

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912022-0001
Claimant	: State of Washington Department of Ecology
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$8,893.50

FACTS:

- 1. Oil Spill Incident:** On 7 January 2008, the State of Washington Department of Ecology (Ecology) responded to a derelict vessel adrift in the Duwamish River, a navigable waterway of the US in Seattle, WA. Ecology arrived on scene at approximately 0930 hours local time and found the 27-foot wooden hull pleasure craft partially submerged and listing. Ecology observed a rainbow-colored sheen surrounding the vessel, estimated to cover a 25 by 50 yard area. The amount of fuel oil remaining onboard the partially submerged vessel could not be determined. Ecology attempted to contact the Responsible Party (RP), Mr. [REDACTED] for two days following the initial spill report. During these attempts Ecology left messages for the RP, but to no avail.

Ecology states it worked with USCG Sector Seattle (Sector Seattle merged and became part of Sector Puget Sound on 30 July 2010. For clarity and consistency, Sector Seattle will be referred to as "Sector Puget Sound" for the remainder of this determination), as it was the reporting party of the spill incident. It also stated that Sector Seattle Pollution Investigators determined that the vessel was not capable of being boarded and inspected and that it was not a navigational hazard. Since there was oil in and around the vessel, Ecology hired NRC Environmental Services (NRCES) to conduct a cleanup and remove all remaining fuel and oil from the vessel.

- 2. Description of removal actions performed:** On 08 January 2008, NRCES worked to remove 25 gallons of gasoline and approximately 20 small containers of household hazardous waste from the vessel. The vessel was secured with a bow and stern line to help ensure it didn't move. Neither a sheen sample nor a source sample was collected. Ecology states that locating the responsibly party to give them an opportunity to mitigate the spill incident was the only issue that delayed cleanup.
- 3. The Claim:** On 21 December 2011, Ecology submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$8,893.50 for the services provided 07 January 2008 through 14 January 2008. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

This claim consists of copies of the following: a modified OSLTF Claim Form for the State of Washington; the Ecology Invoice Summary sheet for this incident; the Ecology Preliminary Purchase sheet for this incident; the Ecology Proof of Payment to NRCES for this incident; NRCES Invoice # 534874; the NRCES Rate Schedule; the disposal manifest for this incident; the Ecology ERTS Report for this incident; the City of Seattle Police Hold Status letter for this vessel, dated 12/14/2006; Public Storage Notice of Lien or Disposal letter for this vessel, dated 12/02/2005; State of Washington Department of

Licensing registration information for this vessel; State of Washington DNR Letter of Notice to the RP for this vessel, dated 1/09/2008; and photos, maps and internal email correspondence.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

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 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:

A. 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 report of a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
4. A Responsible Party was determined but, to date, has not submitted payment to the claimant. 33 U.S.C. § 2701(32).
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. 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 Claimant states it performed a site assessment with USCG Sector Puget Sound on 07 January 2008. It also states that, while it did not personally report this spill to the National Response Center (NRC), it received its call for response by Sector Puget Sound (by USCG Petty Officers who could either not be determined or reached for verification), which would presumably have placed the initial notice in to the NRC. Although the Claims Manager could not locate this record in the NRC database, it was determined to be a reasonable assumption that this incident was most likely reported at the time of the incident, and that the gasoline on the vessel would have needed to be removed, even if the vessel itself was not considered a threat to navigation.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$8,893.50 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912022-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from 07 January 2008 through 14 January 2008. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$8,893.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 912022-0001. 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.

AMOUNT: \$8,893.50

Claim Supervisor

Date of Supervisor's review: *1/19/12*

Supervisor Action: *Approved*

Supervisor's Comments: