

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 917005-0001
Claimant	: Port of Astoria
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$3,451.30

FACTS:

- 1. Oil Spill Incident:** The USCG Sector Columbia River reports¹ that on October 27, 2016, the Port of Astoria (“Port”) notified it that there was a fuel spill at Pier 3 near the haul out. The Port of Astoria is along the Columbia River, which drains directly into the Pacific Ocean - both of which are navigable waterways of the US.

Port personnel responded to the area and found that there was a strong odor of diesel fuel in the air and a large amount of red diesel fuel in the water at the haul out dock and surrounding area. The spill was approximately 100 feet by 75 feet in size, and the estimated amount of fuel spilled was approximately 50-60 gallons. The USCG took samples of the spill but was unable to determine the source or cause of the spill.

This incident was reported to the National Response Center via incident #1162655.²

- 2. Description of removal actions performed:** The Claimant, the Port, responded to the spill site around 0900 local time. Port personnel placed boom and sorbent padding to both contain and absorb the oil in the water. It then hired Waste Management to dispose of the oily waste. Removal actions were complete by approximately 1100.

THE CLAIMANT AND THE CLAIM:

On December 19, 2016, the Port submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$3,451.30 for the services provided on October 27, 2016. 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 with the claim.

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”.

¹ See, USCG Sector Columbia River Case Report # 1050494, opened 10/27/2016.

² See, NRC Report # 1162655, dated 10/27/2016.

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 at 33 USC § 2701(31) 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].

Under 33 USC §2713(a), all claims for removal costs or damages must (with certain exceptions not applicable here) be presented first to the responsible party or guarantor of the designated source of the incident. Then, as provided in 33 U.S.C. §2713(d), “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 Director, 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.”

In addition, 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 Claimant’s removal actions were coordinated with the FOSC via USCG Sector Columbia River.³ 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted to NPFC within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has not been identified. 33 U.S.C. § 2701(32).
5. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified that no suit has been filed by or on behalf of the Claimant in court for the claimed uncompensated removal costs.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim, and further documentation provided by USCG Sector Columbia River, and has determined which of the removal costs presented were incurred for removal actions taken by the Claimant in accordance with the National Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

B. Analysis:

The NPFC Claims Division (CA) reviewed the cost invoices and dailies submitted by the Claimant to determine whether the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA 90 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 were reasonable and necessary.

The Claimant, the Port of Astoria, submitted a well-documented claim to demonstrate that the actions it performed were OPA 90 compensable removal actions and that the work performed mitigated the effects of the oil spill that was discharged into the port and that also threatened the Columbia River and the Pacific Ocean. Additionally, the USCG Sector Columbia River Federal On Scene Coordinator (FOSC) confirmed that the actions claimed were performed by the Claimant and its subcontractors in response to this incident and determined that all of the Claimant’s response actions were determined to be consistent with the National Contingency Plan (NCP). Upon adjudication of the claim, the NPFC verified that the rates charged were billed to the Claimant in accordance with the published rates. As such, the NPFC has determined that the amounts invoiced and paid were reasonable, necessary and in accordance with the governing claims regulations found at 33 CFR 136.

³ See, USCG Sector Columbia River Case Report # 1050494, opened 10/27/2016.

Based on a review of all the supporting documentation and the incident information, the Claims Manager determined that the Claimant did in fact incur \$3,451.30 in uncompensated removal costs that were reasonable and necessary, and that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #917005-0001. Those costs claimed are for uncompensated removal costs incurred by the Claimant for this incident for removal actions by the claimant on October 27, 2016 that are consistent with the NCP.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$3,451.30 as full compensation for the claimed reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 917005-0001. All such costs were incurred by the Claimant for removal actions as that term is defined in OPA 90 and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

AMOUNT: \$3,451.30

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *1/10/17*

Supervisor Action: *Approved*

Supervisor's Comments: