

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPE24617-URC002
Claimant:	Environmental Restoration, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$56,419.90
Action Taken:	Denial

EXECUTIVE SUMMARY:

Lightning struck a Benchmark Oil and Gas (Benchmark or RP) production facility “gun barrel” tank in Orangefield, Texas, on May 29, 2024.² The damaged tank released its nearly full capacity mixture of approximately 40 barrels crude oil and 360 barrels produced water, which discharged into Cow Bayou, a navigable waterway of the United States.³ The United States Environmental Protection Agency (EPA) Region VI was the Federal On-Scene Coordinator (FOSC) for the incident.⁴ Benchmark hired Phoenix Pollution Control & Environmental Services (PPC) to mitigate and cleanup the spill.⁵ On June 10, 2024, the RP informed PPC of their lack of resources to continue with the cleanup of the spill and intent to file for bankruptcy.⁶ The FOSC issued a Notice of Federal Assumption (NOFA) to the RP on June 11, 2024, stating the EPA assumed the remaining response actions to clean up the spill in accordance with the National Contingency Plan (NCP).⁷ On June 12, 2024, the FOSC hired Environmental Restoration, LLC (ER or Claimant) to complete cleanup of the spill.⁸ To help with the cleanup, ER subcontracted PPC since they already had personnel and equipment on scene.⁹

The FOSC hired ER under the authority of Section 311(c)(1) of the Federal Water Pollution Control Act (FWPCA) as amended.¹⁰ Under this authority, ER was paid \$350,000 of the

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 See, Texas Railroad Commission (TXRRC) – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61; See also, National Response Center (NRC) Report # 1400360 dated May 29, 2024.

³ See, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61.

⁴ U.S. EPA Region VI POLREP #1 dated June 12, 2024.

⁵ See, U.S. EPA Region VI POLREP #1, Section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results, dated June 12, 2024.

⁶ See, U.S. EPA Region VI POLREP #1, Section 2.1.1 Narrative, dated June 12, 2024.

⁷ See, *id.* See also, U.S EPA NOFA issued to Benchmark Oil and Gas on June 11, 2024.

⁸ See, U.S. EPA Region VI POLREP #1, Section 2.1.2 Response Actions to Date, dated June 12, 2024.

⁹ See, email from (b) (6), ER to (b) (6), Benchmark – “ER comments.”

¹⁰ See, 33 U.S.C. § 1321(c). See also, U.S. EPA NOFA issued to Benchmark Oil and Gas on June 11, 2024.

\$406,432.42 response costs they claim to have incurred.¹¹ The FOSC stated that generally, ER would have been paid in full for the costs they incurred however, "... ER violated the contract terms and performed the cleanup work without prior approval from EPA."¹² Because of this, the EPA only paid \$350,000 to ER.¹³ As a result, ER presented a claim to the National Pollution Funds Center (NPFC) to recover its remaining costs.¹⁴

On June 2, 2025, the claimant submitted their claim totaling \$56,432.42 to the NPFC without first presenting it to the RP.¹⁵ After being provided the correct information for the RP,¹⁶ the claimant properly presented their claim on June 23, 2025,¹⁷ and the NPFC waited to begin adjudication of the claim until after the 90-day presentment window had passed. After waiting the statutorily required 90 days, on September 21, 2025, the NPFC began adjudication of the claim. Originally, the claimant had requested \$56,432.42 to cover the difference between their total response costs and the amount being paid by the EPA, as referenced above.¹⁸ However, the \$56,432.42 in costs were not itemized in their initial request. After requesting an itemized breakdown of the costs,¹⁹ ER provided a new invoice with costs totaling \$56,419.90 and has requested this amount as the sum certain for their claim.²⁰

The NPFC thoroughly reviewed all documentation submitted with the claim and obtained independently, analyzed the applicable law and regulations and concludes the facts established by this record do not support ER's claim for uncompensated removal costs. For the reasons set forth below, the NPFC has determined ER has not met its burden of proving the removed substance was oil as defined by OPA.²¹ As such, the claim is not compensable by the Oil Spill Liability Trust Fund (OSLTF) and must be denied.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against OSLTF.²² 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

¹¹ See, NPFC Additional Information Request Response, page 2 of 116. See also, email from FOSC to NPFC dated June 3, 2025.

¹² See, email from FOSC to NPFC dated June 3, 2025.

¹³ See, NPFC Additional Information Request Response, page 2 of 116. See also, email from FOSC to NPFC dated June 3, 2025.

¹⁴ See, email from Claimant to NPFC dated June 2, 2025, providing claim request.

¹⁵ Original Claim Submission dated June 2, 2025.

¹⁶ See, email to Claimant from NPFC, dated June 6, 2025, providing RP contact info.

¹⁷ See, Benchmark Cover Letter and Claim Invoice Submittal dated June 16, 2025. See also, Benchmark – USPS certified mail tracking, indicating the documents were picked up from the Post Office on June 23, 2025.

¹⁸ See, NPFC Additional Information Request Response, pages 1-2 of 116. See also, Optional OSLTF Claim Form dated June 2, 2025.

¹⁹ See, email to Claimant from NPFC, dated October 20, 2025, requesting additional information.

²⁰ See, NPFC Additional Information Request Response, pages 1, 2, and 4 of 116.

²¹ 33 U.S.C. § 2701.

²² 33 CFR Part 136.

the facts of the claim.²³ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁴ 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

Lightning struck a Benchmark production facility “gun barrel” tank in Orangefield, Texas, on May 29, 2024.²⁵ The damaged tank released its nearly full capacity mixture of approximately 40 barrels crude oil and 360 barrels produced water, which discharged into Cow Bayou, a navigable waterway of the United States.²⁶ The EPA Region VI was the FOSC for the incident.²⁷ Benchmark hired PPC to mitigate and cleanup the spill.²⁸ On June 10, 2024, the RP informed PPC of their lack of resources to continue with the cleanup of the spill and intent to file for bankruptcy.²⁹ The FOSC issued a NOFA to the RP on June 11, 2024, stating the EPA assumed the remaining response actions to clean up the spill in accordance with the NCP.³⁰ On June 12, 2024, the FOSC hired ER to complete cleanup of the spill.³¹ To help with the cleanup, ER subcontracted with PPC since they already had personnel and equipment on scene.³²

Responsible Party

The spill occurred at an onshore facility as defined by OPA.³³ OPA defines the RP for a discharge from an onshore facility as “any person or entity owning or operating such facility.”³⁴ The FOSC identified Benchmark Oil & Gas as the owner and operator of the tank and facility at the time when the spill incident occurred.³⁵

²³ 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)).

²⁴ 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).

²⁵ See, Texas Railroad Commission (TXRRC) – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61; See also, National Response Center (NRC) Report # 1400360 dated May 29, 2024.

²⁶ See, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61.

²⁷ U.S. EPA Region VI POLREP #1 dated June 12, 2024.

²⁸ See, U.S. EPA Region VI POLREP #1, Section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results, dated June 12, 2024.

²⁹ See, U.S. EPA Region VI POLREP #1, Section 2.1.1 Narrative, dated June 12, 2024.

³⁰ See, *id.* See also, EPA NOFA issued to Benchmark Oil and Gas on June 11, 2024.

³¹ See, U.S. EPA Region VI POLREP #1, Section 2.1.2 Response Actions to Date, dated June 12, 2024.

³² See, email from (b) (6), ER to (b) (6), Benchmark – “ER comments.”

³³ An “onshore facility” is “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).

³⁴ 33 U.S.C. § 2701(32).

³⁵ See, U.S. EPA Notice of Federal Interest (NOFI) issued to Benchmark on May 30, 2024, and EPA NOFA issued to Benchmark Oil and Gas on June 11, 2024. See also, U.S. EPA Region VI POLREP #1, Section 2.1.3 Enforcement Activities, Identity of Potentially Responsible Parties, dated June 12, 2024.

Recovery Operations

On May 30, 2024, the RP hired PPC to begin containment and cleanup operations.³⁶ On June 10, 2024, the RP informed PPC of their lack of funds and resources to continue cleanup for the spill and intent to file for bankruptcy.³⁷ On June 11, 2024, the FOSC issued a Notice of Federal Assumption (NOFA) to the RP stating the agency will assume remaining response actions to clean up the spill in accordance with the National Contingency Plan (NCP).³⁸

On June 12, 2024, the EPA's cleanup contractors mobilized to continue cleanup operations after the RP terminated its service agreement with PPC.³⁹ Between June 13 and June 29, 2024, the EPA's contractors utilized sorbent materials to collect the oil. Hurricane Beryl prevented safe working conditions for cleanup from June 30, 2024, to July 9, 2024.⁴⁰ All response operations concluded on July 10, 2024, after the remaining containment and absorbent boom were collected from Cow Bayou for disposal.⁴¹

The FOSC hired ER under the authority of Section 311(c)(1) of the FWPCA as amended.⁴² Under this authority, ER was paid \$350,000 of the \$406,432.42 response costs they claim to have incurred.⁴³ The FOSC stated that generally, ER would have been paid in full for the costs they incurred however,, "... ER violated the contract terms and performed the cleanup work without prior approval from EPA."⁴⁴ Because of this, the EPA only paid \$350,000 to ER.⁴⁵ As a result, ER presented a claim to the National Pollution Funds Center (NPFC) to recover its remaining costs.⁴⁶

III. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing OPA⁴⁷ require all claims for removal costs must be presented to the RP before seeking compensation from the NPFC.⁴⁸

On June 23, 2025, ER satisfied its presentment requirement under OPA by submitting their claimed costs totaling \$56,432.42 to the RP.⁴⁹ To date, the RP has not paid those costs.

³⁶ See, U.S. EPA Region VI POLREP #1, Section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results, dated June 12, 2024.

³⁷ U.S. EPA Region VI POLREP #1, Section 2.1.1 Narrative, dated June 12, 2024.

³⁸ *Id.*

³⁹ See, U.S. EPA Region VI POLREP #3, Section 2.1.2 Response Actions to Date, dated July 12, 2024. *See also*, U.S. EPA NOFA dated June 11, 2024.

⁴⁰ U.S. EPA Region VI POLREP #3, Section 2.1.2 Response Actions to Date, dated July 12, 2024.

⁴¹ *Id.*

⁴² See, 33 U.S.C. § 1321(c). *See also*, U.S. EPA NOFA issued to Benchmark Oil and Gas on June 11, 2024.

⁴³ See, NPFC Additional Information Request Response, page 2 of 116. *See also*, email from FOSC to NPFC dated June 3, 2025.

⁴⁴ See, email from FOSC to NPFC dated June 3, 2025.

⁴⁵ See, NPFC Additional Information Request Response, page 2 of 116. *See also*, email from FOSC to NPFC dated June 3, 2025.

⁴⁶ See, email from Claimant to NPFC dated June 2, 2025, providing claim request.

⁴⁷ 33 U.S.C. § 2701 *et seq.*

⁴⁸ 33 CFR 136.103.

⁴⁹ See, Benchmark Cover Letter and Claim Invoice Submittal dated June 16, 2025. *See also*, Benchmark – USPS certified mail tracking, indicating the documents were picked up from the Post Office on June 23, 2025.

IV. CLAIMANT AND NPFC:

Initially on June 2, 2025, the claimant submitted their claim totaling \$56,432.42 to the NPFC without first presenting it to the responsible party.⁵⁰ After being provided the correct information for the responsible party,⁵¹ the claimant was able to properly present their claim to the RP on June 23, 2025,⁵² and the NPFC waited to begin adjudication of the claim. When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.⁵³ After the 90 days passed, on September 21, 2025, the NPFC began adjudication of the claim. Originally, the claimant had requested \$56,432.42 to cover the difference between their total response costs of \$406,432.42 and the \$350,000 paid by the EPA.⁵⁴ However, the \$56,432.42 in costs were not itemized in their initial request. After requesting an itemized breakdown of the costs,⁵⁵ ER provided a new itemized invoice with costs totaling \$56,419.90 and they are requesting this amount as the sum certain for their claim.⁵⁶ On October 20, 2025, the NPFC requested some additional information from the claimant, and they promptly provided the information back to the NPFC, as requested.⁵⁷

V. ANALYSIS:

During the adjudication process, evidence revealed lightning struck a “400 barrel **gun barrel**” tank,⁵⁸ which released its nearly full capacity **mixture** of approximately 40 barrels crude oil and 360 barrels produced water into the tank containment area.⁵⁹ The commingled mixture migrated beyond the containment and eventually discharged into Cow Bayou.⁶⁰ These critical facts were not included in ER’s claim submission, however, they were obtained independently during the adjudication process and are detailed below.

a. Tank Service

⁵⁰ Original Claim Submission dated June 2, 2025.

⁵¹ See, email to Claimant from NPFC, dated June 6, 2025, providing RP contact info.

⁵² See, Benchmark Cover Letter and Claim Invoice Submittal dated June 16, 2025. See also, Benchmark – USPS certified mail tracking, indicating the documents were picked up from the Post Office on June 23, 2025.

⁵³ 33 CFR 136.103.

⁵⁴ See, NPFC Additional Information Request Response, pages 1-2 of 116. See also, Optional OSLTF Claim Form dated June 2, 2025.

⁵⁵ See, email to Claimant from NPFC, dated October 20, 2025, requesting additional information.

⁵⁶ See, NPFC Additional Information Request Response, pages 1,2, and 4 of 116.

⁵⁷ See, email to Claimant from NPFC, dated October 20, 2025, Requesting additional information. See also, NPFC Additional Information Request Response.

⁵⁸ See, email from RP to NPFC dated November 12, 2025, indicating purpose of tank. See also, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61(emphasis added).

⁵⁹ See, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61 indicating 40 barrels of crude oil and 360 barrels of produced water spilled (emphasis added). See also, Texas General Land Office (TGLO) Case # 2024-1900 entry into the “Response Chronology” timeline on May 30, 2024, at 1025 am, on page 9 of 45 indicating 60 barrels of crude oil and 340 barrels of an oil water solution. While the quantities are slightly different between the two documents, both indicate a complete loss of the tank’s contents.

⁶⁰ See, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61; See also, TGLO Case # 2024-1900 entry into the “Response Chronology” timeline on May 30, 2024, at 10:25 a.m., on page 9 of 45.

The EPA FOSC initial Pollution/Situation Report (POLREP) described the spill site as “an oil storage tank battery for oil production wells nearby” with “a tank on site was struck by lightning and released crude oil from the tank into secondary containment.”⁶¹ Each incident status update POLREP repeated this description unchanged. During adjudication, the NPFC further queried Benchmark and the response agencies to establish specifically which tank discharged.

On November 12, 2025, the NPFC contacted the RP to inquire which tank discharged and its use in service.⁶² Benchmark replied that the tank was a reconditioned 400-barrel capacity fiberglass gun barrel tank used for oil production.⁶³ The company acquired the tank during late 2022 and installed it early 2023.⁶⁴ The RP further described its use, stating “Oil and water is pumped from the ground into this tank, where gravity makes sure that the oil is moved into oil storage tanks, and the water is moved into the injection well.”⁶⁵

The NPFC sought to gain further clarity about the gun barrel tank contents and use during the production process. On November 24, 2025, the NPFC provided the RP with a section of the EPA document titled *SPCC Guidance for Regional Inspectors*, dated December 16, 2013.⁶⁶ The section provided is titled “Oil / Water Separators,” and the NPFC used this reference to ask the following question to the RP about the Gun Barrel tank.⁶⁷

Here is a document titled ‘SPCC Guidance For Regional Inspectors’ SPCC Guidance for Regional Inspectors, December 16, 2013. Page 5-16 states in part that ‘Gun barrels, also called wash tanks, are generally found in older or marginal fields and are used to provide quiescent conditions and retention time to allow produced water to settle out of the well fluids (Figure 5-10).’⁶⁸

⁶¹ See, U.S. EPA Region VI POLREP #1, Section 1.1.2.2 Description of Threat, dated June 12, 2024.

⁶² See, email from NPFC to RP dated November 12, 2025, requesting purpose of the tank. See also, email from NPFC to RP dated November 12, 2025, requesting location of specific tank in plan. See also, email from NPFC to RP dated November 12, 2025, requesting tank diagram.

⁶³ See, email from RP to NPFC dated November 12, 2025, indicating purpose of tank.

⁶⁴ See, *id.* See also, email from RP to NPFC dated November 24, 2025.

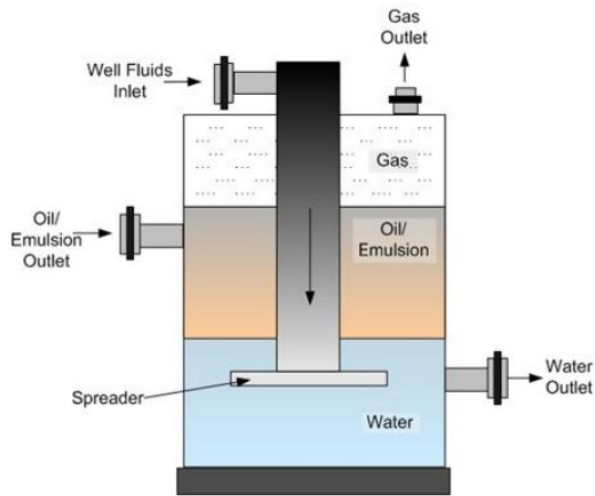
⁶⁵ See, email from RP to NPFC dated November 12, 2025, indicating purpose of tank.

⁶⁶ See, email from NPFC to RP dated November 24, 2025, requesting information about the tank.

⁶⁷ SPCC Guidance for Regional Inspectors, Chapter 5 Oil / Water Separators Section 5.5.

⁶⁸ Email from NPFC to RP dated November 24, 2025, requesting information about the tank. While Figure 5-10 is embedded here for ease of reading, it was attached as part of the email to the RP for reference.

Figure 5-10: Gun barrel oil/water separator.



Please review Figure 5-10 on page 5-17. Additionally, page 5-17 states ‘In oil production separators, the momentum of the fluid flow is absorbed at the inlet, thereby reducing the fluid viscosity and allowing oil, gas, and water to separate out of solution. Gas then rises and flows out at the top of the separator, while oil and water fall to the lower portion of the vessel and coalesce in separate areas. With the appropriate settling time, the more dense free water settles beneath the less dense oil. Liquid levels are maintained by float-actuated control valves or dump valves. As the different pre-set liquid levels are reached, dump valves discharge water and oil from the separator to appropriate storage areas’

Can you confirm that the statement in the paragraph above and Figure 5-10 provide an accurate description of the tank that discharged? If not, please explain in detail any similarities and differences or the function/purpose and contents of the tank that discharged.⁶⁹

The RP responded, “This sounds accurate. It is a very economical way of producing marginal fields in the industry.”⁷⁰

The Railroad Commission of Texas (TXRRC) “regulates the oil and gas industry, including the drilling, production, and transportation of oil and gas, as well as pipeline safety and natural gas utilities in the State of Texas.”⁷¹ TXRRC dispatched crew to the Benchmark spill site during initial incident response. The NPFC posed the above question to TXRRC during review on reconsideration. TXRRC provided a copy of their legal enforcement referral and replied, “The gun barrel that leaked is an oil water separator.”⁷² This statement corroborates TXRRC

⁶⁹ Email from NPFC to RP dated November 24, 2025, requesting information about the tank.

⁷⁰ Email from RP to NPFC dated November 24, 2025.

⁷¹ Email from TXRRC to NPFC dated December 2, 2025.

⁷² *Id.*

Inspection Report entry “lightning strike on gun barrel that resulted in top of 400 bbl fiberglass being blown off and water leg broke at valve fitting.”⁷³ The following report photos represent the damaged valve fitting.



Pic # 5 of broken water leg on gun barrel.

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Pic # 1 of oil in fierwall appx 1-1/2" deep Firewall dimension 70 feet x 50 feet. Firewall berm 2-1/2feet with a 5 foot base depyh of fluid in firewall is 2-1/2 inches.

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Upon thorough and careful consideration of the foregoing, the NPFC concludes the source of the spill was the damaged Benchmark gun barrel tank.

b. Tank Contents

The EPA FOSC initial POLREP describes the spill as “approximately 20 to 40 barrels (bbls) of crude oil was released.”⁷⁶ Each incident status POLREP update repeated this description unchanged. Additionally, the Texas General Land Office (TGLO) State On-Scene Coordinator’s forty-five-page response case report repeatedly characterized the discharge was a crude oil spill;⁷⁷ however, there was a singular report entry that indicated the spill was as mixture of 340 barrels of an oil water solution and 60 barrels of crude oil.⁷⁸

During adjudication, the NPFC sought to clarify the seemingly incongruent statements for the administrative record. By email, the NPFC asked EPA “Please confirm if the tank contained only crude oil.”⁷⁹ The FOSC replied, “To the best of my knowledge and based on conversations with the Texas Railroad Commission (the state agency responsible for regulations for inland crude oil production facilities) Benchmark was an active crude oil production facility and the

⁷³ TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61.

⁷⁴ TXRRC – Benchmark Legal Enforcement, Inspection Report Pictures, Picture #5, provided by (b) (6) on page 42 of 61.

⁷⁵ TXRRC – Benchmark Legal Enforcement, Inspection Report Pictures, Picture #1, provided by (b) (6) on page 6 of 61.

⁷⁶ U.S. EPA Region VI POLREP #1, Section 1.1.2.2 Description of Threat, dated June 12, 2024.

⁷⁷ See, TGLO Case # 2024-1900.

⁷⁸ See, TGLO Case # 2024-1900 entry into the “Response Chronology” timeline on May 30, 2024, at 10:25 am, on page 9 of 45.

⁷⁹ Email from NPFC to FOSC dated September 4, 2025.

content of the tank was crude oil.”⁸⁰ To gain clarity about what material spilled out of the tank, the NPFC sought to query TGLO and TXRRC.

As noted above, the NPFC’s review concluded the source of the spill was the Benchmark gun barrel tank.⁸¹ With this newly developed evidence, the NPFC sought to establish whether the damaged tank discharged produced water in addition to crude oil.

i) Correspondence with EPA

Further to EPA’s statement above, the NPFC sent an email to the FOSC requesting information of the TXRRC contact who informed EPA that the substance spilled was crude oil.⁸² The FOSC promptly responded and provided the requested information.⁸³ Subsequently, the NPFC questioned “[d]id the EPA ever quantify the total amount discharged,”⁸⁴ to which EPA replied “[n]o, EPA did not quantify the amount of oil discharged. Since the responsible party conducted the initial cleanup response prior to financial issues, EPA was not conducting the cleanup from the beginning. Therefore, EPA does not have the data to quantify the total amount of discharged oil.”⁸⁵

ii) Correspondence with TGLO

TGLO dispatched crew to the Benchmark spill site during initial incident response. The NPFC contacted the TGLO responding officer, Mr. (b) (6), to inquire about the above noted singular report entry that indicated the spill was as mixture of 340 barrels of an oil water solution and 60 barrels of crude oil.⁸⁶ The NPFC asked the Mr. (b) (6) the following clarifying questions:

“How did you determine there was a discharge of both an ‘oil water solution’ and of strictly ‘crude oil’ from the tank?”⁸⁷ Mr. (b) (6) responded “[w]hile first on scene and conducting my investigation into the cause and source the discharge, I questioned Mr. (b) (6)⁸⁸ as to the volume of the damaged tank and its contents. He stated to me that the tank contained 340 bbl oil water solution and 60 bbl crude oil.”⁸⁹

Additionally, Mr. (b) (6) was asked “... can you please explain why on pages 2 and 43 of 45, for the attached case number 2024-1900, it only mentions the material spilled as crude oil and doesn’t say anything about produced water?”⁹⁰ Mr. (b) (6) responded “[m]y agency only regulates petroleum products, produced water would fall under the Railroad

⁸⁰ Email from FOSC to NPFC dated September 17, 2025.

⁸¹ See, email from RP to NPFC dated November 12, 2025, indicating purpose of tank. See also, email from TXRRC to NPFC dated December 2, 2025. See also, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61.

⁸² See, email from NPFC to FOSC dated November 24, 2025.

⁸³ See, email from FOSC to NPFC dated November 25, 2025.

⁸⁴ See, email from NPFC to FOSC dated November 24, 2025.

⁸⁵ See, email from FOSC to NPFC dated November 25, 2025.

⁸⁶ See, email from NPFC to TGLO dated November 24, 2025.

⁸⁷ Email from NPFC to TGLO dated November 24, 2025.

⁸⁸ According to Mr. (b) (6), Mr. (b) (6) was the onsite company representative.

⁸⁹ Email from TGLO to NPFC dated November 24, 2025.

⁹⁰ Email from NPFC to TGLO dated November 24, 2025.

Commissions (sic) of Texas jurisdiction. The Railroad commission was notified and had reps onsite for portions of the cleanup process.”⁹¹

iii) Correspondence with TXRRC

By email on November 26, 2025, the NPFC asked the TXRRC “[h]ow did you determine the tank discharged only crude oil,”⁹² to which TXRRC replied the “... Railroad Commission of Texas Field Inspector, was dispatched and inspected the lease and reported a lightning strike had hit a gun barrel. The top of the 400 bbl fiberglass gun barrel was blown off, and the water leg broke at a valve fitting spilling approximately 40 bbls of crude oil and 360 bbls of produced water into the firewall. The firewall drain was partially opened due to rocks in firewall drain valve. The oil and produced water entered a drainage ditch besides the tank battery and oil entered Cow Bayou.”⁹³ This statement corroborates TXRRC Inspection Report.⁹⁴

Upon thorough and careful consideration of the foregoing, the NPFC concludes crude oil and produced water spilled out of the damaged gun barrel tank; the commingled mixture migrated along a path of discharge from the containment, eventually discharging into Cow Bayou.

VI. 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.⁹⁵ An RP’s liability is strict, joint, and several.⁹⁶ 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.”⁹⁷ 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.”⁹⁸ 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.”⁹⁹

⁹¹ Email from TGLO to NPFC dated November 24, 2025.

⁹² Email from NPFC to TXRRC dated November 26, 2025.

⁹³ Email from TXRRC to NPFC dated December 2, 2025.

⁹⁴ See, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61.

⁹⁵ 33 U.S.C. § 2702(a).

⁹⁶ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

⁹⁷ *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).

⁹⁸ 33 U.S.C. § 2701(31).

⁹⁹ 33 U.S.C. § 2701(30).

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the NCP.¹⁰⁰ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.¹⁰¹ 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.¹⁰²

A spill of commingled crude oil and produced water is not an OPA incident

a. Statutory Definitions

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.”¹⁰³

An “incident” under OPA is defined 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.*¹⁰⁴

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 (CERCLA) (42 USC § 9601) and which is subject to the provisions of that Act [42 USCA Section 9601 et seq].”¹⁰⁵

CERCLA defines “hazardous substance” broadly.¹⁰⁶ However, the definition of “hazardous substance” under CERCLA specifically excludes “petroleum, including crude oil or any fraction thereof...”¹⁰⁷ 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).”¹⁰⁸ A mixture, or commingling, of oil and hazardous substances is not “oil” within the meaning of the OPA.¹⁰⁹

¹⁰⁰ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

¹⁰¹ 33 CFR Part 136.

¹⁰² 33 CFR 136.105.

¹⁰³ 33 U.S.C. § 2701(3).

¹⁰⁴ 33 U.S.C. § 2701(14)(emphasis added).

¹⁰⁵ 33 U.S.C. § 2701(23).

¹⁰⁶ 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].” *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See, e.g., *Munoz v. Intercontinental Terminals Co.*, 845 F.4th 343 (5th Cir. 2023).

b. Produced Water

When it is initially extracted from subsurface geological structures, unrefined crude oil typically includes portions of natural gas, silt, water, and sand, in addition to any chemical additives previously used during production to enhance extraction of the crude. To obtain a marketable product, some of these constituents must be removed from the crude oil. The separation process generates various types of waste like produced water, cuttings, and drilling fluids. Produced water refers to the water separated from the crude oil.¹¹⁰

In addition to small parts of crude oil, produced water may include other contaminants that can be difficult to remove. The concentrations and types of pollutants in production water may vary significantly depending upon factors like the well's location and any treatment of the water. Production water commonly includes significant concentrations of chloride, sodium, calcium, magnesium, and potassium. Production water may also include varying concentrations of the following:

- Organic compounds: benzene, naphthalene, toluene, phenanthrene, bromodichloromethane, and pentachlorophenol;
- Inorganics: lead, arsenic, barium, antimony, sulfur, and zinc;
- Radionuclides: uranium, radon, and radium¹¹¹

c. 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 have intended them to apply.

¹¹⁰ Produced water is more fully as follows: A term used to describe water produced from a wellbore that is not a treatment fluid. The characteristics of produced water vary, and use of the term often implies an inexact or unknown composition. It is generally accepted that water within the pores of shale reservoirs is not produced due to its low relative permeability and its mobility being lower than that of gas. *Schlumberger Oilfield Glossary*, available online at: www.glossary.oilfield.slb.com/Terms/p/produced_water.aspx (last visited February 12, 2026).

¹¹¹ See, United States Environmental Protection Agency, Office of Compliance, *Profile of the Oil and Gas Extraction Industry*, p 39 (October 2000) available online at: <https://archive.epa.gov/sectors/web/pdf/oilgas.pdf> (last visited February 12, 2026). See also, United States Department of the Interior, Bureau of Reclamation, *Oil and Gas Produced Water Management and Beneficial Use in the Western United States*, p. 41-60 (September 2011) available online at: <https://www.usbr.gov/research/dwpr/reportpdfs/report157.pdf> (last visited February 12, 2026); United States Environmental Protection Agency, *Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*, p. ES- 17 (June 2015) (External Review Draft)—EPA/600/R-15/047, available online at https://www.epa.gov/sites/default/files/2015-07/documents/hf_es_erd_jun2015.pdf (last visited February 12, 2026); Konkel, *Salting the Earth: The Environmental Impact of Oil and Gas Wastewater Spills* (and its references) available online at <https://pmc.ncbi.nlm.nih.gov/articles/PMC5132645/#sec1> (last visited February 12, 2026). Additionally, many other constituents found within produced water are CERCLA hazardous materials. (A listing of CERCLA hazardous substances is found at 40 CFR 302.4).

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 CERCLA. **This ensures that there will be no overlap in the liability provisions of CERCLA and the Oil Pollution Act.**¹¹²

The legislative history of CERCLA likewise is instructive: "The reported bill [CERCLA] does not cover spills or other releases strictly of oil."¹¹³ Contemporaneous congressional debate further elucidated how it intended CERCLA to apply to spills of oil mixed with hazardous substances.¹¹⁴ Both Representative Edgar and Senator Randolph specifically discussed oil slicks that were mixed with 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 oil¹¹⁵ 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.¹¹⁶ 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.'"¹¹⁷

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.¹¹⁸ In that case, the

¹¹² H. R. Rep. No. 653, 101st Cong., 2d Sess. 102 (1990). S. Rep. No. 101-94 (1989) (emphasis added).

¹¹³ S. Rep. No. 96-848, 96th Cong., 2d Sess. 29-30 (1980) (emphasis added).

¹¹⁴ See, e.g., at 126 Cong. Rec. H1 1798 (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).

¹¹⁵ This has become known colloquially as EPA's "petroleum exclusion."

¹¹⁶ 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).

