

United States Senate

May 8, 2018

Mr. William Grawe
Director, National Pollution Funds Center
U.S. Coast Guard Stop 7100
4200 Wilson Boulevard, Ste 1000
Arlington, VA 20598-7100

Dear Mr. Grawe:

I write requesting a swift resolution by the U.S. Coast Guard to an oil pollution incident on property owned by the County of Powell, Montana. Unfortunately, as a direct result of inaction by the Coast Guard, Powell County is now being charged nearly \$4 million for cleanup action ordered by the Environmental Protection Agency. This is unacceptable and must be remedied by the Coast Guard immediately.

This case began in January 2011, when a Federal On-Scene Coordinator (FOSC) examined an old underground storage tank located on Powell County property. During that inspection, the FOSC determined that the tank was discharging fuel into Tin Cup Joe Creek, a tributary of the Clark Fork River. Based on this examination, the U.S. Environmental Protection Agency initiated an effort to remove the pollutant. While the tank had been located on property with a history of environmental problems, Powell County assumed liability for cleaning up the property following a 2005 conveyance agreement. Cleanup on this parcel was not moving forward until Powell County agreed to accept this agreement with a cleanup plan in place, which was developed with guidance from the EPA and the Montana Department of Environmental Quality. Powell County has never operated a railway and acted as a good Samaritan trying to resolve environmental issues on its own.

In 2014, Powell County received notification from the Coast Guard that this matter was to be referred to the U.S. Department of Justice. Because of the liability determination, the National Pollution Funds Center (NPFC) acknowledged that Powell County was unable to pay the significant costs associated with the incident. Under the law (33 U.S.C. Sec. 2715), any costs resulting from the incident exceeding \$500,000 must be approved by the Attorney General, who must also decide whether the facts of the case merit a compromise based upon Powell County's ability to pay. Importantly, NPFC must request that the case is then forwarded to the Department of Justice.

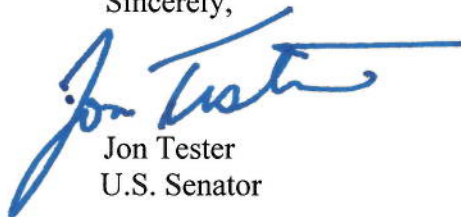
It appears that this referral to the Department of Justice by the Coast Guard's NPFC never occurred. Moreover, because the Department of Justice never received the case, its statute of limitations had expired. As a result, Powell County was contacted by the Department of Treasury with a bill of \$3,959,298.48 with no further notices, information or any legal protections. There was no opportunity for Powell County to move forward with cleanup under its

plan, and in light of the inadequate capture system put in place by EPA this expense may not have even been necessary. The problems were identified well before the change of ownership and the federal government cannot, in good conscience, place this burden on a rural county that tried to do the right thing.

Because Powell County may have certain federal funds withheld or rescinded as a result of this Treasury payment, I request swift action by the Coast Guard to resolve this matter. It is incumbent on the Coast Guard that this issue be resolved in consultation with the Environmental Protection Agency, the Department of Justice, the Treasury Department, and Powell County, so that the County's actuarial responsibility is minimized and accurately resolved.

Thank you for your attention to this matter and I look forward to your prompt response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon Tester", with a long horizontal flourish extending to the right.

Jon Tester
U.S. Senator