

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	S12017-0001
<b>Claimant:</b>	State of Washington Department of Ecology
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$4,519.84

### Facts

#### Oil Spill Incident

On March 30, 2012 the Washington State Department of Ecology (Ecology) responded to a report of a large fire involving numerous sunken vessels and releases of oil at the Squalicum Harbor Marina in Bellingham, Washington. Ecology arrived on-scene at 0940 and at that time found that the fire had spread through a covered moorage section of boathouses causing the structures to collapse onto the vessels inside. Twelve vessels in the boathouse caught fire and sank.

Bellingham Fire responded to the Squalicum Harbor Marina after receiving several reports of a fire at the boat house. 911 calls indicated receiving a call from an individual claiming to be trapped in the fire. Fire personnel extinguished the fire. Search and recovery efforts commenced.

Ecology immediately dispatched personnel to the site 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 and any oil that they contained.

The scene was initially designated a crime scene as two individuals were missing and possible victims of the fire. The recovery of the victims took precedence during the initial recovery operations. This slowed the salvage operations to remove the collapsed structures to get to the underlying sunken vessels but did not adversely impact the containment and recovery of spilled oil.

Following the recovery of the two victims and their vessel, salvage operations accelerated. Twelve vessels total were finally recovered.

An estimated 4,000 gallons of gasoline and diesel were at risk and determined to be the worst case potential spill volume, based on the fuel capacities of the sunken vessels. Total recovered was estimated to be 1,438 gallons, most of which was recovered from sorbent materials.<sup>1</sup>

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<sup>1</sup> See Oil Spill Liability Trust Fund, Modified Claim Form, Claimant's narrative.

FOSC coordination was provided by Sector Puget Sound, MSTC [REDACTED] Incident Management Division.

The National Response Center was notified via Incident Report # 1007333 and Report # 1008054.

### Responsible Party

Under the Oil Pollution Act of 1990, an owner or operator of a vessel is considered a responsible party and liable for any government costs incurred during the response to mitigate an oil pollution incident. In a marina fire, boat sinking, and discharge of oil (gasoline or diesel), unless proven otherwise, all vessels that sink are potential responsible parties (joint and severally) for any costs incurred under OPA 90.

In this case 12 boat owners are held responsible under the Oil pollution Act of 1990. RP Notification letters have been sent out.<sup>2</sup>

### Claim

On February 20, 2014, Ecology submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$4,519.84.<sup>3</sup> Ecology's claim is for costs associated with the response services that were provided by the Department of Ecology to include: Personnel, (salary and benefits) and travel for one employee that exceeded 50 miles.

### Description of Removal Activities

The Port of Bellingham hired NRCES to respond to the incident. NRCES recovered boats and debris on the F Dock and recovered debris from the water. Cleanup operations were extended to the part of East G Dock that was well south of the point of origin in order to maintain the investigation scene.

Global Salvage, Port Operations, and Police/Fire Investigations developed a plan for recovery/salvage and evidence storage. Security of the response zone was maintained by private security and Bellingham Police.<sup>4</sup>

Containment and absorbent boom were deployed around the impacted area to control, contain, and recover spilled oil.

It is important to note that the only costs that pertain to this claim are the costs incurred by Ecology for their response.

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<sup>2</sup> See, CPS for the RP letters sent to [REDACTED]

<sup>3</sup> Invoice No. SP13005001

<sup>4</sup> Incident Action Plan, April 5, 2012

**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. Findings of Facts***

1. FOSC coordination was provided by Sector Puget Sound, Chief [REDACTED]
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 statute of limitations for removal cost claims.
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 \$4,484.84 and for the cost of an employee’s travel that exceeded 50 miles to reach the incident site in the amount of \$35.00. Also, Claimant provided a payroll record (Actual FTE’s /Sub-Object Costs for Bien 13) that demonstrated the time and expense that Ecology incurred in result of the incident.

Claimant’s invoice provides the travel cost however, it is listed under the “Goods & Services” header. However, Ecology provided a travel expense voucher<sup>5</sup> and a Detail of Expenditures Report<sup>6</sup> to demonstrate the travel cost that occurred on March 31, 2012 from Seattle to Bellingham.

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<sup>5</sup> State Form A20-AE

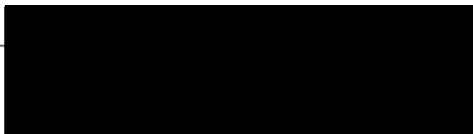
<sup>6</sup> Document # 1793-027

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 within reason and that the actions taken by all parties responding to the incident were determined by the USCG and the Unified Command to be consistent with the National Contingency Plan (NCP). On that basis, the Claims Manager determines that \$4,519.84 is approved for this claim and that the amount is payable by the OSLTF.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay **\$4,519.84** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number S12017-0001. 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: *3/14/14*

Supervisor Action: *Approved*

Supervisor's Comments: