

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912073-0001
Claimant	: State of Washington
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Cynthia E Oliver
Amount Requested	: \$10,397.71

### FACTS:

**Oil Spill Incident:** On September 26, 2010, the State of Washington Department of Ecology received a report of a rainbow-colored sheen on the surface of Spring Lake. The Department of Ecology investigated and found the source to be a leaking home heating oil tank at 18631 Spring View Drive proximal to where the sheen was discovered.<sup>1</sup> The tank was actively leaking oil as a result of holes appearing in the bottom of the tank due to corrosion. This leakage resulted in approximately 5 gallons of fuel accumulation in the property's drainage system and another twenty-five gallons entering the lake via the property's drainage system.<sup>2</sup>

**Description of Removal Actions:** The owner of the property and Responsible Party, Ms. Rose Bucher, was contacted by the Department of Ecology who advised her of the spill and of her responsibilities for cleanup. Due to the urgent need to quickly stop and clean up the spill, the Department of Ecology hired NRC Environmental Services to handle the cleanup.<sup>3</sup> The remaining fuel was removed from the tank, sorbent boom and pads were deployed on the lake and the property's drainage system was cleared of fuel.<sup>4</sup> A total of approximately 25 gallons of fuel were removed.

**The Claim:** State of Washington Department of Ecology presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$10,397.71 for their uncompensated removal costs.

The claim consists of the OSLTF Claim Form, invoice summary sheet, contractor invoicing, contractor proof of payment, contractor rate schedule, incident report, scene photographs, and copies of disposal manifests.

### APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National

<sup>1</sup> See, OSLTF Claim Form, dated June 25, 2012.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

Contingency Plan and uncompensated damages. 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”.

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (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 determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

## **DETERMINATION OF LOSS:**

### ***Overview:***

1. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012 (a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

***Analysis:***

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC performed independent research into the incident and used the provided documentation in the adjudication and analysis process for this claim.

The Claimant was billed NRC personnel time in the amount of \$4,368 from September 27-30, 2010 and June 13, 2011; the Claimant was billed NRC equipment and material expenses in the amount of \$4,935; the Claimant was also billed subcontractor costs in the amount of \$192.63, and sales tax in the amount of \$902.08 were also billed. The NPFC confirmed the presence of the Claimant throughout the incident response and activities. The NPFC also confirmed that the costs were billed in accordance with the rate schedule in place at the time services were rendered.

The NPFC has denied \$120.00 in administrative personnel costs. Three total hours for Machell Pugh as an administrative specialist denied as not within the active response timeframe nor is there a description of duties to indicate they were removing oil as opposed to other administrative matters.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$10,277.71 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912073-0001.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

***Determined Amount:***

The NPFC hereby determines that the OSLTF will pay \$10,277.71 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912045-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Claim Supervisor 

Date of Supervisor's review: *9/18/12*

Supervisor Action: *Approved*

Supervisor's Comments: