

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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5890
December 1, 2015

Sent VIA E-Mail:

[REDACTED]
State of Washington
Dept of Ecology

[REDACTED]
P.O. Box 47600
Olympia, WA 98504-7600

RE: S14018-0001

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that it will offer \$11,541.01 as full compensation for OPA claim number S14018-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. It must include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the Director, NPFC within 60 days after the date the offer was mailed to you. It is important to note that the NPFC does not receive mail directly to its physical address therefore when submitting a request for reconsideration, please be mindful that there are no exceptions to the receipt requirement timeline. Additionally, overnight delivery is not received at the NPFC the next day since all mail is routed through a central mail facility first which does not constitute receipt by the NPFC. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. All correspondence should include claim number.

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are

required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

Sincerely,



Claims Manager
U.S. Coast Guard

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

CLAIM SUMMARY / DETERMINATION

Claim Number:	S14018-0001
Claimant:	State of Washington
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$11,541.01

Facts

Oil Spill Incident

On February 21, 2014, during a fire at Shelter Bay Marina in LcConner, WA, several vessels caught fire, discharged oil and sank. Shelter Bay is connected to the Swinomish Channel, which is connected to Padilla Bay, which is connected to North Skagit Bay and South Skagit Bay. Both bays are navigable waters of the United States. arrived on-scene at 1755 and

The Coast Guard hired Global Diving and Salvage to respond to the incident. FOSC Coordination was provided by Sector Puget Sound, Incident Management Division. The Washington State Department of Ecology (Ecology) personnel responded to the incident and became part of the Unified Command. As part of the Unified Command established for this incident, Ecology coordinated with the USCG Federal On-Scene Coordinator (FOSC) to establish objectives to control, contain, and recover spilled oil and to address the recovery of the sunken vessels as well as any oil that was contained.

Claim

On November 10, 2015, Ecology submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$11,541.01.¹ Ecology participated in monitoring the incident, interviewed the eye-witnesses and worked with Swinomish Tribal representatives and facilitated the mobilization to the site of a nearby Ecology spill response trailer granted to the Tribal. Personnel costs included salary and benefits and travel and per diem expenses for four employees.

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 -

¹ While Ecology presented its claim to a responsible party prior to submitting its claim to the Oil Spill Liability Trust Fund, claims presented by a Governor of a State for removal costs incurred by that State are not required to do so. See 33 U.S.C. § 2713(b)(1)(C)

- (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:

A. Findings of Facts

1. Sector Puget Sound, as the FOSC for this incident, determined that the removal actions undertaken by the Claimant were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved a 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 period of limitations for removal costs claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis

The NPFC Claims Manager has 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 costs were adequately documented and reasonable.

Claimant provided an invoice for salaries and benefits in the amount of \$10,803.97 and for the cost of four employees’ travel along with hotel costs since the Claimant had to travel in excess of 50 miles to reach the incident site. The travel and hotel costs were in the amount of \$737.04. Also, Claimant provided Washington State Department of Ecology Detail of Expenditures Report, Travel Expense Vouchers for each employee that responded to the incident which details the cost and time dedicated to the incident, as well as hotel receipts. All documentation that was submitted in the claim submission, demonstrated the time and expense that Ecology incurred as a result of the incident.

The NPFC performed a review of the costs presented by the State of Washington, Department of Ecology, and has determined that the rates charged were in accordance with the published state rates and that the actions undertaken by all parties responding to the incident were determined by the Federal On Scene Coordinator (FOSC) to be consistent with the National Contingency Plan (NCP). On that basis, the Claims Manager determines that \$11,541.01 is approved for this claim and that the amount is payable by the OSLTF.

C. Determined Amount

The NPFC hereby determines that it will offer **\$11,541.01** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number S14018-0001. 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 Claimants.


Claim Supervisor: 
Date of Supervisor's review: <i>12/1/15</i>
Supervisor Action: <i>Approved</i>