

CLAIM SUMMARY / DETERMINATION

Claim Number:	914054-0001
Claimant:	Snohomish County Parks and Recreation
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$44,776.26

FACTS:

Oil Spill Incident: On March 12, 2013, a park ranger discovered a 200 gallon underground storage tank (UST) abandoned on the side of the road at 22718 N. Carpenter Road, Snohomish, WA. The tract of land where the UST was found is currently owned by the Snohomish County Parks Department.¹ At the time of the discovery, the UST didn't appear to be leaking so the park ranger contacted the Snohomish County Public Works Department and requested that the UST be picked up for proper disposal. On March 15, 2013, Snohomish County Public Works personnel arrived on-scene and discovered that the UST had leaked and estimated that approximately 25 gallons of diesel fuel had been discharged from the UST onto the side of the road; 5 gallons of which had entered a nearby storm drain.² That storm drain emptied into a 2 cell retention pond that is hydraulically connected to a wetland complex that drains into Carpenter Creek. Carpenter Creek flows into Woods Creek, a tributary of the Skykomish River. The Skykomish River travels northwest and empties into Puget Sound, a navigable waterway of the United States.³ Sorbent material was placed around the spill site as diesel fuel wasn't observed in the storm drain.⁴

Description of Removal Activities for this Claimant: On March 18, 2013, Snohomish County Public Works personnel attended the spill site and vactored (vacuumed) the affected storm drain. All of the liquid material recovered from the storm drain was properly disposed of at the Snohomish County Liquid Treatment Facility.⁵

On March 21, 2013, Ms. [REDACTED] Park Engineer, Snohomish County Parks & Recreation attended the spill site and observed a sheen on the retention pond. Clean Harbors, Inc. (CHI) was contracted by Snohomish County Parks & Recreation to conduct cleanup of the oil impacted soil and water. CHI responded and placed sorbent boom in the retention pond and all of the storm drains that drained into the retention pond.⁶ Mr. [REDACTED] Washington Dept of Ecology, in its capacity as the State On-Scene Coordinator (SOSC), was notified of the spill by Snohomish County and responded on this date. As the County was overseeing the spill site and had already contracted CHI to conduct the cleanup, Mr. [REDACTED] didn't assume responsibility for the spill cleanup and departed the scene leaving the cleanup efforts to Snohomish County personnel. In a conversation between Mr. [REDACTED] and an NPFC Claims Manager in March of 2014, Mr. [REDACTED] stated that he didn't believe that the water testing conducted by Snohomish County personnel was within the proper scope of cleanup.⁷

¹ See Snohomish County Parks property map provided by claimant dated 12 mar 2014.

² See Snohomish County Environmental Report Tracking Systems (ERTS) #640090 provided by claimant dated 21 Mar 13.

³ See email from Mr. [REDACTED] Washington SOSC Dept of Ecology dated 22 Apr 2014.

⁴ See email from Ms. [REDACTED] Parks Engineer, Snohomish County Parks & Recreation dated 6 Jun 2014.

⁵ See email from Ms. [REDACTED] Parks Engineer, Snohomish County Parks & Recreation dated 30 May 2014.

⁶ See explanation of services from Clean Harbors, Inc provided by claimant dated 6 Jun 2014.

⁷ See 21 Mar 2014 summary of conversation between Mr. [REDACTED] Washington SOSC Dept of Ecology and Mr. [REDACTED] NPFC in email dated 19 May 2014.

On March 26, 2013, CHI personnel returned to the spill site and jet rod cleaned all of the storm lines and catch basins. The sorbent boom was replaced in the retention pond and storm drains as a precautionary measure. Soil samples were taken from the spill site.

From April 2, 2013 to April 19, 2013, CHI personnel responded to the spill site on 8 more occasions for various response activities that included changing out absorbent materials, the collection of more soil samples and a 2nd attempt at jet rod cleaning of the storm lines and catch basins.⁸

Evaluation of Removal Activities: Mr. [REDACTED] as SOSOC, didn't oversee the response and removal activities and Snohomish County Parks & Recreation didn't notify the CG National Response Center⁹ until May 16, 2014, nor attempt to coordinate their response efforts through a Federal On-Scene Coordinator (FOSC), all of the removal actions up to and including April 19, 2013 have been evaluated by NPFC personnel and determined to be consistent with the National Contingency Plan (NCP) pursuant to its Delegation of Authority for Determination of Consistency.

However, CHI removal activities from April 25, 2013 through September 27, 2013, which included the recovery of 3200 gallons of waste water with a vacuum truck from the retention pond on April 25, 2013, to the remediation of 19 tons of soil from the spill site along the roadway on September 25, 2013,¹⁰ can't be properly evaluated by NPFC personnel to ensure that the oil contaminated water and soil posed a substantial threat of oil discharge into a navigable waterway of the United States or that the subsequent cleanup actions were consistent the NCP. Any and all CHI cleanup or removal activities that occurred on April 25, 2013 and following would need evaluation and concurrence by an FOSC that the oil contaminated water and soil posed a substantial threat of discharge into a navigable waterway of the United States and that the County's cleanup was performed in accordance with the NCP.

Lastly, a decision was made by County personnel to leave oil contaminated soil in the retention pond¹¹ when the removal of oil contaminated soil along the roadside spill site was conducted more than 6 months after the spill date, a clear explanation must be provided by the FOSC as to how the soil along the roadside was considered a substantial threat of oil discharge into a navigable waterway if the soil in the retention pond didn't pose the same substantial threat of oil discharge into a navigable waterway.

Responsible Party: The owner or the person who illegally abandoned the 200 gallon UST was never identified.

The Claim: On March 12, 2014, Snohomish County Parks and Recreation presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$44,776.26.¹²

⁸ See explanation of services from Clean Harbors, Inc provided by claimant dated 6 Jun 2014.

⁹ See NRC report #1083009 dated 16 May 2014

¹⁰ See explanation of services from Clean Harbors, Inc provided by claimant dated 6 Jun 2014.

¹¹ See email from Ms [REDACTED] Parks Engineer, Snohomish County Parks & Recreation dated 6 Jun 2014.

¹² See NPFC Standard Claim Form dated 12 Mar 2014.

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 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. As there was no FOSC coordination with this response, the NPFC has determined that the majority of the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with its 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 substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined which of the costs presented were for actions in accordance with the NCP and that the costs for these actions were 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 to be consistent with the NCP in accordance with the NPFC delegation of authority for determination of consistency, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or contractual agreements in place at the time the services were rendered, unless otherwise indicated below, and were determined by the NPFC, pursuant to its Delegation of Authority, to be consistent with the NCP.

General Categories of denied costs:

1. Removal charges for activities that occurred without supporting documentation and/or FOSC concurrence;

2. Removal charges for items that weren't listed on the Clean Harbors rate sheet or supported by receipts.

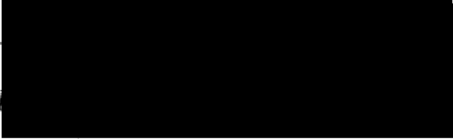
The NPFC will not itemize all the denied costs here in this Claim Summary Determination but rather will attach the spreadsheets created by the NPFC for each invoice where the identification of each item billed, claimed, paid, denied, and the reason for denial is itemized. All denied costs fall within one of the two categories referenced above.

OVERALL DENIED COSTS = \$16,054.41

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$28,721.85 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #914054-0001. 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.

AMOUNT: \$28,721.85

Claim Supervisor: 

Date of Supervisor's review: *June 19, 2014*

Supervisor Action: *Approved*

Supervisor's Comments: