

CLAIM DETERMINATION on RECONSIDERATION

<b>Claim Number:</b>	S18010-0004
<b>Claimant:</b>	Oregon Department of Environmental Quality
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claims Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$13,652.36
<b>Action Taken:</b>	Offer in the amount of \$13,652.36

**EXECUTIVE SUMMARY:**

Oregon Department of Environmental Quality (ORDEQ) requested reconsideration of NPFC's original claim determination dated September 19, 2018 for an incident involving the Cannery Pier Hotel.<sup>1</sup> In its original claim ORDEQ sought \$13,652.36 in uncompensated removal costs.<sup>2</sup> NPFC determined that \$4,185.29 of the \$13,652.36 was compensable under the Oil Pollution Act and the remaining \$9,467.07 was not compensable because the amount was comprised of expenses that were considered not properly supported removal costs. NPFC offered ORDEQ \$4,185.29 as complete compensation for its claim<sup>3</sup>; ORDEQ timely sought reconsideration and provided additional material to NPFC.<sup>4</sup>

Requests for reconsideration are considered *de novo*. NPFC has thoroughly reviewed the original claim, the request for reconsideration, all information provided by the ORDEQ and the relevant statutes and regulations. Upon reconsideration, the NPFC has determined that \$13,652.36 is compensable as supported by the detailed cost methodology provided to support the indirect expense cost calculation used to determined all claimed indirect expenses.

This is final agency action.

**I. CLAIM HISTORY:**

On August 2, 2018, Oregon DEQ submitted its claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) for uncompensated removal costs totaling \$13,652.36.

As evidence for its original claim, the Claimant submitted numerous documents associated with its response to the oil spill incident.<sup>5</sup>

<sup>1</sup> 2018 10 19 Email from ORDEQ to NPFC requesting reconsideration of the NPFC's initial offer determination dated September 19, 2018.

<sup>2</sup> OR DEQ OSLTF Claim Form dated July 27, 2018.

<sup>3</sup> 2018 09 19 NPFC Claim Determination to OR DEQ.

<sup>4</sup> 2018 10 19 Email from ORDEQ to NPFC requesting reconsideration of the NPFC's initial offer determination dated September 19, 2018.

<sup>5</sup> ORDEQ Invoice #HSRAF18-3662 dated July 19, 2018; Optional OSLTF Claim Form dated July 23, 2018; ORDEQ Pollution/Situation Report dated January 18, 2018; State of Oregon Resources At Risk Summary dated January 19, 2018; ORDEQ Detailed Incident Reports dated January 18, 2018 through January 24, 2018; USCG National Response Center (NRC) Report # 1202688 dated January 18, 2018; ICS Incident Briefing dated January 19, 2018; Oregon Emergency Response System (OERS) report dated January 18, 2018; ORDEQ Time Reporting Daily Logs for January 18, 2018, through February 1, 2018; ORDEQ Cost Recovery Accounting Schedule Invoice for Project # S23400-00, totaling \$13,652.36; Letter from Scwabe, Williamson, & Hyatt to ORDEQ dated March 6, 2018; and ORDEQ OSC Unit Log dated January 18, 2018 through January 31, 2018.

The NPFC made a partial offer on the claim on September 19, 2018 in the amount of \$4,185.29 for direct expenses associated with personnel time and denied \$9,467.07 in indirect costs on the grounds that the Claimant's indirect costs were not properly supported by the record. The NPFC's initial determination only offering partial compensation for the claim, dated September 19, 2018, is hereby incorporated by reference.<sup>6</sup>

## II. REQUEST FOR RECONSIDERATION:

On October 19, 2018, the Claimant timely requested reconsideration of the NPFC's initial determination and offer on the claim dated September 19, 2018.<sup>7</sup> In support of its request for reconsideration, the Claimant provided a letter explaining that Oregon Revised Statutes (ORS) 465.333 governs the state's costs recovery for emergency response and site cleanup which it cites as its basis for receiving compensation of its indirect expense calculation when combined with the initial supporting documentation presented in its original request for compensation.

### ANALYSIS ON RECONSIDERATION:

A request for reconsideration of an initial determination must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 C.F.R. §136.115(d). A Claimant submitting a claim to the Fund has the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. 33 C.F.R. §136.105(a). When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including new information provided by the Claimant in support of its request for reconsideration.

The Oil Spill Liability Trust Fund is available to the President for the payment of claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan (NCP).<sup>8</sup> OPA defines "removal costs" 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 such an incident."<sup>9</sup>

The regulations implementing OPA are found at 33 CFR Part 136. In relevant part, those regulations state the NPFC is only permitted to compensate claimants for "**reasonable** removal costs of actions taken..."<sup>10</sup> The regulations further require that a claimant bear the burden of providing all evidence, information, and documentation deemed necessary by the NPFC to establish 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...<sup>11</sup>

Upon adjudication of the reconsideration request and in consideration of all documentation provided in support of the claim, both initially and upon reconsideration, the NPFC has determined that the report generated by Merina, McCoy & Co., PC dated March 16, 2001 entitled "Department of Environmental Quality Waste Management and Cleanup (WMC) Program Review of Indirect Cost Rate Methodology," combined with the Oregon Revised Statutes (ORS) 465.333 that governs the state's costs recovery for emergency response and site cleanup, the NPFC has determined

<sup>6</sup> 2018 09 19 NPFC Claim Determination to OR DEQ.

<sup>7</sup> OR DEQ Claim Submission dated July 27, 2018.

<sup>8</sup> 33 U.S.C. § 2712(a)(4).

<sup>9</sup> 33 U.S.C. § 2701(31).

<sup>10</sup> 33 CFR 136.205 (emphasis added).

<sup>11</sup> 33 CFR 136.105; 33 CFR 136.203.

sufficient detailed support for the calculation of indirect expenses has been demonstrated and is reasonable.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reason outlined above, OR DEQ's request for reconsideration of its uncompensated removal costs in the total amount of \$13,652.36 is approved on reconsideration.

**AMOUNT: \$13,652.36**

Claim Supervisor: 

Date of Supervisor's Review: *12/18/18*

Supervisor Action: *Offer on Reconsideration Approved*