

CLAIM SUMMARY / DETERMINATION

Claim Number:	S18002-0001
Claimant:	State of Washington
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$2,044.17
Action Taken:	Offer in the amount of \$2,044.17

EXECUTIVE SUMMARY:

On November 18, 2017 the Fishing Vessel (FV) LIHUI II sank at the Ilwaco Marina and discharged fuel into the Columbia River, a navigable waterway of the United States.¹ United States Coast Guard (USCG) Sector Columbia River received notification of the incident via National Response Center (NRC) report # 1197662 and in its capacity as the Federal On Scene Coordinator (FOSC), determined approximately 10 gallons of diesel discharged into the waterway.² The FOSC accessed the Oil Spill Liability Trust Fund (OSLTF) and opened Federal Project Number (FPN) S18002 in order to hire a contractor to remove the remaining oil onboard.³

In accordance with the Oil Pollution Act of 1990, [REDACTED] was identified as the responsible party (RP)⁴ and vessel owner.⁵ State of Washington, Department of Ecology (Claimant or Ecology) jointly responded to the incident in its capacity as the State On-Scene Coordinator (SOSC). Ecology worked jointly with the FOSC.⁶ Ecology attempted to present its invoiced costs to the RP but received returned mail.⁷ Ecology presented its uncompensated costs claim to the National Pollution Funds Center (NPFC) for \$2,044.17.⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that the full amount of the requested \$2,044.17 is compensable and offers this amount as full and final compensation of this claim.⁹

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

¹ National Response Center (NRC) report # 1197662 dated November 18, 2017..

² USCG MISLE Case # 1106901 opened November 20, 2017.

³ USCG SITREP-POL ONE AND FINAL dated November 20, 2017.

⁴ USCG MISLE Case # 1106901, Involved Subjects.

⁵ Department of Homeland Security, U.S. Coast Guard, Bill of Sale, dated November 6, 2017.

⁶ Ecology claim submission, Incident Summary section.

⁷ Attorney General of Washington, Ecology Division letter to [REDACTED], dated April 20, 2018, Attorney General of Washington, Ecology Division letter to [REDACTED], dated April 23, 2018. The letters were returned by the U. S. Post Office as "Return to Sender" and "Unable to Forward."

⁸ 33 CFR 136.103(c).

⁹ 33 CFR 136.115.

On November 18, 2017, the FV LIHUI II sank and discharged diesel at the Ilwaco Marina on the Columbia River, a navigable waterway of the United States near Ilwaco, Washington.¹⁰ The vessel emitted oil sheen into the River.¹¹

Responsible Party

Mr. [REDACTED] of Ilwaco, Washington is the vessel owner¹² and the responsible party.¹³ The NPFC's Case Management Division and Ecology have not been able to make contact with Mr. (b) (6),¹⁴

On September 10, 2019, the NPFC issued a Responsible Party Notification Letter to Mr. [REDACTED].¹⁵ A Responsible Party Notification letter notifies the owner and/or operator that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

Recovery Operations

USCG Sector Columbia River as the Federal On-Scene Coordinator (FOSC) for the incident, hired a response contractor and oversaw the response actions undertaken to mitigate the effects of the incident.¹⁶ The FOSC opened an FPN¹⁷ and hired Global Diving and Salvage to remove all fuel and oil residue from the sunken vessel.¹⁸ On November 19, 2017, Ecology responded and deployed hard boom to contain the oil sheen around the vessel.¹⁹

II. CLAIMANT AND RP:

The claimant tried to present its claim to Mr. [REDACTED] via two separate letters April 20, 2018 and April 23, 2018, that were both returned to sender.²⁰

III. CLAIMANT AND NPFC:

On September 5, 2019, the NPFC received a claim for uncompensated removal costs from Ecology. The claim included an Ecology cover letter dated August 29, 2019, modified claim

¹⁰ NRC Report # 1197662 dated November 18, 2017.

¹¹ USCG MISLE Case # 1106901 opened November 20, 2017.

¹² Department of Homeland Security, U.S. Coast Guard, Bill of Sale, dated November 6, 2017.

¹³ 33 U.S.C. § 2701 (32) (A)

¹⁴ NPFC Billing Letter dated February 20, 2018 via certified mail # 7016 2140 0000 4032 6475; Ecology letter to [REDACTED], dated April 20, 2018; and Attorney General of Washington, Ecology Division letter to [REDACTED] dated April 23, 2018.

¹⁵ NPFC RP Notification Letters sent to Mr. [REDACTED] via three separate addresses dated September 10, 2019.

¹⁶ USCG SITREP-POL ONE AND FINAL dated November 20, 2017..

¹⁷ FPN S18002 was opened.

¹⁸ USCG Authorization to Proceed document hiring Global Diving and Salvage dated November 19, 2017

¹⁹ Ecology claim submission, Incident Summary section.

²⁰ Attorney General of Washington, Ecology Division letter to [REDACTED], dated April 20, 2018, Attorney General of Washington, Ecology Division letter to [REDACTED], dated April 23, 2018. The letters were returned by the U. S. Post Office as "Return to Sender" and "Unable to Forward."

form, Ecology invoice summary sheet, Ecology labor costs including salary and benefits, Ecology lab costs, lab analysis, ICS forms, Ecology incident reports, NRC report, photographs, news articles, email correspondence, copies of correspondence, miscellaneous RP information and FOSC correspondence and/or documentation.²¹

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²² As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.²³ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁴ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.²⁵ An RP's liability is strict, joint, and several.²⁶ When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."²⁷ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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

²¹ Ecology complete claim submission dated August 29, 2019.

²² 33 CFR Part 136.

²³ See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

²⁴ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

²⁵ 33 U.S.C. § 2702(a).

²⁶ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

²⁷ *Apex Oil Co., Inc. v. United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

incident.”²⁸ The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”²⁹

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁰ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³¹ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.³²

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.
- (d) That the removal costs were uncompensated and reasonable.³³

The NPFC analyzed each of these factors and determined that the uncompensated removal costs incurred by Ecology and submitted herein are compensable removal costs based on the supporting documentation provided. In accordance with the National Contingency Plan (NCP) at 40 CFR 300.300(d) under Phase I – Discovery or notification, it states at (d)...” Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall ensure notification of the appropriate state agency of any state which is, or may reasonably be expected to be, by the discharge. The OSC shall then proceed with the following phases as outlined in the RCP and ACP”.

Ecology was notified via NRC report # 1197622 on November 18, 2017, that the F/V LIHUI II sank at the Ilwaco Marina and discharged fuel into the Columbia River, a navigable waterway of the United States. Ecology responded immediately and deployed hard boom while working jointly with the FOSC to handle the response actions.³⁴ Ecology also took samples and handled the sample identification which has been provided to the FOSC substantiating that the product recovered was an OPA oil.³⁵ Based on the nature of the activities to respond, deploy boom prior to the arrival of the FOSC’s response contractor, and the actions undertaken to handle lab analysis, Ecology’s costs have been determined to be consistent with the NCP. The costs claimed were billed in accordance with the state’s published rates for personnel time and lab

²⁸ 33 U.S.C. § 2701(31).

²⁹ 33 U.S.C. § 2701(30).

³⁰ *See generally*, 33 U.S.C. § (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³¹ 33 CFR Part 136.

³² 33 CFR 136.105.

³³ 33 CFR 136.203; 33 CFR 136.205.

³⁴ Ecology claim submission, Incident Summary section.



³⁵ Ecology lab analysis and sample documentation included in the claim submission.

costs and therefore determined to be reasonable, necessary and in accordance with the FOSC's response objectives as supported by the record.³⁶

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the State of Washington – Department of Ecology's request for uncompensated removal costs is approved in the amount of **\$2,044.17**.

This determination is a settlement offer,³⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

	
Claim Supervisor:	
Date of Supervisor's review:	<i>9/16/19</i>
Supervisor Action:	<i>Offer Approved</i>

³⁶ USCG MISLE Case # 1106901 opened November 20, 2017 and USCG Pollution Investigator statement of MST (b) (6), (b) dated January 2, 2018.

³⁷ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

³⁸ 33 CFR § 136.115(b).

³⁹ 33 CFR § 136.115(b).