

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPE24603-URC001
Claimant:	Horizon Environmental
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$1,600,755.87
Action Taken:	Offer in the amount of \$1,291,123.33

EXECUTIVE SUMMARY:

On January 3, 2024 at 1700 local time, the National Response Center (“NRC”) received notification that a truck struck a valve on a tank at a tank farm causing the stem on the tank to break, releasing an unknown amount of crude oil into its containment area² at the Shamrock Terminal at Port of Victoria, Texas.³ The Federal On-Scene Coordinator (FOSC) determined that the incident posed a substantial threat of discharge to the Port of Victoria, a navigable waterway of the United States, due to the proximity to the waterway and because oil managed to get into culverts that are connected to the Port of Victoria.⁴

United States Environmental Protection Agency (“USEPA” or “FOSC”) is the Federal On-Scene Coordinator for the incident.⁵ The FOSC opened Federal Project Number (FPN) UCGPE24603 in response to the incident and issued a Notice of Federal Interest (NOFI).⁶ A Unified Command (“UC”) was established that included the State On-Scene Coordinator, the Texas Commission on Environmental Quality (“TCEQ” or “SOSC”), Texas Department of Emergency Management (“TDEM”), and Victoria County Office of Emergency Management (“OEM”).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 One-barrel equals 42 gallons.

³ See, National Response Center (NRC) Report # 1388207 dated January 3, 2024; See also, EPA Region VI POLREP #1: EPA Region VI Shamrock Products Oil Spill profile, available at Site Profile - Shamrock Products Oil Spill - EPA OSC Response (last visited January 2, 2025).

⁴ Email from FOSC to NPFC dated August 27, 2024.

⁵ See, USEPA Region VI POLREP #1 dated January 5, 2024.

⁶ USEPA Notice of Federal Interest (NOFI) issued to (b) (6) on January 5, 2024.

⁷ USEPA Region VI POLREP #1, section 3.1 Unified Command, dated January 5, 2024.

In accordance with the Oil Pollution Act of 1990 (“OPA”),⁸ Shamrock Products, LLC was identified by the FOSC as the Responsible Party (“RP” or “Shamrock”).⁹ On January 5, 2024, the USEPA Federal On-Scene Coordinator (FOSC) arrived on site with a USEPA’s Superfund Technical Assessment and Response Team (START) contractor to conduct a preliminary assessment, provide technical support, and compile photographic and written documentation.¹⁰

Shamrock hired its facility response contractor, Horizon Environmental (“Horizon”), to perform cleanup operations at the site. Horizon Environmental used vacuum trucks and heavy machinery to remove contaminated liquids and soils, and conducted air monitoring.¹¹

On August 13, 2024, Horizon presented its uncompensated removal costs claim to the National Pollution Funds Center (“NPFC”) for \$1,611,024.87.¹² After receiving a partial payment from the Responsible Party, Horizon sent an amended sum certain requesting \$1,600,755.87.¹³ On January 16, 2025, Horizon informed the NPFC that it received a check from the RP in the amount of \$62,755.81,¹⁴ which reduces the claimed costs by that amount.

The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$1,291,123.33 of the claimed costs are compensable and offers this amount as full and final compensation as detailed below.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (“OSLTF” or “Fund”).¹⁵ 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.¹⁶ The NPFC may rely upon, but is not bound by the findings of fact,

⁸ 33 U.S.C. § 2701(32).

⁹ See, USEPA Notice of Federal Interest (NOFI) issued to (b) (6) on January 5, 2024; See also, USEPA Region VI POLREP #1, section 2.1.3 Enforcement Activities, Identify of Potentially Responsible Parties (PRPs), dated January 5, 2024.

¹⁰ USEPA Region VI POLREP #1, section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results, dated January 5, 2024.

¹¹ See, Horizon Environmental Health, Safety, Security, and Environmental (HSSE) Plan; See also, Horizon Environmental Emergency Services Contract with Shamrock Products, LLC dated January 5, 2024.

¹² See, Horizon Environmental email dated August 12, 2024. See also, the signed OSLTF form that was received on August 26, 2024.

¹³ Request to amend sum certain dated August 13, 2024.

¹⁴ Email between Horizon and NPFC dated January 16, 2025.

¹⁵ 33 CFR Part 136.

¹⁶ 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)).

opinions, or conclusions reached by other entities.¹⁷ 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 January 3, 2024 at 1700 local time, the National Response Center (“NRC”) received notification that a truck struck a valve on a tank at a tank farm causing the stem on the tank to break, releasing an unknown amount of crude oil into its containment area at the Shamrock Terminal at the Port of Victoria, Texas¹⁸ The RP reported the spilled amount of crude oil was estimated to be above 300 barrels.¹⁹

The incident occurred at the Shamrock Products facility, located approximately 0.5 miles southeast from the Victoria Barge Canal/the Port of Victoria.²⁰ The FOSC determined that the incident posed a substantial threat of discharge to the Port of Victoria, a navigable waterway of the United States, due to the incident proximity to the waterway and because oil managed to get into culverts that are connected to the Port of Victoria.²¹ Shamrock implemented emergency response actions that included isolating and containing the discharge, recovering oil to the extent practicable, initiating odor reduction/mitigation, and remediation.²²

Responsible Party

The spill occurred at an onshore facility as defined by the OPA.²³ OPA defines the Responsible Party for a discharge from an onshore facility as “any person or entity owning or operating such facility.”²⁴ Shamrock Products, LLC is the confirmed owner/operator of the Victoria Port Terminal Facility located in Victoria, Texas at the time when the spill incident occurred.²⁵ As such, Shamrock Products, LLC is identified as the RP, as defined by OPA.²⁶

Recovery Operations

¹⁷ 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).

¹⁸ See, National Response Center (NRC) Report # 1388207 dated January 3, 2024; See also, EPA Region VI POLREP #1: EPA Region VI Shamrock Products Oil Spill profile, *available at* Site Profile - Shamrock Products Oil Spill - EPA OSC Response (last visited January 2, 2025).

¹⁹ One barrel of oil equals approximately 42 gallons.

²⁰ USEPA Region VI POLREP #1 dated January 5, 2024.

²¹ Email from FOSC to NPFC dated August 27, 2024.

²² Preliminary Remediation Workplan dated January 19, 2024, for Horizon Environmental by Ensolum, LLC.

²³ 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).

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

²⁵ See, Victoria Terminal Sill Prevention Control, and Countermeasure Plan (SPCC) dated March 2024 and provided to the NPFC by USEPA Region VI on August 26, 2024. USEPA Region VI also provided a copy of an SPCC Inspection that was conducted after the spill and dated March 19, 2024.

²⁶ See, 33 U.S.C. § 2701(32). See also, USEPA Notice of Federal Interest (NOFI) issued to (b) (6) on January 5, 2024.

On January 5, 2024, the FOSC opened the FPN and activated Weston Solutions to perform air monitoring around the affected area, to provide a preliminary assessment, and provide technical support.²⁷

On January 5, 2024, Horizon responded at Shamrock's request when Shamrock initiated emergency response actions that included isolating and containing the release, recovering oil to the extent practicable, initiating odor reduction/mitigation, and performed remediation and disposal efforts.²⁸

The FOSC determined all response actions performed by Horizon between the dates of January 5, 2024 and March 14, 2024 when she determined removal complete, were consistent with the National Contingency Plan (NCP).²⁹ Additionally, the FOSC determined that Horizon's actions were necessary to prevent, minimize, and mitigate the effects of the incident, and that the removal costs were incurred as a result of these actions.³⁰ Lastly, the FOSC confirmed that personnel from TCEQ, in their capacity as the State On Scene Coordinators (SOSCs), oversaw the remediation activities after the FOSC demobilized from the incident site.³¹

III. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)³² require all claims for removal costs must be presented to the responsible party before seeking compensation from the NPFC.³³

Horizon has satisfied its presentment requirements under OPA.³⁴ The invoices were inclusive of labor, equipment and vehicles, materials and supplies, subcontractors, markup, and fixed priced items totaling \$1,600,755.87.³⁵ The RP has not paid the invoices that are the basis of this claim.

IV. CLAIMANT AND NPFC:

When an RP denies a claim or has not settled a claim after ninety-days of receipt, a claimant may elect to present its claim to the NPFC.³⁶ On August 13, 2024, Horizon presented its

²⁷ USEPA Region VI POLREP #1 dated January 5, 2024.

²⁸ See, Preliminary Remediation Workplan dated January 19, 2024, for Horizon Environmental by Ensolum, LLC. See also, Horizon claim submission including all attachments.

²⁹ Email from FOSC to NPFC dated October 16, 2024.

³⁰ Email from FOSC to NPFC dated September 13, 2024.

³¹ *Id.*

³² 33 U.S.C. § 2701 *et seq.*

³³ 33 CFR 136.103.

³⁴ Horizon submitted a total of 15 invoices to the RP. On 1/15/24, 1/20/24 x2, 2/7/24 x2, 2/13/24 x2, 2/19/24, 2/20/24, 2/26/24, 3/4/24, 3/11/24, 3/28/24, and 4/17/24, respectively, for interim costs. These costs are the subject of the claim.

³⁵ Horizon claim submission received August 13, 2024, and resubmission of invoices on October 15, 2024.

³⁶ 33 CFR 136.103.

uncompensated removal costs claim to the NPFC for \$1,611,024.87.³⁷ On August 13, 2024, Horizon sent an amended sum certain requesting \$1,600,755.87.³⁸

The claim included Invoice zip file; Daily Tickets – Backup Documentation zip file; TCEQ zip file; Photos zip file; ICS 209 zip file; Maps zip file; Site Plans zip file; a two page letter from Horizon Environmental to Shamrock Products, LLC dated April 9, 2024, advising that invoices totaling \$4,071,043.00 remain past due therefore Horizon intends to seek reimbursement from the Oil Spill Liability Trust Fund (OSLTF), an email dated August 12, 2024, advising it is presenting a claim in the amount of \$1,611,024.87, and a copy of an email from USEPA to Horizon Environmental dated April 5, 2024.³⁹

On August 14, 2024, after receiving an email amending the sum certain, the NPFC inquired into what the meaning of highlighted items on the invoices meant and requested a copy of the Horizon rate sheet used to create the invoiced pricing. Later on August 14, Horizon provided the explanation and the applicable rate sheet used for this incident.⁴⁰

Between August 29, 2024, and September 9, 2024, the NPFC requested a list of the invoices by number, the amount and items claimed per invoice plus markup as the submission documents were unclear. The NPFC requested a copy of the contract/agreement Horizon had with Shamrock.⁴¹ On September 12, 2024, the NPFC received notification from DoD Safe service providing two files from Horizon identified as Third Party Invoices and Third Party Spreadsheet.⁴²

On September 12, 2024, the NPFC used the first invoice to provide an example of its request for additional information that it explained would apply to all invoices. The overall request was categorized as follows:

1. Proof of payment for vendor costs invoiced;
2. Provide each third-party vendor invoice, daily field log rental agreements if applicable, and governing rate sheets between Horizon and the vendor;
3. For M&M consultation costs, provide the individual's name, billet date of service and hours billed along with any reports generated; and
4. Provide explanation for the excavator and bobtail.⁴³

On September 13, 2024, the NPFC and Horizon exchanged emails regarding the explanation of a Tolling Agreement and how the timeframe works based on amount of time requested should Horizon decide to request a Tolling Agreement.⁴⁴ On September 19, 2024, Horizon requested a

³⁷ See, Horizon Environmental email dated August 12, 2024. See also, Signed OSLTF form that was received on August 26, 2024.

³⁸ DoD Safe drop off for NPFC with request to amend sum certain dated August 13, 2024.

³⁹ Horizon Original claim submission received August 13, 2024, via DoD Safe site.

⁴⁰ Email correspondence between Horizon and NPFC dated August 14, 2024.

⁴¹ Emails between NPFC and Horizon via file entitled 2024 09 09 Email from Claimant Re Horizon Agreement/Contract.

⁴² See, Third Party Invoices; See also, Third Party Markup Items under file entitled 2024 09 12 AI Received Re Invoice Explanation.

⁴³ Email from NPFC to Horizon dated September 12, 2024, requesting additional information.

⁴⁴ Emails between NPFC and Horizon on September 13, 2024, regarding terms of a Tolling Agreement.

20-day Tolling Agreement.⁴⁵ Later the same day, the NPFC provided a copy of the fully executed Tolling Agreement.⁴⁶

On September 24, 2024, the NPFC requested clarification on the invoiced terminology for mileage and fuel surcharges on Invoice 15458 as the invoice appeared to be worded improperly and not in accordance with the terms of the rate sheet.⁴⁷ On September 25, 2024, Horizon acknowledged the improper terminology used as it pertained to mileage and fuel surcharges and on October 15, 2024, Horizon resubmitted corrected invoicing via zip files identified as Invoices, Invoice Daily Tickets – Backup Documentation, and Invoice Explanation Worksheets.⁴⁸

On October 17, 2024, the NPFC requested a copy of the ICS-209 for from January 8, 2024. Horizon provided the ICS-209 later the same day.⁴⁹ On October 22, 2024, the NPFC requested additional information regarding Invoice 15542, a listing of personnel in receipt of boots and gloves, and a Roll Off truck capacity.⁵⁰

On November 1, 2024, the NPFC requested that the Claimant provide an explanation by invoice on how it determined which costs were paid by the RP. Horizon responded to the NPFC on November 7, 2024.⁵¹ On November 20, 2024, the NPFC requested a copy of the RP’s audit for invoices 15596 and 15635. The administrative record contained all other invoice audits with the exception of these. On November 20, 2024, Horizon provided a copy of the RP audit for 15635 and stated there was no audit for 15596.⁵²

On January 16, 2025, Horizon informed the NPFC of a check received from the RP in the amount of \$62,755.81.⁵³

V. 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.⁵⁴ An RP’s liability is strict, joint, and several.⁵⁵ 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

⁴⁵ Email from Horizon to NPFC dated September 19, 2024, requesting a 20-day Tolling Agreement.

⁴⁶ Email from NPFC to Horizon dated September 19, 2024, with executed Tolling Agreement attached.

⁴⁷ Email from NPFC to Horizon dated September 24, 2024, regarding Invoice 15458.

⁴⁸ *See*, Resubmission of claim submission invoices and documentation dated October 15, 2024, which is intended to supersede the original claim submission documents.

⁴⁹ Emails between NPFC and Horizon dated October 17, 2024, requesting additional information and response to the request.

⁵⁰ Emails between NPFC and Horizon regarding requests for additional information dated October 22, 2024, through October 24, 2024.

⁵¹ *See*, Email from NPFC to Horizon requesting additional information dated November 1, 2024; *See also*, Email from Horizon to NPFC dated November 7, 2024, providing a response to the NPFC’s request for explanation.

⁵² Emails between Horizon and NPFC dated November 20, 2024.

⁵³ Email between Horizon and NPFC dated January 16, 2025.

⁵⁴ 33 U.S.C. § 2702(a).

⁵⁵ *See*, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

favoring those responsible for the spills.”⁵⁶ 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.”⁵⁷ 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.”⁵⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁵⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁶⁰ 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.⁶¹

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.⁶²

The NPFC analyzed each of these factors and determined that most of the costs incurred and submitted by Horizon herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate pricing⁶³ and all costs were supported by adequate documentation which included invoices and/or proof of payment⁶⁴ where applicable and have been determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁶⁵

⁵⁶ *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).

⁵⁷ 33 U.S.C. § 2701(31).

⁵⁸ 33 U.S.C. § 2701(30).

⁵⁹ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁶⁰ 33 CFR Part 136.

⁶¹ 33 CFR 136.105.

⁶² 33 CFR 136.203; 33 CFR 136.205.

⁶³ Horizon Original Claim Submission received August 13, 2024, with Attachments.

⁶⁴ Horizon claim submission and supporting documentation provided on both August 13, 2024, and October 15, 2024, respectively.

⁶⁵ See, Emails from FOSC to NPFC dated August 27, 2024, September 13, 2024, and October 16, 2024, respectively.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$1,291,123.33 while \$246,876.73 is denied based on the following categories by Invoice:⁶⁶

Invoice 15392:

1. Third Party Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total Denied: \$6,000.00
2. Third Party Xylem Invoice not provided and denied as not supported by the record.
Total Denied: \$201.01
3. Markup – Third-party charges that are denied resulted in the denial of the associated markup.
Total Denied: \$1,200.00
4. Unidentified difference.
Total denied: \$.03

Total Denied for this invoice: \$7,401.04⁶⁷

Invoice 15445:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$2,700.00
2. Third Party invoices and markup not supported by documentation or associated with repairs/damages to equipment.
Total denied: \$24,721.43
3. Supplies and Equipment not listed on ICS-209 is denied; no evidence item(s) were operating.
Total denied: \$16,605.00
4. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209.
Total denied: \$729.00
5. Unidentified difference.
Total denied: \$(-125.00)

Total Denied for this invoice: \$44,755.43⁶⁸

Invoice 15446:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$675.00

⁶⁶ Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.

⁶⁷ See, Enclosure 3, Sheet 2, lines 15,16,34,35,53,54,55,71,72,89,90,91, and 110.

⁶⁸ See, Enclosure 3, Sheet 3, lines 11,13,16,22,23,24,25,34,50,70,71,86,99,115,124,142,144,148,157,173,175,176, and 182.

2. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209.
Total denied: \$459.00

Total Denied for this invoice: \$1,134.00⁶⁹

Invoice 15458:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$ 2,250.00
2. Equipment not listed on ICS-209 is denied; no evidence item(s) were operating.
Total denied: \$2,250.00
3. Deny all heavy equipment as ICS-209 states no excavation due to rain.
Total denied: \$10,200.00
4. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209 or work not performed due to rain.
Total denied:\$1,836.00
5. Fuel surcharge for vac truck adjusted based on approved vac truck charge by NPFC.
Total denied: \$122.40
6. Level D PPE, Boots, Gloves and Hydration reduced in accordance with the total number of personnel in the contaminated area less amounts paid for by RP's insurer.
Total denied:\$20.83
7. Unidentified difference.
Total denied:\$2,936.00

Total Denied for this invoice: \$19,915.23⁷⁰

Invoice 15459:

1. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not operated due to rain.
Total denied: \$918.00
2. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$675.00

Total Denied for this invoice: \$1,593.00⁷¹

Invoice 15484:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$2,250.00

⁶⁹ See, Enclosure 3, Sheet 4, lines 6,7, and 11.

⁷⁰ See, Enclosure 3, Sheet 5, lines 18,20,27,47,49,54,55,58,59,71,73,77,82,87, and 96.

⁷¹ See, Enclosure 3, Sheet 6, lines 4,5, and 9.

2. Equipment not listed on ICS-209 is denied; no evidence item(s) were operating.
Total denied: \$25,250.00
3. Level D PPE, Boots, Gloves and Hydration reduced in accordance with the total number of personnel in the contaminated area less amounts paid for by RP's insurer.
Total denied: \$1.40
4. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209.
Total denied: \$3,141.90
5. On 2/3/24, no evidence of disposal to warrant 16 hours of a dual haul trailer roll off truck.
Total denied: \$2,292.80
6. Unidentified difference.
Total denied: \$(1,448.41)

Total Denied for this invoice: \$31,487.69⁷²

Invoice 15485:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$675.00
2. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209.
Total denied: \$49.00

Total Denied for this invoice: \$724.00⁷³

Invoice 15495:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied:\$3,825.00
2. Equipment not listed on ICS-209 is denied; no evidence item(s) were operating.
Total denied: \$12,750.00
3. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209.
Total denied: \$1,836.00
4. Unidentified difference.
Total denied: \$573.00

Total Denied for this invoice: \$18,984.00⁷⁴

Invoice 15496:

⁷² See, Enclosure 3, Sheet 7, lines 11,13,16,17,19,27,29,32,33,52,53, 54,60,61,62,63,65,75,76,84,119,120,121, 122,123,124,130,131,132,135,136, and 147.

⁷³ See, Enclosure 3, Sheet 8, lines 4 and 5.

⁷⁴ See, Enclosure 3, Sheet 9, lines 11,12,20,21,36,37,44,45,48,80,81,89,90,93,121,122,132,133,136,159,161, and 169.

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.

Total Denied for this invoice: \$420.70⁷⁵

Invoice 15497:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$7,875.00
2. Equipment not listed on ICS-209 is denied; no evidence item(s) were operating.
Total denied: \$12,750.00
3. Level D PPE, Boots, Gloves and Hydration reduced in accordance with the total number of personnel in the contaminated area less amounts paid for by RP's insurer.
Total denied: \$2,550.00
4. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209.
Total denied: \$2,484.00
5. Lunch for crew denied as no evidence personnel were entitled to meal allowance.
Total denied: \$403.54
6. Third-party rental and associated markups
Total denied: \$2,867.48

Total Denied for this invoice: \$28,930.02⁷⁶

Invoice 15514:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$1,800.00
2. Equipment not listed on ICS-209 is denied; no evidence item(s) were operating.
Total denied: \$2,550.00
3. Level D PPE, Boots, Gloves and Hydration reduced in accordance with the total number of personnel in the contaminated area less amounts paid for by RP's insurer.
Total denied: \$1,200.00
4. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209.
Total denied: \$459.00
5. No justification for mobile command trailer.
Total denied: \$2,000.00
6. Unidentified difference.
Total denied: \$(-763.40)

⁷⁵ See, Enclosure 3, Sheet 10, line 5.

⁷⁶ See, Enclosure 3, Sheet 11, lines 12,13,17,18,19,29,30,35,51,52,55,56,60,61,62,87,90,101,103,109,110,111,136, 146,169,172,174,184,186,192,193,194,204,219,229,245,246,253,254, and 257.

Total Denied for this invoice: \$7,245.60⁷⁷

Invoice 15537:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$9,900.00
2. Equipment not listed on ICS-209 is denied; no evidence item(s) were operating.
Total denied: \$6,700.00
3. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209.
Total denied: \$324.00
4. Personnel not listed on the contemporaneous sign in sheet or identified within the contaminated area based on listing from Horizon.
Total denied: \$3,985.00
5. No sign in sheet or ICS-209 to support personnel and charges.
Total denied: \$4,193.00
6. Unidentified difference.
Total denied: \$137.00

Total Denied for this invoice: \$25,239.00⁷⁸

Invoice 15542:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$12,150.00
2. Level D PPE, Boots, Gloves and Hydration reduced in accordance with the total number of personnel in the contaminated area less amounts paid for by RP's insurer.
Total denied: \$3,005.00
3. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209.
Total denied: \$2,459.70
4. Unidentified difference.
Total denied: \$469.21

Total Denied for this invoice: \$18,083.91⁷⁹

Invoice 15596:

1. Horizon Per Diem – distance to spill location is less than 50 miles each way therefore all instances of per diem are denied as not justified by the record.
Total denied: \$4,500.00

⁷⁷ See, Enclosure 3, Sheet 12, lines 18,48,49,50,61,76,77,88,102,104,105,106,112,113, and 117.

⁷⁸ See, Enclosure 3, Sheet 13, lines 10,17,21,35,36,37,65,66,67,78,88,92,104,117,142,143,144,145,146,147,148,149,150,151,152,153,154,155, and 156.

⁷⁹ See, Enclosure 3, Sheet 14, lines 27,31,57,84,85,86,94,101,106,108,111,139,140, 141,159,164,166,168, 195,196,214,221, and 230.

2. Level D PPE, Boots, Gloves and Hydration reduced in accordance with the total number of personnel in the contaminated area less amounts paid for by RP's insurer.
Total denied: \$3,145.00
3. Fuel surcharge denied that is associated with equipment that is denied on the basis that the equipment was not on the ICS-209.
Total denied: \$264.60
4. Personnel not listed on the contemporaneous sign in sheet or identified within the contaminated area based on listing from Horizon.
Total denied: \$775.00
5. Lunch for crew denied as no evidence personnel were entitled to meal allowance.
Total denied: \$143.74
6. Unsupported portions of third-party receipt costs.
Total denied: \$468.49
7. Damages and/or repairs to materials or equipment are denied as they are not OPA compensable removal costs.
Total denied: \$4,953.16
8. Third-party receipt that is not itemized and contains no proof of payment.
Total denied: \$21,955.72
9. Unidentified difference.
Total denied: \$(-154.99)

Total Denied for this invoice: \$36,050.72⁸⁰

Invoice 15635:

1. The activities associated with this invoice were incurred after the response was deemed complete by the FOOSC and are denied without further analysis.

Total Denied for this invoice: \$4,912.39⁸¹

Overall Denied Costs: \$246,876.73⁸²

Claimed Costs that were compensated by the RP during the adjudication of the claim: \$62,755.81⁸³

VI. CONCLUSION:

After careful analysis of all the supporting documentation provided by the claimant and the entire administrative record, the NPFC finds that on January 3, 2024, the Shamrock Products, LLC facility located in Victoria, Texas discharged oil and posed a substantial threat of discharge

⁸⁰ See, Enclosure 3, Sheet 15, lines 14,15,26,28,42,43,44,49,62,75,79,80,87,88,89,94,106, 120,122,129,130,131,136,148,157,158,161,169,170,171,172,176,177,178, and 182.

⁸¹ See, Enclosure 3, Sheet 16.

⁸² See, Enclosure 3.

⁸³ Email between Horizon and NPFC dated January 16, 2025.

to the Victoria Barge Canal/Port of Victoria as determined by the FOSC.⁸⁴ The FOSC determined all response actions performed by Horizon between the dates of January 5, 2024, and March 14, 2024, when she determined removal complete, were consistent with the National Contingency Plan (NCP).⁸⁵

Additionally, the FOSC confirmed that Horizon's actions were necessary to prevent, minimize, and mitigate the effects of the incident and that the removal costs were incurred as a result of these actions.⁸⁶ Finally, the FOSC confirmed that personnel from TCEQ, in their capacity as a State On Scene Coordinator (SOSC), provided oversight for the remediation actions after the FOSC demobilized from the incident location.⁸⁷

Horizon was hired by the RP to perform response actions that were determined by the FOSC to be consistent with the NCP.⁸⁸ As such, the NPFC finds that the claimant's costs and actions were the result of a substantial threat of discharge as defined by OPA and as determined by the FOSC.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Horizon's request for uncompensated removal costs is approved in the amount of **\$1,291,123.33**.

This determination is a settlement offer,⁸⁹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁹⁰ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁹¹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

⁸⁴ Email from FOSC to NPFC dated August 27, 2024.

⁸⁵ Email from FOSC to NPFC dated October 16, 2024.

⁸⁶ Email from FOSC to NPFC dated September 13, 2024.

⁸⁷ *Id.*

⁸⁸ Emails from FOSC to NPFC dated August 27, 2024, September 13, 2024, and October 16, 2024, respectively.

⁸⁹ 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).

⁹⁰ 33 CFR 136.115(b).

⁹¹ *Id.*

Claim Supervisor:

(b) (6)

Date of Supervisor's review: *2/7/2025*

Supervisor Action: *Offer Approved*