

CLAIM SUMMARY / DETERMINATION

Claim Number:	920004-0001
Claimant:	State of Washington Department of Ecology
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$4,798.29
Action Taken:	Offer in the amount of \$4,798.29

EXECUTIVE SUMMARY:

On August 20, 2018, State of Washington Department of Ecology (ECOLOGY) was notified of a mystery sheen that was discovered along the Lower Columbia River coastline, a navigable waterway of the United States.¹ Samples were taken by Ecology State On Scene Coordinator (SOSC) (b) (6) and the results were unable to match the source of the spill to surrounding vessels in the area.²

Ecology maintained contact with USCG to provide updates on obtaining samples and results and investigation outcome. Ecology reported the incident but did not operate under USCG direction.³ On August 20, 2018, Ecology SOSC deployed the Spill Response Team at the spill site to perform oil recovery sweeps along the shorelines overnight.⁴ Ecology presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$4,798.29 on December 11, 2019.⁵ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$4,798.29 is compensable and offers this amount as full and final compensation of this claim.⁶

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On August 20, 2018, the National Response Center (NRC) was notified by a local government⁷ of a sheen from an unknown source discovered on the Columbia River.⁸ Ecology personnel obtained 14 samples from multiple locations and vessels along the coast of the river near river mile 82 to determine the source of the spill.⁹ Ecology, in its capacity as the SOSC, initiated actions to perform cleanup utilizing sorbent sweeps to mitigate and clean

¹ OSLTF Claim submission letter dated December 11, 2019.

² Compilation of email correspondence between ECY, USCG and Manchester Environmental Laboratory.

³ Email from USCG to NPFC dated January 7, 2020.

⁴ OSLTF Claim dated December 11, 2019, Columbia River RM 82 Mystery Discharge, August 20, 2018 Incident Summary.

⁵ OSLTF Claim submission letter dated December 11, 2019.

⁶ 33 CFR 136.115.

⁷ Cowlitz County Department of Emergency Management.

⁸ OSLTF Claim dated December 11, 2019, National Response Center Incident Report #1222104.

⁹ 14 Sample Chain of Custody dated from August 22, 2018 to August 23, 2018.

the oil from the sites.¹⁰ Sample results confirmed the substance was lube oil and some samples were a match to other samples taken from various surrounding locations.¹¹ The investigation by Ecology's SOSOC, did not determine the source of the spill.

Recovery Operations

On August 20, 2018 Ecology decided to not hire a response contractor since the Ecology Spill Response Team mobilized to the site and deployed sorbent booms along the Lower Columbia River. Ecology's Incident Report estimates the spill to have been approximately 100 gallons. Ecology deployed sorbent sweep overnight and returned to retrieve it the next day. Ecology deemed the response completed on August 21, 2018 after recovering as much oil they could using the sorbent sweeps and all remaining sheen was determined to be unrecoverable.¹²

II. CLAIMANT AND RP:

Claims for removal costs or damages may first be presented to the Fund by the Governor of a State for costs that are incurred by the State.¹³ Ecology and USCG were unable to determine the source of the spill after vessels of interest were sampled and investigated by Ecology personnel.¹⁴

III. CLAIMANT AND NPFC:

On December 11, 2019, the NPFC received a claim for uncompensated removal costs from State of Washington Department of Ecology dated November 22, 2019. The claim included the invoices for Ecology state personnel salaries and benefits and Manchester Environmental Laboratory Project Statements, photos, and chain of custody documentation for the samples that were taken. Additional information submitted to the NPFC included investigator emails, breakdown explanation email associated with the laboratory costs, Manchester Laboratory Analytical Price List FY 17 and FY 19, and social media posts by Ecology personnel supporting actions.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁵ 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

¹⁰ Email from USCG MST3 to NPFC dated January 7, 2020 confirming Ecology was on site and performed the removal actions.

¹¹ Manchester Environmental Laboratory Final Analysis Report dated August 22, 2018.

¹² Washington State Department of Ecology Spill Program Incident Detail Report Dated August 20, 2018.

¹³ 33 U.S.C. § 2713(b)(1)(c).

¹⁴ Emails from Washington State Department of Ecology Investigator regarding sample intake and transport.

¹⁵ 33 CFR Part 136.

the facts of the claim.¹⁶ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁷ 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:

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP). The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims. 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.

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.¹⁸
- (d) That the removal costs were uncompensated and reasonable.¹⁹

The NPFC analyzed each of these factors and determined the costs incurred by Ecology and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC determined all approved costs were invoiced at the appropriate rate sheet pricing and were billed in accordance with the rate schedule provided.²⁰ All approved costs were supported by adequate documentation which included invoices, proofs of payment, and FOSC coordination.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, State of Washington Department of Ecology request for uncompensated removal costs is approved in the amount of **\$4,798.29**.

¹⁶ 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)).

¹⁷ 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).

¹⁸ Email from USCG MST3 to NPFC dated January 7, 2020 acknowledging the actions taken by the claimant were consistent with the NCP and PDX IMD would have taken similar actions if they had responded to the incident.

¹⁹ 33 CFR 136.203; 33 CFR 136.205.

²⁰ Ecology rate sheet pricing and Manchester Environmental Laboratory rate schedule.

This determination is a settlement offer,²¹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.²² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.²³ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p>(b) (6)</p>
Claim Supervisor: (b) (6)
Date of Supervisor's review: <i>1/13/2020</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments:

²¹ 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).

²² 33 CFR § 136.115(b).

²³ 33 CFR § 136.115(b).