

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924041-URC001
Claimant:	Alaska Dept. of Environmental Conservation, Spill Prevention & Response
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$3,097.21
Action Taken:	Denial on Reconsideration

EXECUTIVE SUMMARY:

On September 6, 2018, at approximately 08:45 local time, Hilcorp Alaska notified the United States Coast Guard's ("USCG") National Response Center (NRC) of a sheen near the Granite Point Platform in Cook Inlet, a navigable waterway of the United States.² On September 6, 2018, at 18:30 local time, the NRC received another report of a sheen that was believed to be from a sunken vessel, described as 100 rings of sheen about 6" to about 2' in diameter each and coming up in bursts of about 4-5 at a time, observed 400 feet away from the Granite Point Platform.³

The State of Alaska Department of Environmental Conservation, Spill Prevention & Response ("Claimant" or "ADEC") communicated with the United States Coast Guard's (USCG) Marine Safety Detachment ("MSD") (b) (6) ("USCG" or "FOSC") and also communicated via email and phone with Hilcorp Corporation regarding sheen sightings in the area.⁵ MSD (b) (6) is the Federal On-Scene Coordinator ("FOSC") based on the location of this incident. No Responsible Party ("RP") has been identified.

ADEC presented its uncompensated removal cost claim to the National Pollution Funds Center ("NPFC") for \$3,097.21 on July 12, 2024.⁶ The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and concluded that the claim was not compensable under the Oil Pollution Act ("OPA") and therefore was denied. On November 4, 2024, ADEC timely sought reconsideration.⁷

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 (NRC) Incident Report # 1223853 dated September 6, 2018.

³ NRC Report # 1223860 dated September 6, 2018.

⁴ ADEC original claim submission dated July 11, 2024, ADEC Spill Summary Report 18239924802, page 2.

⁵ *Id.*

⁶ *Id.*

⁷ *See*, Request for Reconsideration dated November 4, 2024.

Requests for reconsideration are considered *de novo*.

The NPFC has thoroughly reviewed the original claim, all documentation submitted with the request for reconsideration, information obtained independently, analyzed the applicable law and regulations, and after careful consideration has determined that the claim must be denied on reconsideration.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).⁸ 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.⁹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁰ 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. CLAIM HISTORY:

On July 12, 2024, ADEC presented its original claim to the NPFC for uncompensated removal costs totaling \$3,097.21. The NPFC thoroughly reviewed the original claim, all information provided by ADEC and obtained independently, the relevant statutes and regulations, and ultimately denied the claim because ADEC did not prove by a preponderance of the evidence that any of its actions were either directed by the USCG FOSC or were determined by the FOSC to be consistent with the NCP.¹¹ The NPFC's initial determination is hereby incorporated by reference.

III. REQUEST FOR RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim.¹² The claimant has the burden of providing all evidence, information, and documentation deemed necessary by NPFC's Director to

⁸ 33 CFR Part 136.

⁹ 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)).

¹⁰ 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).

¹¹ See, 33 CFR 136.203(c); 136.205. See also, NPFC determination issued September 23, 2024.

¹² 33 CFR 136.115(d).

support the claim.¹³ When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including any new information provided by the Claimant in support of its request for reconsideration. The written decision by the NPFC is final.¹⁴

On November 4, 2024, the NPFC received ADEC's timely request for reconsideration.¹⁵ ADEC provided a one-page letter purporting to address the NPFC's concerns, clarify ADEC's role, and provide what it believes to be additional key information in the following four categories: (1) ADEC's role as a State On-Scene Coordinator (SOSC), (2) Coordination with the USCG and Mitigation Efforts, (3) ADEC's Contributions to Source Identification, and (4) Consistency with the National Contingency Plan (NCP).¹⁶

IV. ANALYSIS ON RECONSIDERATION:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF). 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. 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. The NPFC has thoroughly reviewed and considered the Claimants' request for reconsideration.

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.¹⁷

In its request for reconsideration, ADEC posits several arguments. First, it argues that under Alaska state law, it is the designated SOSC for oil and hazardous substance spills which enables them to work with the USCG FOSC. ADEC further explains what it believes collaboration is and how its role as the SOSC makes their actions fully consistent with the NCP.¹⁸

¹³ 33 CFR 136.105(a).

¹⁴ *Id.*

¹⁵ Request for Reconsideration dated November 4, 2024.

¹⁶ *Id.*

¹⁷ 33 CFR 136.203; 33 CFR 136.205.

¹⁸ Request for Reconsideration dated November 4, 2024.

The NPFC analyzed ADEC’s argument and weighed it against the evidence in the administrative record. Notably, ADEC did not provide any documentation from the FOSC to support its claim that its actions were consistent with the NCP as determined by the FOSC which is a requirement set forth in the governing claims regulations.¹⁹ Moreover, the FOSC provided a letter to the NPFC dated July 31, 2024, which stated in relevant part, “The CG, and myself as FOSCR, did not reach out to ADEC for assistance, but for the purposes of keeping a state stakeholder apprised of actions as they occurred.”²⁰

Second, ADEC argues that it “worked closely with the USCG throughout the incident, providing essential updates and participating in the evaluation of potential sources of the sheen.”²¹ ADEC states that its “review of Hilcorp’s pipeline testing and the sonar survey of the sunken M/V MONARCH played a critical role in determining whether these were contributing factors to the discharge.”²² ADEC contends that “[w]hile the FOSC may not have formally ‘directed’ ADEC actions, the steps taken by ADEC were necessary to support the mitigation efforts and aligned with the collaborative nature of Unified Command.”²³

The regulations require the claimant to demonstrate “[t]hat the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”²⁴ NPFC considered the information provided by the claimant and weighed it against the administrative record. The record contains a statement from the FOSC to the NPFC on July 31, 2024, which addresses this issue. The FOSC stated “[i]f ADEC choose [*sic*] to interpret data collected by Hilcorp through a third-party vendor, it would have been their own decision, and not at the behest of Hilcorp, MSD Homer, or myself.”²⁵ The NPFC finds that the claimant has not met its regulatory requirement.

Third, ADEC asserts while ADEC staff may not have been physically located at the scene, their efforts were vital in ruling out the sunken M/V MONARCH as a source of the sheen and confirming that Hilcorp’s pipeline was not leaking. ADEC asserts that it has regulatory oversight including construction, inspection and repair requirements while the USCG does not. It contends that its activities were necessary to minimize and mitigate the impact of the incident by identifying the potential source of the discharge and preventing further contamination. ADEC argues this investigative work was directly relevant to ensuring a timely and effective response to the sheen, consistent with the NCP’s goals.²⁶

ADEC’s physical presence, or lack thereof, is irrelevant to the adjudication of its claim. The administrative record indicates there was no request for assistance in this case and any actions performed by ADEC were not actions at the direction of the FOSC and are not considered consistent with the NCP. The record contains an email from the FOSC which states, “[d]uring this response ADEC did not provide any indication that they were going to be billing for their

¹⁹ See, 33 CFR 136.203(c); 136.205. See also, NPFC initial determination issued September 23, 2024.

²⁰ Email from FOSC to NPFC dated July 31, 2024.

²¹ Request for Reconsideration dated November 4, 2024.

²² *Id.*

²³ *Id.*

²⁴ 33 CFR 136.203.

²⁵ Email from FOSC to NPFC dated July 31, 2024.

²⁶ Request for Reconsideration dated November 4, 2024.

inclusion on conference call and emails; this inclusion was a professional courtesy on our part, and part of their daily mission.”²⁷ Notwithstanding the purported propriety of ADEC’s actions, they do not meet the regulatory standard for compensation²⁸ and must, therefore, be denied.²⁹

Fourth, and more holistically, ADEC argues that the NCP supports the use of resources and expertise across agencies to respond to pollution incidents. ADEC’s justification states that its involvement, even from a remote position, contributed to the overall mitigation efforts. Additionally, ADEC asserts that coordination with the USCG and their independent analysis of potential sources of the discharge demonstrate their adherence to the NCP and submit that their actions are compensable under OPA as they were integral to preventing, minimizing, and mitigating environmental harm.³⁰

It is important to reiterate that before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence *each* of these four elements:

- (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;³¹
- (d) That the removal costs were uncompensated and reasonable.³²

ADEC’s claim fails – at a minimum – because it has produced no evidence whatsoever, either in its original submission or in its request for reconsideration – that any of its actions were directed by the FOSC or were determined by the FOSC to be consistent with the National Contingency Plan. ADEC’s broad assertions have not been supported by evidence. ADEC has provided no documentation supporting its positions regarding FOSC direction or a determination by the FOSC that ADEC’s actions were performed in accordance with the NCP. In addition, as briefly outlined above, the record says the exact opposite. It is imperative that a claimant prove by a preponderance of the evidence – that its actions meet each of these regulatory requirements. It has not done so neither in its original submission or in its request for reconsideration. As such, the claim must remain denied.

V. CONCLUSION:

The NPFC has thoroughly reviewed the entirety of the administrative record, analyzed the applicable law and regulations, and as discussed in detail above and previously, has concluded that the claimant has not demonstrated by a preponderance of the evidence, that it is entitled to compensation from the OSLTF. NPFC specifically finds that ADEC failed to provide evidence that the claimed costs for the actions performed were at the direction of the USCG FOSC or were

²⁷ Email from FOSC to NPFC dated July 31, 2024.

²⁸ *See*, 33 CFR 136.203.

²⁹ Email from FOSC to NPFC dated July 31, 2024.

³⁰ Request for Reconsideration dated November 4, 2024.

³¹ Email from FOSC to NPFC dated July 31, 2024.

³² 33 CFR 136.203; 33 CFR 136.205.

determined by the FOISC to be consistent with the NCP. As such, the claim must be denied on reconsideration.

Russell C. Proctor FOR

Claim Supervisor: ***Russell C. Proctor***

Date of Supervisor's review: ***12/19/24***

Supervisor Action: ***Denied on Reconsideration***