C. § 9601(14). “Hazardous substance means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317 (a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606].”

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *See, e.g., Munoz v. Intercontinental Terminals Co.*, 845 F.4th 343 (5th Cir. 2023).

⁵¹ H. R. Rep. No. 653, 101st Cong., 2d Sess.102 (1990).S. Rep. No. 101-94 (1989)(emphasis added).

⁵² S. Rep. No. 96-848, 96th Cong., 2d Sess. 29-30 (1980)(emphasis added).

⁵³ *See, e.g.*, at 126 Cong.Rec. H11798 (Rep. Edgar) (oil slicks and industrial oil waste); 126 Cong.Rec. S14963 (daily ed. November 24, 1980) (Sen. Randolph) (contaminated oil slick), and other petroleum products containing hazardous substance additives intended to be addressed by the legislation including PCBs in transformer fluid, *id.* at S14963 (Sen. Randolph) and S14967 (Sen. Stafford); dioxin in motor fuel used as a dust suppressant, *id.* at S14974 (Sen. Mitchell); PCBs in waste oil, *id.* (Sen. Mitchell) and contaminated waste oil, *id.* at S14980 (Sen. Cohen).

hazardous materials present on a navigable waterway, with the intent of ensuring the final legislation was broad enough to cover these events. By all accounts, it was.

Since the passage of CERCLA, the EPA has promulgated several policy documents explaining its position with respect to discharges of oil. Taken holistically and simplistically, the policies explain that CERCLA excludes discharges of oil⁵⁴ but CERCLA could impose liability on certain discharges of substances that contain oil in an adulterated form. Because of the adulteration of the oil, if released, it would be considered a “hazardous material” not “oil” as defined.⁵⁵ While most of the jurisprudence in this area concerns cases where the EPA is asserting jurisdiction under CERCLA and the defendant asserts the “petroleum exclusion” as a defense, the decisions discussing the intent and application of CERCLA are instructive to how to analyze a commingled spill. For example, one court after reviewing the legislative history of CERCLA and analyzing EPA’s policy documents on CERCLA’s application to oil concluded pointedly, “the EPA determined that the purpose of the petroleum exclusion was ‘to remove from CERCLA jurisdiction spills only of oil, not releases of hazardous substances mixed with oil.’”⁵⁶

Moreover, the Tenth Circuit analyzed the commingling of petroleum products and hazardous materials in the soil and floating in the groundwater beneath an oil refinery.⁵⁷ In that case, the sampling results and expert testimony confirmed that certain soil at the refinery, as well as the petroleum plume in the groundwater aquifer beneath the refinery, contained a mixture of petroleum and hazardous wastes.⁵⁸ In holding that the petroleum exclusion did not apply to these facts, the court indicated that in order for CERCLA to be inapplicable, the moving party would have to had provided testing to show that unadulterated petroleum was the *only* contaminant in the ground water plume. Moreover, the court would have required an expert to opine that the hazardous waste *did not commingle* with petroleum products.⁵⁹

As to this claim, the administrative record indicates that this was a commingled spill. Specifically:

1. The FOSC opened the Superfund via a CERCLA Project Number UCGPC24019 due to a large amount of hazardous substances found aboard the AURORA

⁵⁴ This has become known colloquially as EPA’s “petroleum exclusion.”

⁵⁵ Several courts have analyzed whether a particular discharge falls under CERCLA or has been exempted from CERCLA jurisdiction because of the application of the “petroleum exclusion”. For example, when discussing lead in waste oil discharge: “If the lead results from its use as an additive to petroleum products, and was found at the level expected of purely petroleum additives, it will fall under the petroleum exclusion and would not be a “Hazardous substance” for the purpose of CERCLA liability. If, on the other hand, the level exceeded the amount that would have occurred in petroleum during the refining process, then the petroleum exclusion would not apply. *Mid Valley Bank v. North Valley Bank*, 764 F.Supp. 1377 (E.D. Cal. 1991). *See also, e.g., State of Wash. v. Time Oil Co.*, 687 F.Supp. 529 (W.D. Wa. 1988), *City of New York v. Exxon*, 744 F. Supp. 474 (S.D.N.Y. 1990).

⁵⁶ *Mid Valley Bank v. North Valley Bank*, 764 F.Supp. 1377, 1383-4 (E.D. Cal. 1991).

⁵⁷ *Tosco Corp. v. Koch Indus., Inc.*, 216 F.3d 886 (10th Cir. 2000).

⁵⁸ *Id.*

⁵⁹ *Id.* at 894. *See also, Eastman v. Brunswick Coal & Lumber Co.*, No. CIV. 95-255-P-C, 1996 WL 911200, (D. Me. Apr. 19, 1996)(A truck loaded with diesel fuel (an OPA oil) overturned and caught fire releasing its contents, and in conjunction with the fire, hazardous materials mixed with the diesel fuel. This mixture entered the [plaintiffs'] soil and groundwater, and ultimately, a navigable waterway of the United States. The court indicated that the petroleum exception would not apply and these facts, if alleged and proven, would constitute a CERCLA release.

On June 21, 2024, the FOSC accessed the Superfund via CERCLA Project Number UCGPC24019 in the initial amount of \$150,000.00 in order to remove all hazardous substances discovered aboard the AURORA during incident response.⁶⁰ On August 16, 2024, the CERCLA Project ceiling was raised to \$222,000.00.⁶¹

2. Incident documentation and reporting

Under section J of SITREP-POL Two and Final, it states in relevant part under paragraph two... “The USCG, utilizing the Oil Spill Trust Fund [sic], contracted with Global Diving and Salvage to contain the spill, refloat the vessel, and remove petroleum and hazardous materials from the site.” Additionally, it further states.... “The primary control is that the M/V AURORA must remain floating to minimize residual petroleum and hazardous materials being released into the waterway.” Additionally, the language used by the FOSCR in its official supplemental statement asserts ... “Given the vessel’s layout, fluctuating tides, and the free flow of water between some compartments during the incident, *it is highly likely that oily water and hazardous substances mixed to some extent*”⁶²

3. Documentation from Global Diving and Salvage

Under section 3.4 Salvage Operations, Phase 8 – Pollution mitigation, it states “When the salvage master is satisfied that the vessel is suitably dewatered, stable, and that all leaks have been patched, the vessel will be cleared for pollution mitigation. Crews will commence removal of HHW⁶³ from the previously submerged spaces, defueling tanks, stripping engine oil from engine sumps, removing batteries and other various hazardous materials.”⁶⁴

This section of the Salvage Plan combined with slide 10 of the June 10, 2024 Operations Briefing presentation provides evidence that both the B and C decks of the AURORA appeared to be primarily underwater.⁶⁵ As a result, the NPFC communicated with Mr. (b) (6) of Global Diving and Salvage who confirmed that the hazardous waste removed from the C deck of the AURORA was underwater prior to refloating the vessel. He further stated that it was certainly possible that some of the containers of hazardous materials could have leached in the water⁶⁶ which lead the NPFC to request evidence from OSPR regarding sample documentation to prove there was no hazardous materials in the waterway along with the oil that discharged.⁶⁷

4. Uniform Hazardous Waste Manifests generated following the AURORA response⁶⁸

⁶⁰ See, UCGPC24019 Global Authorization to Proceed with removal and disposal of oil or hazardous material spill dated June 21, 2024; See also, USCG Authorization to Proceed message dated June 21, 2024.

⁶¹ See, UCGPC24019 Authorization to Proceed Increase dated August 16, 2024.

⁶² See, FOSC Statement – Supplemental for NPFC dated July 10, 2025.

⁶³ The acronym HHW stands for household hazardous waste.

⁶⁴ Global Diving and Salvage Plan dated June 3, 2024.

⁶⁵ See, Global Salvage Plan dated June 3, 2024. See also, Global Daily Operations Brief dated June 10, 2025.

⁶⁶ See, Operations Briefing June 10, 2024. See also, email Global Diving and Salvage to the NPFC dated June 11, 2025.

⁶⁷ See, Operations Briefing June 10, 2024; See also, email Global Diving and Salvage to NPFC. See also, email to OSPR from NPFC dated July 2, 2025.

⁶⁸ See, email from FOSC to NPFC dated June 4, 2025, providing the manifests.

Seven (7) hazardous waste manifests were generated after Global Diving and Salvage and its subcontractor Patriot Environmental Services removed the following items from submerged spaces onboard the AURORA:

- a) Paint related materials
- b) Waste aerosols
- c) Liquid Kerosene
- d) Solid oily debris
- e) Sulfuric acid solution
- f) Liquid used oil
- g) Liquid ethylene glycol
- h) Acetic acid solution
- i) Polyester Resin Kit
- j) Liquid health and beauty products
- k) Flammable petroleum distillates
- l) Flammable liquids not otherwise specified (NOS)
- m) Adhesives containing flammable liquids
- n) Toxic liquids (pesticides in bottles and sprayers)
- o) 300 lbs. of lead acid batteries
- p) 20 lbs. light bulbs
- q) 50 lbs. miscellaneous light bulbs; and
- r) 80 lbs. dry cell batteries.

