

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914080-0001
Claimant	: Port of Portland
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$33,451.54

FACTS:

A. Oil Spill Incident:

The United States Coast Guard (USCG) Sector Columbia River reports¹ that on October 18, 2011, it received a report of a sheen from an unknown source on the Willamette River adjacent to Berth 411 at the Port of Portland Marine Terminal 4. The Willamette River is a navigable waterway of the US. The source of the oily discharge into the Lower Willamette River remains unknown. It was initially speculated that the vessel Arion SB (moored at Berth 411) was the source of the discharge. However, USCG Sector Columbia River and the United States Environmental Protection Agency (USEPA) Region X conducted an investigation and were unable to find conclusive evidence linking the Arion SB to the oil spill. As a part of the Port's spill response and in coordination with state and federal regulatory agencies, including the USCG in its capacity as the Federal On Scene Coordinator (FOSC) for the incident, the Port investigated upland areas under its ownership, including all adjacent outfalls, and concluded that its property was not the source of the oil sheen.

This incident was reported to the National Response Center (NRC) via multiple reports: # 992916, # 992970, and # 993132.

B. Description of removal actions performed:

In coordination with regulatory agencies, the Port personnel responded to the incident, contained the spill, mapped out the impacted area, initiated contracts with outside services for oil sampling, cleanup and disposal. NRC Environmental Services, Inc. (NRCES) was contracted to clean up and dispose of the oil. Clean up included removing the oil from surface water and washing the shore rock and dock structure that was coated in oil. Oily waste from the cleanup was disposed of at the Hillsboro Landfill. The Port also contracted with Specialty Analytical to sample and analyze the oily material.

C. The Claim: On February 20, 2014, the Port submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$33,451.54 for the services provided from October 18-20, 2011. 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 file.

¹ See USCG Sector Columbia River Case Report # 573526, opened 10/19/2011.

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 FOOSC, and (4) whether the costs were adequately documented.

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”.

“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”. 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

“Claimant” means “any person or government who presents a claim for compensation under this subchapter.” 33 USC § 2701(4).

33 USC § 2712(f), which is entitled “Rights of Subrogation,” provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

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 136.203, the claimant bears the burden to prove the removal costs 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. FOSC Coordination has been established via United States Coast Guard Sector Portland Columbia River; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);²
2. 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.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the 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.

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 Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The USCG Sector Columbia River was made aware of the incident and the actions performed by the Port. The Claimant provided dailies, invoicing and lab analysis for the work performed, including its own personnel costs. Costs incurred were deemed reasonable to accomplish the response objective. The contractor rate schedules (for all its different vendors) in place at the time services were rendered were reviewed and cross-checked.


² See USCG Sector Columbia River Case Report # 573526, opened 10/19/2011.

Oversight was performed by USCG Sector Columbia River, which opened several investigation activities into this incident that are documented under USCG Case Report # 573526. Therefore, the work performed has been deemed reasonable, necessary and in accordance with the NCP in order to mitigate the effects of the spill.

Based on the evidence in this claim submission for the actions undertaken by the Port, the Claims Manager hereby determines that the Claimant incurred \$33,451.40 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Port and submitted to the NPFC under claim #914080-0001. The NPFC had determined that \$0.14 in claimed costs have been denied as a result of math errors on the part of the Claimant. A breakdown of paid and denied costs can be found in the attached spreadsheet created for this claim. The Port represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount: \$33,451.40

The NPFC hereby determines that the OSLTF will pay \$33,451.40 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 914080-0001. 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. \$0.14 in claimed costs are denied.

Claim Supervisor: 

Date of Supervisor's review: 6/25/14

Supervisor Action: *Approved*

Supervisor's Comments: