

CLAIM DETERMINATION

Claim Number:	UCGPE25303-RPD001
Claimant:	Mr. (b) (6)
Type of Claimant:	Responsible Party
Type of Claim:	Defense to Liability, Act or Omission of a 3 rd Party
Claim Manager:	(b) (6)
Amount Requested:	\$21,464.67
Action Taken:	Offer in the Amount of \$20,659.10

EXECUTIVE SUMMARY:

On January 14, 2025, Mr. (b) (6) (claimant) detected a strong heating oil odor originating from his basement.¹ An investigation revealed red dyed oil migrating into the B-Dry system² (drainage system) located within his basement.³ The oil flowed from the drainage system into a sump pit where it was discharged into a stormwater drain located outside of the claimant's residence.⁴ The stormwater drain emptied into to the headwaters of Falls Creek, a tributary to Buttermilk Creek and the Susquehanna River, a navigable waterway of the United States.⁵ The claimant hired Bluestone Environmental, Inc., (Bluestone) to respond to the discharge and to investigate the source of oil migrating into the drainage system.⁶ Pennsylvania Department of Environmental Protection (PA DEP) personnel responded to oversee the claimant's response and to investigate the incident.⁷ The claimant and the PA DEP were unable to identify the source of oil migrating into the drainage system.⁸

On February 21, 2025, PA DEP personnel contacted the U.S. Environmental Protection Agency (EPA) to respond to the incident as red dyed oil continued to migrate into the claimant's drainage system.⁹ Mr. (b) (6), EPA Federal On-Scene Coordinator (FOSC), responded and accessed the Oil Spill Liability Trust Fund (OSLTF) to continue the oil spill removal activities.¹⁰ The FOSC visited the claimant's residence weekly or after a heavy rain to observe

¹ EPA Region III Pollution Report (POLREP) #1 dated February 24, 2025, page 1. Note, POLREP #1 incorrectly identifies the date of their response to the odor and subsequent discovery of oil as January 12, 2025. The NPFC confirmed that the actual date of their response and subsequent discovery of oil was January 14, 2025. See S.J. Kowalski, Inc (b) (6) Account document received by the NPFC on February 10, 2026.

² B-Dry system is a patented interior basement waterproofing method designed to eliminate water seepage through foundation walls, cracks, and the cove joint via a grate covered trench in the basement perimeter. See, "Basement Waterproofing Systems For Wet Basements" at <https://www.b-dry.com> (last visited April 22, 2026). See also, picture of grate covered trench within "S.J. Kowalski, Inc (b) (6) Account" document received by the NPFC on February 10, 2026, page 2.

³ PA DEP Field Narrative dated January 17, 2025, provided by PA DEP, on February 12, 2026, pages 1-2.

⁴ *Id.*

⁵ See, POLREP #1 dated February 24, 2025, page 1. See also, Google Earth map with pathway from the claimant's residence to the Susquehanna River provided by the FOSC, on March 2, 2026.

⁶ POLREP #1 dated February 24, 2025, page 1.

⁷ PA DEP Field Narrative dated January 17, 2025, provided by PA DEP, on February 12, 2026, pages 1-2.

⁸ Email from PA DEP to the CG National Pollution Funds Center dated February 12, 2026.

⁹ POLREP #1 dated February 24, 2025, page 1.

¹⁰ *Id.*

the amount of oil migrating into the drainage system.¹¹ Over time, the amount of red dyed oil observed within the drainage system reduced in volume.¹²

On March 24, 2025, the FOSC demobilized the oil spill removal contractor as there was no red dyed oil observed within the drainage system.¹³

On April 24, 2025, EPA contractors investigated the source of oil that had migrated into the drainage system by conducting geotechnical drilling around the perimeter of the claimant's property.¹⁴ There were no detectable odors or visual signs of oil in any of the bores.¹⁵

On July 8, 2025, the FOSC determined that the claimant's drainage system no longer posed a substantial threat of oil discharge and declared cleanup operations complete.¹⁶

On January 22, 2026, the claimant submitted a claim for entitlement to a defense to liability, based on an act or omission of a third party¹⁷ to the CG National Pollution Funds Center (NPFC) and seeks reimbursement of removal costs incurred under the defense in the amount of \$21,464.67.¹⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and concluded that the claimant has demonstrated an entitlement to a defense to liability. Additionally, the NPFC has determined that \$20,659.10 is compensable and offers this amount as full and final compensation of this claim¹⁹ for his uncompensated removal costs and damages under the Oil Pollution Act (OPA).²⁰

I.

FACTUAL BACKGROUND:

A. (b) (6) *Residence, Oil Spill Removal Activities and the Investigation into the Incident*

The claimant purchased his residence located at (b) (6) in 1979.²¹ The claimant didn't conduct an inquiry into the previous use of the property but was confident that the property had never been used for oil drilling or production²² and no underground storage tanks (UST) were located on the property.²³

The claimant's residence was equipped with a home heating oil storage tank located in the basement.²⁴ The home heating oil storage tank was replaced on January 11, 2024, after a

¹¹ POLREP #2, page 2.

¹² *Id.*

¹³ *Id.*

¹⁴ POLREP #3, page 2.

¹⁵ *Id.*

¹⁶ POLREP #4, page 1.

¹⁷ 33 U.S.C. § 2703(a)(3).

¹⁸ Claim submission with a sum certain of \$21,464.67 dated December 27, 2025, page 1. Note, the claim submission was received at the NPFC on January 22, 2026.

¹⁹ 33 CFR 136.115.

²⁰ 33 U.S.C. § 2703(a).

²¹ Summary of conversation between the claimant and the NPFC dated February 19, 2026.

²² *Id.* Additionally, a review of PA DEP's Oil and Gas Mapping Tool confirmed the closet abandon oil well to the claimant's residence was approximately one mile south of the residence. See PA Oil and Gas Mapping tool at <https://gis.dep.pa.gov/PaOilAndGasMapping/OilGasWellsStrayGasMap.html> (last visited April 22, 2026).

²³ Summary of conversation between the claimant and the NPFC dated February 19, 2026.

²⁴ *Id.*

technician servicing the claimant's boiler observed rust accumulating on the bottom of the storage tank during an annual service call.²⁵ The claimant replaced the storage tank as a precaution to prevent it from failing due to the corrosion.²⁶

The claimant experienced severe flooding into his basement in 2023.²⁷ As a result, he installed a drainage system in the basement to divert water away from his home.²⁸ Specifically, the drainage system was designed to capture groundwater entering the basement within a grate covered trench which drained into a sump pit.²⁹ The sump pit was equipped with a pump that discharged water from the pit into a stormwater drain located outside of the claimant's residence.³⁰

On January 14, 2025, the claimant detected a strong heating oil odor originating from his basement and contacted the company who had replaced his home heating oil storage tank to investigate the odor.³¹ Their inspection found the claimant's boiler and home heating oil storage tank in good condition and failed to identify the source of the odor.³²

The claimant then contacted Alicon Environmental, Inc., (Alicon) to investigate the source of the odor.³³ Alicon personnel responded and discovered red dyed oil pooled in the vicinity of an outlet to a stormwater drain located outside of the claimant's residence.³⁴ Alicon personnel notified PA DEP.³⁵

PA DEP personnel responded and confirmed the presence of red dyed oil in the vicinity and within a stormwater drain located outside of the claimant's residence.³⁶ The stormwater drain emptied into to the headwaters of Falls Creek, a tributary to Buttermilk Creek and the Susquehanna River, a navigable waterway of the United States.³⁷ An inspection of the claimant's basement as a possible source of the oil spill found no evidence of oil originating from within the basement.³⁸ Specifically, the home heating oil storage tank was described as being in very good condition and there was no oil staining or pooling of oil located anywhere within the basement.³⁹ However, red dyed oil was discovered within the claimant's drainage system and sump pit.⁴⁰ The pump within the sump pit was immediately secured to prevent the further discharge of red dyed

²⁵ S.J. Kowalski, Inc (b) (6) Account document received by the NPFC on February 10, 2026.

²⁶ Summary of conversation between the claimant and the NPFC dated February 19, 2026.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ S.J. Kowalski, Inc (b) (6) Account document received by the NPFC on February 10, 2026. Note, S.J. Kowalski incorrectly identified their response to the claimant's residence as January 14, 2026, within their (b) (6) account document. See, email from S.J. Kowalski to the NPFC dated February 27, 2026, confirming that their response to the claimant's residence was January 14, 2025.

³² S.J. Kowalski, Inc (b) (6) Account document received by the NPFC on February 10, 2026.

³³ Summary of conversation between the claimant and the NPFC dated February 19, 2026.

³⁴ *Id.*

³⁵ *Id.*

³⁶ PA DEP Field Narrative dated January 17, 2025, pages 1-2.

³⁷ See, POLREP #1 dated February 24, 2025, page 1. See also, Google Earth map with pathway from the claimant's residence to the Susquehanna River provided by the FOSSC on March 2, 2026.

³⁸ PA DEP Field Narrative dated January 17, 2025, page 1.

³⁹ *Id.*

⁴⁰ PA DEP Field Narrative dated January 17, 2025, pages 1-2.

oil from the drainage system into the stormwater drain.⁴¹ PA DEP personnel also inspected the exterior of the claimant's residence and found no evidence of oil staining or oil-stressed vegetation in the vicinity of the home heating oil storage tank fill pipe.⁴² As a result, PA DEP presumed that the red dyed oil migrating into the claimant's drainage system originated from a leaking UST located somewhere on the claimant's property and issued a Notice of Violation to the claimant requiring the removal and disposal of all oil contaminated material associated with the incident.⁴³ Additionally, the claimant was required to conduct a site characterization that involved the collection of soil and groundwater samples to determine the extent of the contamination and the source of the discharge.⁴⁴

In response, the claimant hired Bluestone to respond to the discharge and to investigate the source of oil migrating into the drainage system.⁴⁵ Bluestone personnel responded and deployed sorbent material around and within the oil contaminated stormwater drain.⁴⁶ Additionally, they staged a 500-gallon storage tank on the claimant's property and redirected the sump pump to discharge oil contaminated water directly into the storage tank.⁴⁷

Between January 16, 2025, and February 25, 2025, Bluestone personnel managed the storage tank located on the claimant's property by pumping down the tank as it became full and properly disposing of the oil contaminated water.⁴⁸

On January 22, 2025, PA DEP personnel interviewed the claimant's neighbors and inspected their properties for signs of a home heating oil spill.⁴⁹ While their investigation did not reveal conclusive evidence of a recent oil spill, PA DEP personnel noted a 4' x 6' discoloration in a neighbor's yard located immediately uphill from his location.⁵⁰ Specifically, the discoloration was described as slightly oily with a faint petroleum odor.⁵¹ Although suspicious, PA DEP didn't pursue the discoloration as a potential source of oil migrating into the claimant's drainage system.⁵²

On January 28, 2025, Bluestone personnel conducted subsurface testing of the claimant's property in search of a UST utilizing a metal detector, magnetometer, and ground penetrating radar.⁵³ Initial testing identified the presence of metal within the claimant's front yard.⁵⁴

⁴¹ PA DEP Field Narrative dated January 17, 2025, page 2.

⁴² Email from PA DEP to the NPFC dated February 13, 2026.

⁴³ PA DEP Notice of Violation issued to Mr. (b) (6) dated January 17, 2025.

⁴⁴ *Id.*

⁴⁵ POLREP #1, page 1.

⁴⁶ *See, id. See also*, Bluestone Environmental, Inc., Daily Job Report dated January 16, 2025.

⁴⁷ *See*, POLREP #1 dated page 1. *See also*, Bluestone Environmental, Inc., Daily Job Report dated January 16, 2025.

⁴⁸ Bluestone Environmental, Inc., Invoices #3768, #3809, and #3940.

⁴⁹ Email from PA DEP to the NPFC dated February 19, 2026. Additionally, the oil discovered within the stormwater drain and within the claimant's drainage system was red which is consistent with the federal requirement of dyeing home heating red to distinguish it from other taxable fuel. (<https://www.eia.gov/energyexplained/heating-oil> (last visited on April 22, 2026)).

⁵⁰ Email from PA DEP to the NPFC dated February 13, 2026.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See*, POLREP #1 dated page 1. *See also*, Bluestone Environmental, Inc., Daily Job Report dated January 16, 2025.

⁵⁴ POLREP #1, page 1.

Bluestone personnel excavated 7.5 feet down in that area in search of the source of the reading with negative results.⁵⁵

On February 21, 2025, PA DEP contacted the U.S. EPA for assistance as red dyed oil continued to migrate into the claimant's drainage system.⁵⁶

On February 24, 2025, the FOSC responded and observed red dyed oil within the claimant's drainage system.⁵⁷ The FOSC accessed the OSLTF⁵⁸ to continue the oil spill removal activities and to investigate the source of oil migrating into the claimant's drainage system.⁵⁹

Between February 24, 2025, and March 23, 2025, the FOSC visited the claimant's residence regularly or after a heavy rain to check on the rate of red dyed oil migrating into the drainage system.⁶⁰ Over a period of time, the amount of red dyed oil migrating into the drainage system reduced in volume.⁶¹

On March 24, 2025, the FOSC demobilized the oil spill removal contractor as there was no red dyed oil observed within the claimant's drainage system.⁶²

On April 24, 2025, EPA contractors conducted geotechnical drilling around the perimeter of the claimant's property in an effort to locate oil contaminated groundwater in the vicinity of the residence.⁶³ Specifically, 12 borings were drilled along the north, east, south, and western property line borders.⁶⁴ While 10 of the 12 boreholes had zero volatile organic compound (VOC) readings, two of the boreholes had short duration readings of approximately 150 and 450 ppb VOCs respectively.⁶⁵ Those locations were on the western side of the house near mature growth trees and visible root systems making it unlikely that a UST was present.⁶⁶ The FOSC classified the short duration readings as anomalies as they weren't reproducible and found that there were no detectable odors or visual signs of oil in any of the bores.⁶⁷

On May 12, 2025, Bluestone personnel returned to the claimant's residence and replaced the sidewalk removed during the excavation of his property in search of a UST.⁶⁸

On July 8, 2025, the FOSC determined that the claimant's drainage system no longer posed a substantial threat of oil discharge and declared cleanup operations complete.⁶⁹

⁵⁵ POLREP #1, page 1.

⁵⁶ POLREP #2, page 2.

⁵⁷ *Id.*

⁵⁸ The FOSC accessed the Oil Spill Liability Trust Fund and was assigned Federal Project Number UCGPE25303.

⁵⁹ POLREP #2, page 2.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ POLREP #3, page 2.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Bluestone Environmental, Inc., Daily Job Report dated May 12, 2025.

⁶⁹ POLREP #3, page 1.