The IC confirmed that the hazardous substances listed above came from “dry” paint locker spaces as noted in number 5 above.⁶⁹ In an email to NPFC on July 18, 2025, the IMD Chief confirmed that “dry” spaces were defined as spaces that were dewatered and dried or spaces void of water; and he believed the picture attached to the email contains hazardous substances that came from the dry paint locker that was midship/aft on B or C deck.⁷⁰ Again, this location was submerged underwater while the Aurora was sunk.⁷¹

5. The Incident Commander confirmed the presence of hazmat in the water

The Incident Commander (IC) confirmed that while walking through a previously underwater storage area aft of amidships on the Aurora, the bottom of his coveralls were covered in paint and other substances. He also confirmed that this same space contained water which was freely communicating within the ship and also had the ability to enter and exit the skin of the ship through various holes and other ingress/egress points.⁷²

Additionally, the IC believes that a large amount of hazardous substances came from the dry paint locker that was located midship aft on Aurora’s B or C deck. A picture attached to his

⁶⁹ Email from Incident Commander to NPFC dated July 3, 2025, with attached statement.

⁷⁰ Email from Incident Commander to NPFC dated July 18, 2025, with attached picture of contents from a paint locker.

⁷¹ Global Salvage Plan dated June 3, 2024. Page 10 provides the Aurora schematic noting flooded spaces. Page 11 notes that green sections (which are located aft in the B and C decks on the schematic) required dewatering.

⁷² Email from Incident Commander to NPFC dated August 7, 2025.

email shows many rusted cans of substances.⁷³ The midship aft location of both B and C decks were submerged underwater while the vessel was sunk.⁷⁴

If a commingled mixture of oil and hazardous substances discharges into a navigable waterway, liability and by extension, claim compensation, for the spill does not fall under OPA. Under the regulations implementing OPA, the burden is on the claimant to prove that the discharged substance was oil as defined by OPA⁷⁵ and to prove that the claimed expenses resulted solely from the discharge of OPA oil.⁷⁶ The OSLTF is not available to pay claims based on these facts.

V. CONCLUSION:

After careful analysis of all the supporting documentation provided by the claimant and the entire administrative record, the NPFC determines and finds as a matter of fact that a commingled mixture of oil and hazardous substances more likely than not discharged into a navigable waterway.

The NPFC finds that the claimant has not met its burden of proving their removal costs were solely the result of a discharge or substantial threat of a discharge of oil as defined by OPA and as such the OSLTF is not available to pay based on these facts.⁷⁷

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, California Department of Fish & Wildlife Office of Spill Prevention and Response's request for uncompensated removal costs is denied.

⁷³ Email from Incident Commander to the NPFC dated July 18, 2025.

⁷⁴ Global Salvage Plan dated June 3, 2024. Page 10 provides the Aurora schematic noting flooded spaces. Page 11 notes that green sections (which are located aft in the B and C decks on the schematic) required dewatering.

⁷⁵ See, 33 CFR Part 136. Notably, in its claim submission, OSPR indicated that it had taken two sets of samples from the incident. As a result, and similar to its rationale in seeking granularity as to the spilled materials, NPFC requested the analyses of those samples. While OSPR provided the sample results, they were ultimately inconclusive. The samples were *only* analyzed for the presence of oil; they were not analyzed for the presence of any hazardous materials. Compared against the entirety of the administrative record, the sample results were not enough evidence for the claimant to meet its burden of proof that its removal costs resulted solely from the discharge of OPA oil.

⁷⁶ *Id.* See also, e.g., *Gatlin Oil v. United States*, 169 F.3d. 107 (4th Cir. 1999)(affirming NPFC's denial of an OSLTF claim because the claimant's damages resulted from a fire as opposed to oil). See also, *In re Deepwater Horizon*, 168 F.Supp.3d 908, 914 (E.D. La. 2016)(dismissing OPA claims because the damages resulted from a moratorium on offshore drilling instead of an oil discharge).

⁷⁷ See, e.g., *Gatlin Oil v. United States*, 169 F.3d. 107 (4th Cir. 1999).

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *9/11/25*

Supervisor Action: *Denial Approved*