

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPE23901-URC001
Claimant:	CA DEPARTMENT OF FISH AND WILDLIFE: OSPR
Type of Claimant:	STATE
Type of Claim:	REMOVAL COSTS
Claim Manager:	(b) (6)
Amount Requested:	\$65,769.24
Action Taken:	Offer in the amount of \$63,028.67

EXECUTIVE SUMMARY:

On October 6, 2022, Reyes Construction, Inc., a contractor that was hired to work on the Orange County Public Works sheet pile repair project, drove a sheet pile through an abandoned 6” underground crude oil pipeline in the Talbert Channel, in Huntington Beach, California.² The incident caused a discharge of residual crude oil to rise to the surface of the Talbert Channel,³ a tributary to the Pacific Ocean, a navigable waterway of the United States.⁴

The California Department of Fish and Wildlife: Oil Spill Prevention and Response (OSPR or Claimant) Office’s Southern Field Response Team (SFRT) responded to the incident and confirmed the petroleum sheen on the water.⁵ The Federal On Scene Coordinator (FOSC) for the incident was the United States Environmental Protection Agency (EPA) Region 9 Office⁶ and they provided direct coordination of the response actions taken.⁷ A Unified Command was established with the FOSC, OSPR, and the Orange County Public Works to establish response objectives and keep the operations moving forward.⁸

The cleanup contractor, Patriot, was brought in to contain and clean up the spill utilizing containment boom and sorbents along with a vacuum truck and box skimmer to remove the oil from the surface of the channel.⁹ The Responsible Party (RP) Chevron Pipeline & Power¹⁰ brought in their own contractor, PSC Primoris, to excavate and expose the abandoned pipeline on

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, OSPR Spill Response Memo dated November 3, 2022.

³ See, OSPR Spill Response Memo dated November 3, 2022.

⁴ U.S. EPA Notice of Federal Interest (NOFI) issued to Chevron Pipeline & Power dated October 7, 2022.

⁵ See, OSPR Spill Response Memo dated November 3, 2022.

⁶ U.S. EPA Notice of Federal Interest (NOFI) issued to Chevron Pipeline & Power dated October 7, 2022.

⁷ See, U.S. EPA Region IX POLREP # 4 and Final dated October 31, 2022.

⁸ See, U.S. EPA Region IX POLREP # 4 and Final dated October 31, 2022.

⁹ See, OSPR Spill Response Memo dated November 3, 2022.

¹⁰ U.S. EPA Notice of Federal Interest (NOFI) issued to Chevron Pipeline & Power dated October 7, 2022.

each side of the channel. Once exposed, the pipeline was cut, the oil was removed, and the ends were capped, to help control and reduce the amount of oil getting into the channel. The response was concluded on November 3, 2022.¹¹

The Claimant, who is requesting compensation for their expenses incurred during the response and cleanup efforts, presented their claim for uncompensated removal costs totaling \$65,769.24 to the National Pollution Funds Center (NPFC), on April 29, 2025.¹² The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$63,028.67 of the requested \$65,769.24 is 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).¹³ 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.¹⁴ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁵ 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 October 6, 2022, Reyes Construction, Inc., a contractor that was hired to work on the Orange County Public Works sheet pile repair project, drove a sheet pile through an abandoned 6” underground crude oil pipeline in the Talbert Channel, in Huntington Beach, California.¹⁶ The incident caused a discharge of residual crude oil to rise to the surface of the Talbert Channel,¹⁷ a tributary to the Pacific Ocean, a navigable waterway of the United States.¹⁸

¹¹ See, OSPR Spill Response Memo dated November 3, 2022.

¹² OSPR Original claim submission received April 29, 2025.

¹³ 33 CFR Part 136.

¹⁴ 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)).

¹⁵ 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).

¹⁶ See, OSPR Spill Response Memo dated November 3, 2022.

¹⁷ See, OSPR Spill Response Memo dated November 3, 2022.

¹⁸ U.S. EPA Notice of Federal Interest (NOFI) issued to Chevron Pipeline & Power dated October 7, 2022.

OSPR's Southern Field Response Team responded to the incident and confirmed the petroleum sheen on the water.¹⁹ A Unified Command was established with the FOSC, OSPR, and the Orange County Public Works to establish response objectives and keep the operations moving forward.²⁰

Responsible Party

The spill occurred from an abandoned 6" crude oil pipeline.²¹ OPA defines the Responsible Party for a discharge from a pipeline as "any person owning or operating the pipeline."²² Chevron Pipeline & Power is the confirmed owner and operator of the pipeline and the FOSC identified them as the responsible party.²³ The NPFC issued an RP Notification Letter to Chevron Pipeline & Power on April 30, 2025.²⁴ On June 10, 2025, the RP acknowledged receipt of the RP Notification Letter and requested what the next steps in the claim process are.²⁵ On June 12, 2025, the NPFC explained the next steps in the adjudication process.²⁶ To date, no response has been received.

Recovery Operations

The SFRT observed oil globules seeping from the sediment at the bottom of the channel creating small pockets of sheen on the surface of the water where the abandoned pipeline was damaged.²⁷ On October 6, 2022, the cleanup contractor, Patriot responded with containment boom, sorbent boom, pom poms, a vacuum truck, and a box skimmer to remove oil from the surface of the channel.²⁸

On October 8, 2022, the RP's contractor, PSC Primoris, excavated and exposed the abandoned pipeline on both sides of the channel. PSC Primoris used a rotary pipe cutter to cut the pipeline and remove the residual oil, with a vacuum truck, and then capped the two sections of the pipeline to help control and reduce the amount of oil going into the channel.²⁹

On October 27, 2022, Reyes used a front-end loader to remove the section of the abandoned pipeline located beneath the channel to completely secure the source. Once cleanup endpoints were met, the response was concluded on November 3, 2022.³⁰

III. CLAIMANT AND NPFC:

¹⁹ See, OSPR Spill Response Memo dated November 3, 2022.

²⁰ See, U.S. EPA Region IX POLREP # 4 and Final dated October 31, 2022.

²¹ U.S. EPA Notice of Federal Interest (NOFI) issued to Chevron Pipeline & Power dated October 7, 2022.

²² 33 U.S.C. § 2701(32)(F).

²³ U.S. EPA Notice of Federal Interest (NOFI) issued to Chevron Pipeline & Power dated October 7, 2022.

²⁴ NPFC RP Notification Letter dated April 30, 2025.

²⁵ Email from RP to NPFC dated June 10, 2025.

²⁶ Email from NPFC to RP dated June 12, 2025.

²⁷ See, OSPR Spill Response Memo dated November 3, 2022.

²⁸ See, OSPR Spill Response Memo dated November 3, 2022.

²⁹ See, OSPR Spill Response Memo dated November 3, 2022.

³⁰ See, OSPR Spill Response Memo dated November 3, 2022.

On April 29, 2025, the claimant presented its removal costs claim to the NPFC for \$65,769.24.³¹ Their claim was for the personnel labor and equipment costs they incurred while working within the Unified Command throughout the response. On May 19, 2025, and again on June 10, 2025, the NPFC requested additional information from the claimant to support their claimed costs.³² The claimant promptly provided all requested information.³³

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.³⁴ An RP's liability is strict, joint, and several.³⁵ 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."³⁶ 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."³⁷ 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."³⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁰ 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.⁴¹

³¹ OSPR Original claim submission received April 29, 2025.

³² See, email from NPFC to OSPR dated May 19, 2025, requesting additional information (AI). See also, email from NPFC to OSPR dated June 10, 2025, requesting AI #2.

³³ Additional information included: FY 2022-2023 Vehicle Rates; Email from Claimant to NPFC dated May 20, 2025, providing AI; Email from Claimant to NPFC dated June 10, 2025, providing AI #2; 52-Fed Rates July 2022; Talbert Channel at Indianapolis Ave Release Full Lab Report.

³⁴ 33 U.S.C. § 2702(a).

³⁵ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁶ *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).

³⁷ 33 U.S.C. § 2701(31).

³⁸ 33 U.S.C. § 2701(30).

³⁹ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁰ 33 CFR Part 136.

⁴¹ 33 CFR 136.105.

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;⁴²
- (d) That the removal costs were uncompensated and reasonable.⁴³

The NPFC analyzed each of these factors and determined that most of the costs incurred and submitted by OSPR are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rates for personnel labor and equipment.⁴⁴

The FOSC for the incident was the EPA Region 9 Office.⁴⁵ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the NCP.⁴⁶

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$63,028.67 while \$2,740.57 are deemed denied for the following reasons:⁴⁷

1. The NPFC denies \$2,740.57 of the \$59,372.86 claimed for personnel labor hours worked. The denied amount was based on adjustments made to the hours worked to align with the hours supported on the ICS-214 documents provided. See enclosure 3 for the specific adjustments made.⁴⁸

Overall Denied Costs = \$2,740.57⁴⁹

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 there was a discharge of crude oil, which is an OPA oil, into the Talbert Channel,⁵⁰ a tributary to the Pacific

⁴² See, U.S. EPA Region IX POLREP # 4 and Final dated October 31, 2022.

⁴³ 33 CFR 136.203; 33 CFR 136.205.

⁴⁴ See, email from Claimant to NPFC dated June 10, 2025, providing AI #2. The email includes the attachments titled: 52-Fed Rates July 2022 and FY 2022-2023 Vehicle Rates.

⁴⁵ U.S. EPA Notice of Federal Interest (NOFI) issued to Chevron Pipeline & Power dated October 7, 2022.

⁴⁶ See, OSPR Original claim submission received April 29, 2025. See also, Additional information which included: FY 2022-2023 Vehicle Rates; Email from Claimant to NPFC dated May 20, 2025, providing AI; Email from Claimant to NPFC dated June 10, 2025, providing AI #2; 52-Fed Rates July 2022; Talbert Channel at Indianapolis Ave Release Full Lab Report. See also, U.S. EPA Region IX POLREP # 4 and Final dated October 31, 2022.

⁴⁷ Enclosure 3 to this determination which provides a detailed analysis of the amounts approved and denied by the NPFC.

⁴⁸ Enclosure 3, sheet 2, lines: 12, 29, 32, 36, 38, 45, 53, 59, 60, 66, 77, 83, 84, 85, 86, 87.

⁴⁹ Enclosure 3 to this determination which provides a detailed analysis of the amounts approved and denied by the NPFC.

⁵⁰ See, OSPR Spill Response Memo dated November 3, 2022.

Ocean, which is a navigable waterway of the United States.⁵¹ The oil came from an abandoned underground 6" pipeline, on October 6, 2022, and OSPR responded and worked with the FOSC in a Unified Command to oversee the cleanup and assist with mitigating the effects of the spill.⁵² All removal costs approved for payment to the claimant were determined to be reasonable and uncompensated and were determined by the FOSC to be consistent with the NCP.⁵³

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, OSPR's request for uncompensated removal costs is approved in the amount of \$63,028.67.

This determination is a settlement offer,⁵⁴ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵⁵ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵⁶ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p>(b) (6)</p> <p>Claim Supervisor: (b) (6)</p> <p>Date of Supervisor's review: <i>07/02/2025</i></p> <p>Supervisor Action: <i>Offer Approved</i></p>

⁵¹ U.S. EPA Notice of Federal Interest (NOFI) issued to Chevron Pipeline & Power dated October 7, 2022.

⁵² See, OSPR Spill Response Memo dated November 3, 2022.

⁵³ See, U.S. EPA Region IX POLREP # 4 and Final dated October 31, 2022.

⁵⁴ 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).

⁵⁵ 33 CFR 136.115(b).

⁵⁶ 33 CFR 136.115(b).