

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912094-0001
Claimant	: Port of Poulsbo
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Amount Requested	: \$2,524.74

**FACTS:**

On Wednesday, June 1, 2011, Port of Poulsbo personnel observed a sheen in Liberty Bay, a navigable water of the U.S. They followed the sheen to its source, which was the fishing vessel ERIC J, owned by [REDACTED] the responsible party (RP). The vessel was leaking red-dye marine diesel from two holes in the aft port side of the hull. The hull makes up part of the fuel tank, so fuel can leak into the water if the hull is breached. Port of Poulsbo personnel completely surrounded the vessel with absorbent boom and placed absorbent pads within the boomed area. These actions contained the oil until the leak could be stopped. Approximately 120 gallons of oil leaked into the water. USCG Sector Puget Sound responded, issued a Captain of the Port order to the RP, and directed the removal actions.

**CLAIMANT and CLAIM:**

Claimant is a Port in Poulsbo, Washington on Liberty Bay, in the Puget Sound region. The Port of Poulsbo offers a wide range of facilities for boat owners, including berthing, covered slips, transient facilities and other services. Claimant seeks reimbursement for labor and materials it expended in response to the incident.

**APPLICABLE LAW:**

"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 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:**

##### **A. Overview:**

1. The CG FOSC from Sector Puget Sound was notified of the incident, issued a Captain of the Port Order to the vessel owner and directed the response;
2. The incident involved the report of a discharge or substantial threat of 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 claims. 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 incident is an OPA incident.

##### **B. Analysis:**

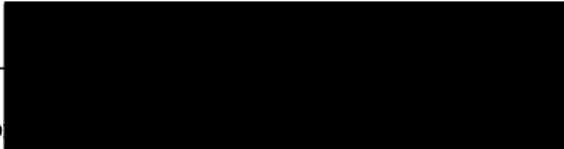
The Claims Manager reviewed the documentation provided by the Claimant in support of the uncompensated costs as claimed. The Claims Manager focused on: (1) whether an OPA-incident gave rise to the claim (i.e. whether there was a discharge or substantial threat of the discharge of oil into a navigable water of the U.S.) (2) whether the actions taken were compensable "removal actions" under OPA and its regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

Claimant argues that it is entitled to reimbursement of costs it expended in response to the oil leak from the ERIC J into the navigable water. Claimant was the first responder to the discharge

and immediately took actions that successfully contained the discharge. NPFC reviewed the documentation provided by the Claimant including incident reports, photos, invoices, proof of payment, its rates, and daily employee labor activity details. The NPFC finds that the actions performed by the Claimant were necessary and reasonable to mitigate and minimize the effects of the oil in the water. The costs it incurred were also necessary and reasonable under the circumstances. Therefore, the NPFC finds that the Claimant should be reimbursed the full amount of its claim.

**AMOUNT: \$2,524.74**

Claim Supervisor



Date of Supervisor's review: *10/10/12*

Supervisor Action: *Approved*

Supervisor's Comments: