

**United States Environmental Protection Agency  
Region X  
POLLUTION REPORT**

**Date:** Monday, March 22, 2004  
**From:** Marc Callaghan, Dan Heister & Michael Szerlog

**Subject:** Final (Special Polrep) - EPA demobilization due to OPA funding cap.  
Thermo Fluids  
6400 SE 101st Street, Portland, OR

<b>POLREP No.:</b>	3	<b>Site #:</b>	763
<b>Reporting Period:</b>	3/22/04	<b>D.O. #:</b>	
<b>Start Date:</b>	3/15/2004	<b>Response Authority:</b>	OPA
<b>Mob Date:</b>	3/15/2004	<b>Response Type:</b>	
<b>Demob Date:</b>		<b>NPL Status:</b>	
<b>Completion Date:</b>		<b>Incident Category:</b>	
<b>CERCLIS ID #:</b>		<b>Contract #</b>	
<b>RCRIS ID #:</b>		<b>Reimbursable Account #</b>	
<b>FPN#</b>	E04003		

**Site Description**

The Thermo Fluids facility, at 6400 SE 101st Avenue, conducts used oil recycling. A main operations building that contained a used oil pit, with a capacity of nearly 37,000 gallons ignited the morning of March 15, 2004, and quickly engulfed the building despite the efforts of over 140 firefighters that responded to the four-alarm fire. Water that was poured onto the fire to contain its spread overwhelmed the industrial property's oil and water separator unit and spread used oil and other potential hazardous chemicals into an adjacent drainage ditch. This 600 foot- long drainage ditch flows into Johnson Creek (within a 1/4 mile) - a tributary of the Willamette River - a navigatable waterbody. (Note: This section of the Willamette River is in USCG - MSO Portland's jurisdiction, however, the majority of the oil released to the drainage ditch and Johnson Creek).

**Current Activities**

Monday, March 15, 2004.

EPA OSC and START contractors mobilized to the site early in the afternoon on Monday, March 15 2004, after being requested by the Oregon Department of Environmental Quality (ODEQ) for assistance with the oil spill response. The RP, Thermal Fluids, has hired National Response Contractor (NRC) Environmental Services to assist with the oil spill cleanup efforts (NRC had originally been mobilized to the site by the ODEQ under the State Contract to address the oil spill).

Wednesday, March 17, 2004

1200 hours. EPA OSC Marc Callaghan received a call from Miguel Bella from USCG Fund Center concerned over the potential NPFC funding issues regarding mixed waste at the site.

1330 hours. Conference Call with NPFC Greg Buie, EPA Chris Field, EPA Carl Kitz, and EPA Marc Callaghan. EPA voiced concerns that the NPFC had made overtures of shutting off funding for the Thermo-Fluids oil discharge response. NPFC Buie stated that they had not come to such a decision and that he would feel comfortable continuing to fund the response if EPA made sure to track OPA and CERCLA costs separately. EPA stated that we were doing so, specifically with regard to the potential asbestos issues that were developing, but that we were not taking any response actions with regard to any acid or other CERCLA hazardous substance releases. EPA stated that we would track any costs that were related to CERCLA response separately. NPFC Buie stated that he felt it was difficult to obtain information regarding the facts at the site, but agreed that he had not tried to call our 24/7 number at any time. We reminded him that this is the one-stop way to access any information needs the NPFC has. NPFC Buie admitted to having based his conceptions on newspaper articles. EPA stated that we felt that this was not an appropriate or reliable source of information, and he should call us if he needs additional information. NPFC Buie seemed satisfied with this. We asked that if further questions or changes in funding status (i.e. to cut off funding) came up, that it we would appreciate it not being last thing Friday afternoon.

Thursday, March 18, 2004,

~1030 hours. EPA OSC Szerlog arrived on-scene to relieve EPA OSC Heister.

~1415 hours. EPA OSC Szerlog received a phone call from Miguel Bella and Greg Buie of NPFC. They informed the OSC that they were placing a funding cap at \$46,200 and would not allow additional funding increases. They stated that the reason was because of the mixed wastes - acid and oil. They also indicated that waste oil was an issue. OSC Szerlog indicated that the sample results did not show anything to indicate waste oil. The results showed diesel, heavy oil, and gasoline constituents.

~ 1445 hours. EPA OSC Szerlog contacted EPA Chris Field and informed him that NPFC had placed a cap on OSLTF reponse funding and would not be allowing for additional funding. OSC Szerlog indicated an estimated need of approximately \$100,000 based on a PRF amendment request from USFW, amendment request for START contractors, and additional support through the weekend from EPA OSC.

Friday, March 19, 2004,

~1000. RRT Activation Call for the discussion of NPFC cutting off funding for the Thermo-Fluids oil discharge response. Call started with roll call. The following were on the call:

EPA Region 10 - Chris Field, Beth Sheldrake, Bill Dunbar, Michael Szerlog, Stephanie Mairs, Anthony Barber

EPA OEPPR - Lynne Beasley, Virginia Coffey, Dana Stalcup

CG 13th District - CAPT Myles Booth, CDR Bill Whitson, Matthew Bernard

CG MSO Portland - CAPT Paul Jewell

ODEQ - Jack Wylie

WDOE - John Butler

NOAA - LCDR Micahel Devaney

USDOJ - Preston Sleeper, Allison O'Brien

OSHA - Ronald Tsunehara

GSA - Ray Robins

EPA and DOI gave response update: USFWS identified fish kill, oiled birds. DOI aware of separation of OPA and CERCLA issues. Earlier indications that pH in water of Johnson Creek was low (~2-4 using pH paper), but was now in 6-8 range. MSO PDX expressed knowledge of response and concern regarding oil threatening Willamette River/Bay - was surprised NPFC cut off funding. EPA OEPPR stated that a letter had just been sent to NPFC requesting reinstatement of funding for this oil discharge response. EPA Region 10 asked whether any on call opposed elevating issue to NRT. CG D13 was not opposed, but stated it might not be an issue NRT can help with - agreed that they should address the issue of NPFC distant from site trying to usurp responsibilities and authorities of OSC on the scene, and also stated surprise at NPFC's decision. CG D13 accepted invitation to participate on NRT activation call, if one occurs. Resolution by RRT was to elevate to NRT if issue couldn't be resolved during 11:30 call with NPFC.

~1130 hours. Call between EPA Region 10, EPA OEPPR, and NPFC

Most of EPA and NPFC previous participants, as well as Tim Eastman and Mark Mjonness were on the call.

EPA asked NPFC to clarify reason for cutting off funding for Thermo-Fluid oil discharge response. NPFC stated at various times throughout the call that the decision was because of "mixed waste" involving "co-mingling" of released acid and discharged oil, either in the water of Johnson Creek, or just prior to reaching the creek. NPFC (Tim Eastman) stated that he did not know whether any mixing or co-mingling actually took place. EPA stated that since there was no information to suggest that the oil was a CERCLA hazardous substance, and that the response efforts were focused on the oil discharge, that there should not be a problem with the appropriateness of using the OSLTF for the oil response. EPA re-acknowledged that any CERCLA assessment and response action expenses were being tracked separately. EPA stated that the oil that was discharged was floating on top of the water and that any acid released was miscible with water, had dispersed throughout the water column, and had been diluted down stream to the extent that there were no feasible response techniques to use for this material. EPA stated that some analysis of the oil had been performed that did not show any significant presence of halogenated compounds or heavy metals, and therefore did not believe that the oil is a hazardous substance. NPFC stated that they had daily updates from ODEQ that stated that there were numerous hazardous materials in the building that burned. NPFC further stated that they had read press releases and newspaper articles that called the oil a "waste oil", and that this term applies to a hazardous substance and therefore OSLTF was not the appropriate funding source. EPA stated that NPFC should not be relying upon newspaper articles and press releases for information, and that the vague use of the term "waste oil" in such articles and releases was not a legal term, but a common language term, most likely used to avoid confusion with the public, who are the intended audiences for such publications. NPFC then asked whether EPA was stating that ODEQ lied about the oil being a "waste oil". EPA explained repeatedly that the use of such a term by ODEQ and the news media in the press does not constitute a legal definition for "waste oil" and that the material is a "used oil", which was being recovered for reuse as fuel, and therefore was clearly an "oil" and should be covered by the OSLTF. EPA asked NPFC how much of what contaminants it would take for an oil to be considered a "waste oil" in their opinion. NPFC stated that he was not qualified to make that determination and that he didn't have the necessary education or experience to do so. EPA

asked whether NPFC would like to see the any analytical results available on the oil. NPFC declined, saying it didn't matter what the analysis said, that the oil was still a "waste oil" because that is what the newspaper articles and press releases stated it was. EPA stated that it needed a clear answer regarding whether funding would be reinstated. NPFC stated that funding would not be reinstated. EPA informed NPFC that an NRT activation would be requested to further elevate this issue. EPA informed NPFC that it was inappropriate for the NPFC to be making such response decisions that rightfully belong with the OSC on scene.

1300 hours. OSC Szerlog notified USFW that their PRFA amendment request was denied because NPFC had placed a cap on the funding. EPA stated that we and our contractors are demobilizing from the scene due to lack of funding. EPA told USFW that EPA could not continue to fund them via the PRFA and that they should demobilize from the scene. USFW indicated that they will evaluate funding options.

1500 hours. OSC Szerlog met privately with SOSC Kaufman and RPOSC Spencer and alerted them that EPA will be demobilizing from the site due to a cap on funding from NPFC. OSC Szerlog informed RPOSC Spencer that they were to continue to clean up the oil spill and work with the SOSC to finish response actions.

1530 hours. EPA and START contractors demobilized from the scene.

### **Planned Removal Actions**

FOSC Szerlog will continue to receive status updates from the SOSC.

### **Next Steps**

None Anticipated.

### **Key Issues**

The following are issues that have been raised or maybe raised due to the NPFC funding cap, forcing demobilization:

- 1) The Northwest Area Contingency Plan calls for Unified Command to manage oil and hazardous substance responses- including FOSC involvement. Because of the funding cap, the FOSC demobilized and disrupted the Unified Command structure for the OPA oil spill. The State of Oregon expressed concerns over EPA demobilizing from the scene and not being a part of Unified Command directing the Responsible Party.
- 2) EPA OSC along with NPFC issued a Pollution Removal Funding Authorization (PRFA) to the USFW to provide natural resource expertise in support of FOSC response actions, assist FOSC in complying with the Endangered Species Act and Migratory Bird Treaty Act, and to provide technical assistance with wildlife monitoring, shoreline cleanup assessment surveys, bird rescues and rehabilitation. Due to the funding cap, EPA was not able to fund USFW to continue the important efforts listed above. In addition, the USFW trustee agency did not have a voice in the Unified Command when EPA was forced to demobilize. The USFW did stay on over the weekend as impacted wildlife were continuing to be found. Their hours are being covered by their Program's overhead. They have expressed their concerns to the FOSC.
- 3) Both the State of Oregon and the USFW expressed concerns over potential claims to the OSLTF for response costs if the RP does not pay, as well as Natural Resource Damage Claims. The State is extremely concerned about the potential for their claims not to be paid by the OSLTF.
- 4) EPA will not be present at the conclusion of the response activities to assist in the determination of "how-clean-is-clean" regarding the clean-up actions. In addition, EPA's contractors, per OSC direction, were part of the Environmental Unit and were in charge of managing the sampling data using the Environmental Response Team's SCRIBE data management software. The State has expressed concerns that the data management inconsistencies have been lost with the demobilization of EPA and its contractors. They were relying on EPA's support.

[response.epa.gov/Thermofluids](https://response.epa.gov/Thermofluids)