B. Responsible Party and the Claim

Mr. (b) (6) owned the drainage system responsible for discharging red dyed oil from the sump pit into a stormwater drain at the time of the incident⁷⁰ and is the responsible party (RP).⁷¹

On January 22, 2026, Mr. (b) (6) submitted a claim for entitlement to a defense to liability, act or omission of a third-party⁷² claim to the NPFC requesting compensation of removal costs incurred between January 16, 2025 and May 13, 2025, for the removal of oil from a stormwater drain, the collection and disposal of oil contaminated water discharged from his basement drainage system, and the restoration of property to its pre-incident condition under the defense in the amount of \$21,464.67.⁷³

II. DISCUSSION:

The NPFC utilizes an informal process when adjudicating claims against the OSLTF.⁷⁴ As a result, 5 U.S.C. § 555 (e) requires the NPFC to provide a brief statement explaining its determinations. This determination is issued to satisfy that requirement for the Claimant's claim against the OSLTF.

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.⁷⁵ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁷⁶ 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 finds facts and makes its determination based on the preponderance of the credible evidence.

III. DETERMINATION PROCESS:

A responsible party 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.⁷⁷ A responsible party's liability is strict, joint, and several.⁷⁸ When enacting the Oil Pollution Act (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

⁷⁰ Claim submission with a sum certain of \$21,464.67 dated December 27, 2025, page 1.

⁷¹ 33 U.S.C. § 2701(32)(B).

⁷² 33 U.S.C. § 2703(a)(3).

⁷³ Claim submission with a sum certain of \$21,464.67 dated December 27, 2025, page 1.

⁷⁴ 33 CFR Part 136.

⁷⁵ 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).

⁷⁶ 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).

⁷⁷ 33 U.S.C. § 2702(a).

⁷⁸ See, H.R. Rep. No. 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

proof unfairly favoring those responsible for the spills.”⁷⁹ OPA was intended to cure these deficiencies in the law.

Notwithstanding the above, under limited circumstances the Oil Spill Liability Trust Fund, administered by the NPFC, may reimburse a responsible party for its uncompensated removal costs and damages when the responsible party establishes an entitlement to a defense to liability under 33 U.S.C. § 2703.

Under the plain meaning of 33 U.S.C. § 2708(a), a responsible party must demonstrate that a defense under 33 U.S.C. § 2703 applies before the OSLTF can reimburse removal costs or damages. Consistent with this statutory requirement, the regulations implementing OPA also require claimants carry the burden of proving an entitlement to reimbursement.⁸⁰ Therefore, as with any other claimant, a responsible party must prove an entitlement under the OPA before receiving reimbursement from the OSLTF. If a responsible party fails to introduce evidence in support of any of the elements necessary to establish entitlement to compensation from the OSLTF or fails to establish each of the elements by a preponderance of the credible evidence, the NPFC must deny the claim.⁸¹

The third-party defense under the OPA is “narrowly construed.”⁸² A defendant must demonstrate that “the release or threatened release was caused solely by an unrelated third party.”⁸³ In order to prevail on its defense, the claimant must establish by a preponderance of the evidence that the discharge of oil and the resulting damages or removal costs were caused solely by an act or omission of a third party⁸⁴ and that he

(a) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances and

⁷⁹ *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.).

⁸⁰ See, 33 CFR 136.105(a)(“The claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.”); and 33 CFR 136.105(e)(6)(Requiring that each claim include evidence to support the claim).

⁸¹ OPA’s legislative history makes it clear that a responsible party has the burden of showing an entitlement to OSLTF compensation under 33 U.S.C. § 2708. As explained in the House Conference Report on OPA: Section 1008 of the House bill allows a responsible party..., or a guarantor for that responsible party... to assert a claim for removal costs and damages *only if the responsible party... can show that the responsible party...has a defense to liability or is entitled to a limitation of liability*. H.R. Conf. Rep. 101-653 at 110 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 788 (emphasis added). See also, *Apex*, 208 F.Supp.2d 642 (claimant failed to carry its burden of proof with respect to the “act of God” defense); *International Marine Carriers v. OSLTF*, 903 F.Supp. 1097 (S.D. Tex. 1994) (claimant must show elements of a third party defense by a preponderance of the evidence); *Water Quality Insurance Syndicate v. United States*, 632 F.Supp.2d 108, 113-114 (D. Mass. 2009) (holding that a responsible party has the burden of showing an entitlement to OSLTF compensation under 33 U.S.C. § 2708).

⁸² *Xiamen Ocean Shipping Co. v. United States*, 2012 WL 12882375, *7 (D. Haw. 2012). See also, *Int'l Marine Carriers v. Oil Spill Liability Trust Fund*, 903 F.Supp. 1097, 1105 (S.D. Tex. 1994).

⁸³ *United States v. A & N Cleaners & Launderers, Inc.*, 854 F.Supp. 229, 239 (S.D.N.Y. 1994); see, *Shore Realty Corp.*, 759 F.2d 1032, 1044-45 & n. 17; *United States v. Stringfellow*, 661 F.Supp. 1053, 1061 (C.D. Cal. 1987) (third-party defense applies “only where a totally unrelated third party is the sole cause of the release or threatened release of a hazardous substance”).

⁸⁴ 33 U.S.C. § 2703(a)(3).

(b) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions.⁸⁵

The claimant has satisfied its burden on each of these statutory requirements.

A. "... evidence that the discharge of oil and the resulting damages or removal costs were caused solely by an act or omission of a third party"

PA DEP personnel initially suspected an abandoned UST located somewhere on the claimant's property as the source of red dyed oil migrating into the drainage system.⁸⁶ However, extensive subsurface testing conducted by Bluestone personnel failed to locate an UST on the property.⁸⁷

PA DEP personnel inspected the claimant's basement as a potential source of the red dyed oil migrating into the drainage system and found no evidence of an oil spill originating from within the basement.⁸⁸ Specifically, the home heating oil storage tank was described as being in very good condition and there was no oil staining or pooling of oil located anywhere within the basement.⁸⁹

PA DEP personnel inspected the exterior of the claimant's residence and found no evidence of oil staining or stressed vegetation in the vicinity of the home heating oil storage tank fill pipe.⁹⁰

PA DEP personnel interviewed the claimant's immediate neighbors and inspected their properties for signs of a home heating oil spill.⁹¹ While their investigation didn't reveal conclusive evidence of a recent oil spill, PA DEP personnel noted a 4' x 6' discoloration in his neighbor's yard located immediately uphill from his location.⁹² Specifically, the discoloration was described as slightly oily with a faint petroleum odor.⁹³ Although suspicious, PA DEP didn't pursue the discoloration as a potential source of oil migrating into the claimant's drainage system.⁹⁴

Lastly, EPA contractors conducted geotechnical drilling around the perimeter of the claimant's property in an effort to locate oil contaminated groundwater in the vicinity of the residence with negative results.⁹⁵

⁸⁵ *Id.* See also, "[The statute] ... requires a showing that the responsible party exercised due care with respect to the spilled oil and that it took precautions against the foreseeable acts or omissions of the third party to whom it is attempting to shift liability." *Buffalo Marine Servs. Inc. v. United States*, 663 F.3d 750, 752 (5th Cir. 2011).

⁸⁶ PA DEP Field Narrative dated January 17, 2025, page 2.

⁸⁷ POLREP #1, page 1. This finding is also consistent with the claimant's assertion that there were no USTs located on his property and that his property was never used for oil and gas production. See, conversation between the claimant and the NPFC dated February 19, 2026, page 1. See also, and PA DEP's Oil and Gas Mapping Tool at <https://gis.dep.pa.gov/PaOilAndGasMapping/OilGasWellsStrayGasMap.html> (last visited on April 22, 2026).

⁸⁸ PA DEP Field Narrative dated January 17, 2025, page 1.

⁸⁹ *Id.*

⁹⁰ Email from PA DEP to the NPFC dated February 13, 2026.

⁹¹ Email from PA DEP to the NPFC dated February 19, 2026.

⁹² Email from, PA DEP to the NPFC dated February 13, 2026.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ POLREP #3, page 2.

The NPFC finds, by a preponderance of the evidence, that the claimant has met his burden under the statute by demonstrating that the source of the red dyed oil migrating into his drainage system did not originate from a facility owned, operated, or managed by the claimant and that the associated damages were therefore caused solely by an act or omission of a third party. As summarized above, this finding is based on the following evidence:

- No on-site source: Inspections confirmed the sound condition of the claimant’s home heating oil storage tank, basement, and property perimeter.
- No clandestine oil wells or tanks: There were no abandoned oil wells located on the claimant’s property. Subsurface testing failed to locate a UST on property.
- No ground contamination: Geotechnical drilling did not identify oil-contaminated groundwater directly beneath the property.
- Potential third-party source: A 4’ x 6’ discoloration, which was slightly oily to the touch and had a faint petroleum odor, was discovered on the neighbor’s yard located directly uphill from the claimant's residence.

B. “... evidence that the responsible party exercised due care and took precautions against foreseeable acts”

Due care has been described by the courts as being “derived not only from statutory standards, but also from the dictates of reasonableness and prudence under the given circumstances of a case.”⁹⁶ As a result, the claimant was required to take reasonable precautions to prevent both intentional and accidental spills in light of all the relevant facts and circumstances. When interpreting OPA’s predecessor statute, the U.S. Court of Claims held that “... a claimant cannot recover, even if a vandal or third party immediately caused the spill, if the claimant does not prove that reasonable action had been taken to prevent or forestall such intervention by the third party.”⁹⁷

The NPFC asked the claimant to provide evidence that he exercised due care with respect to the oil and took precautions against foreseeable acts or omissions of a third party.⁹⁸ In response, the claimant explained that he had replaced his existing home heating oil storage tank on January 11, 2024,⁹⁹ after a technician servicing his boiler observed rust accumulating on the bottom of the storage tank during an annual service call.¹⁰⁰ Specifically, the claimant stated that he replaced the storage tank as a precaution to prevent it from eventually failing and discharging home heating oil into the basement.¹⁰¹

Additionally, and upon discovery of red dyed oil within the drainage system, the claimant immediately secured the sump pump to stop the discharge of red dyed oil from entering the

⁹⁶ *Baby Oil, Inc. v. United States*, 938 F. Supp. 2d 640, 646 (E.D. La. 2013) (citing *Coumou v. United States*, 107 F.3d 290, 295–96 (5th Cir. 1997), *withdrawn and superseded in part on reh’g by Coumou v. United States*, 114 F.3d 64 (5th Cir. 1997)).

⁹⁷ *Union Petroleum Corp. v. United States*, 228 Ct. Cl. 54, 73, 651 F.2d 734, 745 (1981) (citing *Chicago, Milwaukee, St. Paul & Pacific R.R. Co. v. United States*, 216 Ct. Cl. 155, 159, 575 F.2d 839, 841 (1978). *Cf.*, *United States v. HVI Cat Canyon*, 314 F.Supp.3d 1049 (C.D.Cal. 2018)

⁹⁸ Summary of conversation between the claimant and the NPFC dated February 19, 2026, page 2.

⁹⁹ Approximately one-year before the oil spill incident of January 14, 2025.

¹⁰⁰ S.J. Kowalski, Inc (b) (6) Account document received by the NPFC on February 10, 2026.

¹⁰¹ Summary of conversation between the claimant and the NPFC dated February 19, 2026, page 2.

stormwater drain.¹⁰² The claimant also hired Bluestone to deploy sorbent material in and around the stormwater drain to prevent red dyed oil from impacting Falls Creek, PA.¹⁰³ Additionally, the claimant instructed Bluestone to redirect the sump pump into a 500-gallon storage tank staged on property to capture all oil contaminated water being discharged from the sump pit.¹⁰⁴ Lastly, the claimant directed Bluestone to conduct subsurface testing of his property in search of a UST in an attempt to identify and secure the source of oil migrating into the drainage system.¹⁰⁵

In sum, the pollution prevention measures employed by the claimant represent tangible examples of due care and reasonable precautions taken to address the ongoing oil spill incident and to prevent an intentional or accidental release of oil.

As such, the NPFC finds that the claimant has met his burden under this portion of the statute in that he exercised due care with respect to the oil concerned and took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts of omissions.

IV. OSLTF COMPENSIBLE RESPONSE COSTS

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan.¹⁰⁶ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.¹⁰⁷ 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.¹⁰⁸

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.¹⁰⁹

In this case, the claimant submitted a claim for entitlement to a defense to liability, act or omission of a third party to the NPFC and seeks reimbursement of removal costs incurred under the defense in the amount of in the amount of \$21,464.67.¹¹⁰ The NPFC reviewed the documentation submitted by the claimant to adjudicate whether the claimant had incurred all costs claimed and each of the four factors above were met.

¹⁰² PA DEP Field Narrative dated January 17, 2025, page 2.

¹⁰³ See, POLREP #1, page 1. See also Bluestone Environmental, Inc., Daily Job Report dated January 16, 2025.

¹⁰⁴ See, POLREP #1, page 1. See also Bluestone Environmental, Inc., Daily Job Report dated January 16, 2025.

¹⁰⁵ See, POLREP #1, page 1. See also Bluestone Environmental, Inc., Daily Job Report dated January 16, 2025.

¹⁰⁶ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

¹⁰⁷ 33 CFR Part 136.

¹⁰⁸ 33 CFR 136.105.

¹⁰⁹ 33 CFR 136.203; 33 CFR 136.205.

¹¹⁰ Claim submission dated December 27, 2025, page 1.

The NPFC analyzed each of these factors and determined most of the removal costs incurred by the claimant and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC determined all approved costs were invoiced at prices comparable to rate schedule pricing of other regional oil spill removal organizations operating in the same area.¹¹¹ All approved costs were supported by adequate documentation which included invoices, proofs of payment, and/or FOSC statements.

The amount of compensable removal costs totals \$20,659.10, while \$805.57 of the claimed removal costs were deemed not compensable as summarized in the narrative summary below and detailed in the NPFC Summary of Costs Spreadsheet.¹¹²

Bluestone Invoice #3786

Charges in the amount of \$787.99 were denied. The denied costs included the costs associated with the installation and maintenance of a radon fan within the claimant's basement intended to remove unpleasant odors from the residence. Other denied costs included the costs associated with the purchase of removal supplies that were later returned for a full refund and for the costs associated with the purchase of a manufacturer's 2-year protection plan covering removal equipment associated with the response.

Bluestone Invoice #3940

Charges in the amount of \$17.58 were denied for the maintenance of a radon fan installed within the claimant's basement.

CONCLUSION

Based on a comprehensive review of the record, the applicable law, and regulations, and for the reasons outlined above, the claimant's request for a defense to liability, based on an act or omission of a third party is approved and its request for uncompensated removal costs is approved in the amount of \$20,659.10.

This determination is a settlement offer;¹¹³ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.¹¹⁴ The NPFC reserves the right to revoke a settlement

¹¹¹ Bluestone Environmental does not maintain a published rate schedule. See, email from Bluestone Environmental to the NPFC dated February 19, 2026. As a result, the NPFC compared the rates charged by Bluestone to the rates charged by similarly situated companies for comparable items and found that the Bluestone rates were equal to or less than the rates charged by those companies for the same item.

¹¹² Enclosure 3 provides a detailed accounting of the amounts denied.

¹¹³ 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 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).

¹¹⁴ 33 CFR § 136.115(b).

offer at any time prior to acceptance.¹¹⁵ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: (b) (6)

(b) (6)

Date of Supervisor's review: *April 24, 2026*

Supervisor Action: *Claim Approved*

¹¹⁵ *Id.*