¹¹⁷ *Mid Valley Bank v. North Valley Bank*, 764 F.Supp. 1377, 1383-4 (E.D. Cal. 1991).

¹¹⁸ *Tosco Corp. v. Koch Indus., Inc.*, 216 F.3d 886 (10th Cir. 2000).

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.¹¹⁹ 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.¹²⁰ Finally, the Fifth Circuit addressed this issue head-on in 2023 and affirmatively concluded that a mixture, or commingling, of oil and hazardous substances is not “oil” within the meaning of the OPA.¹²¹

The OSLTF can fund FWPCA removal activity costs, but cannot pay OPA claims, for a commingled spill

The Federal response to oil discharges and hazardous substance releases is conducted in accordance with the NCP.¹²² The NCP effectuates the response powers and responsibilities created by CERCLA, as amended, and the authorities of the FWPCA (colloquially known as the Clean Water Act), as amended. Under the NCP, a FOSC designated by the EPA or the United States Coast Guard (USCG) is responsible for directing the response efforts and coordinating all other efforts at the scene of an oil or hazardous substance release. The USCG provides FOSCs for oil and hazardous substance releases into or threatening the coastal zone. EPA provides FOSCs for releases into or threatening the inland zone.

In this case, the EPA FOSC issued a NOFA,¹²³ and opened Federal Project Number (FPN) UCGPE24617 in response to the incident.¹²⁴ The NOFA stated in part, “[e]ffective June 12, 2024, EPA will conduct removal activities under the authority of Section 311(c)(1) of the FWPCA as amended.”¹²⁵

Expenditures from the Oil Spill Liability Trust Fund are very limited.¹²⁶ One authorized expenditure is for the payment of removal costs and other costs, expenses, claims, and damages referred to in OPA at 33 U.S.C. § 2702. Another is to carry out section 311(c) of the FWPCA (colloquially known as the Clean Water Act) with respect to removal of oil *as defined by that section*.¹²⁷

¹¹⁹ *Id.*

¹²⁰ *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.

¹²¹ *See, e.g., Munoz v. Intercontinental Terminals Co.*, 845 F.4th 343 (5th Cir. 2023).

¹²² 40 CFR Part 300.

¹²³ *See*, U.S. EPA Region VI POLREP #1, Section 2.1.1 Narrative, dated June 12, 2024. *See also*, U.S. EPA NOFA issued to Benchmark Oil and Gas on June 11, 2024.

¹²⁴ *See*, U.S. EPA Region VI POLREP #1, Section 3.1 Unified Command, dated June 12, 2024.

¹²⁵ *See*, U.S. EPA NOFA issued to Benchmark Oil and Gas on June 11, 2024.

¹²⁶ *See*, 26 U.S.C. § 9509(c)(1); 33 U.S.C. § 2712(a).

¹²⁷ *See*, 26 U.S.C. § 9509(c)(1)(D); 33 U.S.C. §§ 1321(s), 2712(a)(1), 2752(b)(1).

These distinctions are important because the definition of oil under OPA is different than the definition of oil under the FWPCA. The FWPCA defines oil broadly: “oil” means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.”¹²⁸ OPA defines oil as “oil of any kind or in 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 [CERCLA] (42 U.S.C. 9601) and which is subject to the provisions of that Act.” The CERCLA exclusion was added by Congress, when it incorporated the FWPCA definition of oil into OPA, to make it clear that there was to be no overlap between CERCLA and OPA.¹²⁹

While it is certainly possible to use the OSLTF to fund a response to an oil discharge under OPA, it would require the FOSC to make a determination that the substance that discharged is “purely” an OPA oil as defined by statute. Given the uncertainty that exists in first stages of a response, this level of granularity often does not exist. Conversely, since the FWPCA provides the broad response and funding authority to respond to a discharge of oil [which is more broadly defined than OPA] or a hazardous substance, the Fund is often opened under the FWPCA in these scenarios. It is important to note that when seeking funding from the OSLTF to immediately respond to the notification of a spill, the FOSC is not required to determine whether the spilled substance is an OPA oil or a FWPCA oil as that would be nearly impossible to know at the time. It is enough to state that “oil” was discharged in order to access the Fund because the Fund is equally available under OPA and under the FWPCA for the response effort to address the removal of “oil”.¹³⁰ At this point in the response, the nature of the oil itself is not necessitous.¹³¹

¹²⁸ 33 U.S.C. § 1321(a)(1).

¹²⁹ The Conference Report on this provision states:

The Conference substitute includes a definition of the term "oil" which is based on the definition of the term in section 311 of the FWPCA. The definition has been modified, however, 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 purposes of [CERCLA]. This ensures that there will be no overlap in the liability provisions of CERCLA and the Oil Pollution Act (emphasis added).

H.R. Rep. No. 653, 101st Cong., 2d Sess. 102 (1990). Representative Strangeland reinforced this during the House's adoption of the Conference Report:

The conferees have defined the term "oil" to clarify that the term is mutually exclusive from hazardous substances subject to regulation under ... [CERCLA]. In fact the conferees have focused on oil spills rather than hazardous substances or hazardous materials spills throughout the development of the legislation. This is true even though various portions of the bill expressly mention hazardous substances. This is done, for example, in amendments to section 311 of the Clean Water Act where we simply wanted to reinstate existing provisions referring to both oil and hazardous substances. 136 Cong. Rec. H6933, 6939 (daily ed. Aug. 3, 1990).

¹³⁰ Compare, 33 U.S.C. § 2712 with 33 U.S.C. § 1321(s).

¹³¹ “It is important to note... liability and compensation for oil pollution removal costs and damages caused by a discharge from a vessel or facility... will be determined in accordance with [OPA]. The [Oil Spill Liability Trust] Fund, however, will be available to the Coast Guard and other government agencies for immediate removal of spills of all types of oil from all sources in the same manner as the fund established by section 311 (k) is presently

Conversely, the distinction is of great importance during the claims adjudication and cost recovery efforts. Title I of OPA – the liability, compensation, and claims regime – only applies to spills of “OPA” oil. Or in other words, claims under 33 U.S.C. § 2713 may be only brought when costs were incurred in responding to a discharge of oil *as defined in OPA* – which as outlined above - specifically excludes CERCLA hazardous substances from its definition.

While FOSCs have the ability to choose which funding authority (OSLTF or CERCLA) is best suited for funding the response to an event, the authority for the NPFC to compensate claimants for removal costs or damages based on an event is exclusively found in OPA and is limited to compensating those removal costs and damages that are *solely* the result of discharge or a substantial threat of discharge of OPA-defined oil. 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. In the context of claims, the burden is on the claimant to prove that the discharged substance was oil as defined by OPA. The claimant must also show that the claimed damages resulted from the discharge of OPA oil.¹³²

VII. CONCLUSION:

After thorough review of the entire administrative record, analysis of the applicable law and regulations, and after careful consideration, the NPFC deems the following facts are substantiated by a preponderance of the credible evidence:

- a. Lightning struck a Benchmark 400-barrel gun barrel tank which, at the time of the incident, contained a nearly full capacity mixture of approximately 40 barrels crude oil and 360 barrels produced water.¹³³
- b. The gun barrel tank is an oil-water separator used to allow produced water to settle out of the well fluids.¹³⁴
- c. Produced water commonly includes a varying concentration of organic compounds, inorganic compounds, and radionuclides, many of which are classified as CERCLA hazardous substances.¹³⁵

available to respond to such spills.” H.R. Conf. Rep. No. 653, 101st Cong., 2d Sess. 124 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 1990 WL 132747.

¹³² See, 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).

¹³³ See, email from RP to NPFC dated November 12, 2025, indicating purpose of tank. See also, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61.

¹³⁴ See, email from RP to NPFC dated November 12, 2025, indicating purpose of tank. See also, email from RP to NPFC dated November 24, 2025. See also, email from TXRRC to NPFC dated December 2, 2025.

¹³⁵ See, United States Environmental Protection Agency, Office of Compliance, *Profile of the Oil and Gas Extraction Industry*, p 39 (October 2000) available online at: <https://archive.epa.gov/sectors/web/pdf/oilgas.pdf> (last visited February 12, 2026). See also, United States Department of the Interior, Bureau of Reclamation, *Oil and Gas Produced Water Management and Beneficial Use in the Western United States*, p. 41-60 (September 2011) available online at: <https://www.usbr.gov/research/dwpr/reportpdfs/report157.pdf> (last visited February 12, 2026); United States Environmental Protection Agency, *Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*, p. ES- 17 (June 2015) (External Review Draft)—EPA/600/R-15/047, available online at https://www.epa.gov/sites/default/files/2015-07/documents/hf_es_erd_jun2015.pdf (last visited February

- d. The lightning damaged the tank top and broke the water leg at a valve fitting.¹³⁶
- e. The damaged gun barrel tank released its contents of produced water and crude oil into the tank (firewall) containment; the containment drain was partially open.¹³⁷
- f. The commingled mixture of crude oil and produced water migrated along a path of discharge from the containment, eventually spilling into Cow Bayou.¹³⁸
- g. As discussed above, the OSLTF is not available to compensate claims for removal costs, submitted in accordance with 33 U.S.C. § 2713 and 33 CFR Part 136, arising from a spill that involved a commingled mixture of oil and hazardous substances.

The NPFC determines that the claimant has not met its burden of proving that the content of the Benchmark Oil and Gas gun barrel tank which released and became the subject of the costs claimed, was solely “oil” as defined by OPA. As such, the OSLTF is not available to pay claims based on these facts. Therefore, based on a comprehensive review of the entire administrative record, the applicable law and regulations, and for the reasons outlined above, Environmental Restoration’s claim for uncompensated removal costs is denied.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor’s review: 2/18/2026

Supervisor Action: *Denial Approved*

12, 2026); Konkel, *Salting the Earth: The Environmental Impact of Oil and Gas Wastewater Spills* (and its references) available online at <https://pmc.ncbi.nlm.nih.gov/articles/PMC5132645/#sec1> (last visited February 12, 2026). Additionally, many other constituents found within produced water are CERCLA hazardous materials. (A listing of CERCLA hazardous substances is found at 40 CFR 302.4).

¹³⁶ See, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61.

¹³⁷ See, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61. See also, TGLO Case # 2024-1900 entry into the “Response Chronology” timeline on May 30, 2024, at 10:25 am, on page 9 of 45.

¹³⁸ See, TXRRC – Benchmark Legal Enforcement, Incident Report, Inspection ID # 1286444 dated May 30, 2024, on page 40 of 61. See also, TGLO Case # 2024-1900 entry into the “Response Chronology” timeline on May 30, 2024, at 10:25 am, on page 9 of 45.