

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPE24423-URC001
Claimant:	Mississippi Department of Environmental Quality
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$78,220.10
Action Taken:	Offer in the amount of \$78,109.09

EXECUTIVE SUMMARY:

On August 17, 2024, at 1700 local time, the National Response Center (“NRC”) received a report of a fire that was burning tires at Mississippi Tire Recycling, LLC in Jackson, Mississippi.² Chipped rubber material stored at the Mississippi Tire Recycling, LLC site caught fire.³ The burning rubber material released pyrolytic oil from the site into an unnamed tributary that flows to the Pearl River, a navigable waterway of the United States.⁴ The oil traveled approximately a half mile before being caught by a natural underflow dam.⁵

The United States Environmental Protection Agency (“EPA”) Region IV is the Federal On-Scene Coordinator (“FOSC”) for the incident.⁶ The FOSC opened Federal Project Number (“FPN”) UCGPE24423 in response to the incident at the request of Mississippi Department of Environmental Quality (“Claimant” or “MSDEQ”) as the State On Scene Coordinator (“SOSC”) for the incident.⁷ In accordance with the Oil Pollution Act of 1990 (OPA),⁸ Mississippi Tire Recycling, LLC, is the owner and operator of the facility that discharged oil, and is identified as the Responsible Party (“RP”) for the incident.⁹

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 with 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 National Response Center Report #1408292 dated August 17, 2024.

³ U.S. EPA Region IV POLREP #1, Section 2.1.1 Narrative dated August 21, 2024.

⁴ *Id.*

⁵ U.S. EPA Region IV POLREP #1, Section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results, dated August 21, 2024.

⁶ U.S. EPA Region IV POLREP #1 dated August 21, 2024.

⁷ *See*, U.S. EPA Region IV POLREP #1, Section 2.1.2 Response Actions to Date, dated August 21, 2024; *See also*, MSDEQ Emergency Response Incident Report dated September 27, 2024.

⁸ 33 U.S.C. §2701(32).

⁹ U.S. EPA Region IV POLREP #1, Section 2.1.3 Enforcement Activities, Identity of Potentially Responsible Parties (PRPs), dated August 21, 2024.

On November 13, 2024, MSDEQ presented its removal costs claim to the National Pollution Funds Center (“NPFC”) for \$78,220.10.¹⁰ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$78,109.09 of the claimed costs are compensable and offers this amount as full and final compensation of this claim.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹¹ 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.¹² The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹³ If there is conflicting evidence in the 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 August 17, 2024, at 1700 local time, the National Response Center (“NRC”) received a report of a fire that was burning tires at Mississippi Tire Recycling, LLC in Jackson, Mississippi.¹⁴ Chipped rubber material stored at the Mississippi Tire Recycling, LLC site caught fire.¹⁵ The Jackson Fire Department applied 6 million gallons of water in an attempt to extinguish the fire.¹⁶ The burning rubber material released pyrolytic oil from the site into an unnamed tributary that flows to the Pearl River, a navigable waterway of the United States.¹⁷ The oil traveled approximately a half mile before being caught by a natural underflow dam.¹⁸

Responsible Party

¹⁰ MSDEQ Original claim submission received November 13, 2024.

¹¹ 33 CFR Part 136.

¹² 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)).

¹³ 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).

¹⁴ National Response Center Report #1408292 dated August 17, 2024.

¹⁵ U.S. EPA Region IV POLREP #1, Section 2.1.1 Narrative dated August 21, 2024.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ U.S. EPA Region IV POLREP #1, Section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results, dated August 21, 2024.

The spill occurred at an onshore facility as defined by the Oil Pollution Act of 1990 (OPA).¹⁹ OPA defines the Responsible Party (RP) for a discharge from an onshore facility as “any person or entity owning or operating such facility.”²⁰ Mississippi Tire Recycling, LLC is the confirmed owner and operator of the facility at the time when the spill incident occurred.²¹ As such, Mississippi Tire Recycling, LLC is identified as the RP, as defined by the Oil Pollution Act of 1990.²²

On November 14, 2024, The NPFC issued an RP Notification Letter to Mississippi Tire Recycling LLC via email.²³ On December 10, 2024, the RP provided photographs of the incident and acknowledged receipt of the RP Notification Letter. During a phone conversation, the RP advised that the business is on the verge of Bankruptcy, and he is unable to pay the claim.²⁴

Recovery Operations

On August 18, 2024, the FOSC opened Federal Project Number (“FPN”) UCGPE24423 in response to the incident at the request of MSDEQ.²⁵ MSDEQ hired E3 Environmental under a state contract in order to mitigate the threat and recover the pyrolytic oil that was released.²⁶ The FOSC mobilized resources on August 18th and 19th, 2024 to conduct source control, containment, and recovery operations. The FOSC utilized heavy equipment to segregate the burning material and stop the release of pyrolytic oil to the tributary.²⁷ The FOSC also utilized a vacuum truck and drum skimmer to recover oil.²⁸ Jackson Fire Department continued applying three to four million gallons of water per day until the fire was finally extinguished on August 26, 2024.²⁹ On August 28, 2024, the removal response entered into maintenance phase.³⁰

E3 Environmental performed actions to contain and recover oil on August 18, 2024, and August 19, 2024, then ceased actions until August 29, 2024, when more oil was observed and E3 was contacted to perform additional response actions.³¹ On September 10, 2024, E3 Environmental removed containment, removed the access road to the tributary, and completed operation and maintenance. Disposal of oil debris and materials were planned.³²

¹⁹ An “onshore facility means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 2701(24).

²⁰ 33 U.S.C. § 2701(26), 33 U.S.C. § 2701(32)

²¹ U.S. EPA Region IV POLREP #1, Section 2.1.3 Enforcement Activities, Identity of Potentially Responsible Parties (PRPs), dated August 21, 2024.

²² 33 U.S.C. §2701(32).

²³ Mailed RP notification letter dated November 14, 2024.

²⁴ Email from NPFC to RP providing a summary of a phone call dated December 10, 2024.

²⁵ See, U.S. EPA Region IV POLREP #1, Section 2.1.2 Response Actions to Date, dated August 21, 2024; See also, MSDEQ Emergency Response Incident Report dated September 27, 2024.

²⁶ See, MSDEQ OSLTF Claim Form, question 9, dated October 7, 2024; See also, U.S. EPA Region IV POLREP #1, Section 2.1.2 Response Actions to Date, dated August 21, 2024.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See, U.S. EPA Region IV POLREP #2, Section 2.1.2 Response Actions to Date, dated August 25, 2024. See also, U.S. EPA Region IV POLREP #3, Section 2.1.2 Response Actions to Date, dated August 29, 2024.

³⁰ U.S. EPA Region IV POLREP #3, Section 2.1.2 Response Actions to Date, dated August 29, 2024.

³¹ On December 2, 2024, MSDEQ provided a copy of the MSDEQ Emergency Response Incident Report, Narrative section, dated September 27, 2024.

³² *Id.*

III. CLAIMANT AND NPFC:

On November 13, 2024, Mississippi Department of Environmental Quality presented its removal costs claim to the NPFC for \$78,220.10.³³ The claim included MSDEQ's signed OSLTF form, MSDEQ invoice ER-00000973, and MSDEQ invoice ER-00000974.³⁴ MSDEQ's signed OSLTF form listed Hinds Tire Fire Report from MDEQ and USEPA POLREP as attachments, but those documents were not attached.³⁵

On November 29, 2024, the NPFC requested additional information from MSDEQ.³⁶ On December 2, 2024, and December 5, 2024, MSDEQ replied to the NPFC's request for additional information and provided E3 Environmental itemized invoices, E3 Environmental daily field service ticket, incident photos, MSDEQ emergency response work order forms, Mississippi Emergency Management Agency emails, contractor rate sheets, MSDEQ incident report, USEPA POLREP, and disposal manifests.³⁷

On February 4, 2025, the NPFC requested more additional information from MSDEQ.³⁸ The same day, MSDEQ replied to the NPFC's request for additional information and provided proof of payment to E3 Environmental.³⁹

On February 20, 2025, the NPFC requested additional information from MSDEQ.⁴⁰ The same day, MSDEQ replied to the NPFC's request for additional information and provided MSDEQ's original and modified contract with E3 Environmental.⁴¹

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.⁴² An RP's liability is strict, joint, and several.⁴³ 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."⁴⁴ OPA was intended to cure these deficiencies in the law.

³³ MSDEQ Original Claim Submission received November 13, 2024.

³⁴ *Id.*

³⁵ MSDEQ Original Claim Submission, page 2 #13, received November 13, 2024.

³⁶ Additional Information request email to MSDEQ dated November 29, 2024.

³⁷ Emails from MSDEQ dated December 2, 2024, and December 5, 2024.

³⁸ Additional Information request email to MSDEQ dated February 4, 2025.

³⁹ Email from MSDEQ dated February 6, 2025.

⁴⁰ Additional Information request email to MSDEQ dated February 20, 2025.

⁴¹ Email from MSDEQ dated February 20, 2025.

⁴² 33 U.S.C. § 2702(a).

⁴³ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

⁴⁴ *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).

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.”⁴⁵ 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.”⁴⁶

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴⁷ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁸ 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.⁴⁹

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;
- (d) That the removal costs were uncompensated and reasonable.⁵⁰

The NPFC analyzed each of these factors and determined that part of the costs incurred and submitted by MSDEQ herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment⁵¹ where applicable and have been determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁵²

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$78,109.09 while \$111.01 is denied based on the following categories and detailed in the NPFC Summary of Costs (Enclosure 3).

E3 Environmental Invoice SI-38662:

1. The NPFC denied unidentified difference.

⁴⁵ 33 U.S.C. § 2701(31).

⁴⁶ 33 U.S.C. § 2701(30).

⁴⁷ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁸ 33 CFR Part 136.

⁴⁹ 33 CFR 136.105.

⁵⁰ 33 CFR 136.203; 33 CFR 136.205.

⁵¹ MSDEQ Payment Detail dated February 4, 2025.

⁵² Email from FOSC dated December 23, 2024.

Total Denied: \$0.01⁵³

Total Denied for this invoice: \$0.01

E3 Environmental Invoice SI-39089:

1. The NPFC denied unidentified differences.

Total Denied: \$0.09⁵⁴

2. Personnel costs do not meet rate sheet provision for Overtime. Overtime hours are approved as Standard time.

Total Denied: \$110.91⁵⁵

Total Denied for this invoice: \$110.00

Overall Denied Costs: \$111.01

V. CONCLUSION:

After careful analysis of all the supporting documentation provided by MSDEQ and the entire administrative record, the NPFC determines and finds as a matter of fact that MSDEQ hired E3 Environmental for fire mitigation efforts with heavy equipment and to conduct source control, containment, and recovery operations for the pyrolytic oil, which is an OPA oil, that discharged into the tributary of the Pearl River, a navigable waterway of the United States.⁵⁶ All removal costs approved for payment were determined to be reasonable, uncompensated, and were determined by the FOSC to be consistent with the NCP.⁵⁷

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Mississippi Department of Environmental Quality request for uncompensated removal costs is approved in the amount of **\$78,109.09**.

This determination is a settlement offer,⁵⁸ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵⁹ The NPFC reserves the right to revoke a

⁵³ Enclosure 3, Sheet 2, Line 107.

⁵⁴ Enclosure 3, Sheet 3, Lines 17, 66, and 126.

⁵⁵ Enclosure 3, Sheet 3, Lines 120, 121, 124, and 125.

⁵⁶ See, U.S. EPA Region IV POLREP #1, Section 1.1.2.2 Description of Threat dated August 21, 2024; See also, MSDEQ Emergency Response Incident Report, Narrative section, dated September 27, 2024.

⁵⁷ Email from FOSC dated December 23, 2024.

⁵⁸ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR 136.115(a).

⁵⁹ 33 CFR 136.115(b).

settlement offer at any time prior to acceptance.⁶⁰ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *2/25/2025*

Supervisor Action: *Offer Approved*

Supervisor's Comments:

⁶⁰ 33 CFR 136.115(b).