

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	920005-0001
<b>Claimant:</b>	Washington State Department of Ecology
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b), (b) (6)
<b>Amount Requested:</b>	\$4,968.43
<b>Action Taken:</b>	Offer in the amount of \$4,968.43

### **EXECUTIVE SUMMARY:**

On October 24, 2018, an unknown sheen was discovered on the waters of the Lower Columbia River (LCR) from River Mile (RM) 75.5, in Kalama WA, to RM 63, in Longview, WA.<sup>1</sup> Coast Guard (CG) Sector Columbia River, Portland Incident Management Division (IMD) was dispatched to serve as Federal On Scene Coordinator (FOSC).<sup>2</sup> Attempts to locate the spill source were unsuccessful and no responsible party (RP) as defined by the Oil Pollution Act of 1990, could be identified.<sup>3</sup> Washington State's Department of Ecology (WA DOE or claimant) was dispatched to assist with the cleanup of the oil spill into the LCR.<sup>4</sup> WA DOE presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$4,968.43.<sup>5</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$4,968.43 of the requested amount is compensable and offers this amount as full and final compensation of this claim.

### **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

#### ***Incident***

On October 24, 2018, WA DOE responded to a call reporting an oil sheen in the LCR. The caller stated he noticed the sheen after sunrise, confirmed that the sheen was not from his vessel but was unable to determine the origin of the spill.<sup>6</sup> WA DOE contacted CG Sector Columbia River, who reported the spill to the National Response Center (NRC).<sup>7</sup>

CG Sector Columbia River arrived on-scene, meeting with and overseeing the work of WA DOE to assess the specificity of the product, determine the source of the spill, and perform any necessary cleanup activities. The spill extended from approximately RM 75.5, up-river of the Port of Kalama, Kalama, WA, to just down-river of the Lewis and Clark Bridge in Longview, WA, RM 63.<sup>8</sup> The estimated oil volume of the spill was 110 gallons.

<sup>1</sup> SITREP, dated October 24, 2018.

<sup>2</sup> NRC Report #1228371, dated October 24, 2018.

<sup>3</sup> 33 U.S.C. § 2701(32).

<sup>4</sup> Washington State Department of Ecology Initial Incident Detail Report, dated October 24, 2018.

<sup>5</sup> Washington State Department of Ecology claim submission, dated November 25, 2019.

<sup>6</sup> SITREP, dated October 24, 2018.

<sup>7</sup> NRC Report #1228371, dated October 24, 2018.

<sup>8</sup> Washington State Department of Ecology Incident Summary, dated October 24, 2018.

### ***Responsible Party***

CG Sector Columbia River worked with WA DOE, attempting to locate the source of the spill, and working to identify a responsible party (RP). All attempts at locating a source were unsuccessful, and a RP could not be identified.<sup>9</sup> As such, the oil spill was determined to be a mystery sheen.

### ***Recovery Operations***

On October 24, 2018, WA DOE arrived on scene with a spill response boat, and a spill response truck loaded with oil spill response sorbent supplies. Upon arrival, WA DOE noted the oil was spread-out and without odor. WA DOE personnel spent much of the day on the boat conducting oil spill assessment while taking environmental samples.<sup>10</sup> On scene personnel did not discover any recoverable oil, and no contractor was hired to assist with the spill. WA DOE cites minimal commercial and recreational vessel traffic on the LCR during the time of spill assessment.<sup>11</sup>

For further assessment of the spill, WA DOE conducted an over-flight aerial recon of the LCR on October, 24, 2018.<sup>12</sup> Prior to the FOSC's arrival, WA DOE was in contact with the CG Sector Columbia River by telephone.

CG Sector Columbia River arrived on scene in the afternoon, and concurs with the Claimant that by the time the oil was discovered in the LCR, the oil was non-recoverable. WA DOE provided on-water transportation for the FOSC so that they were able to obtain environmental samples from the river. The FOSC recalled the sheen looking like hydraulic fluid, and took multiple samples from the waters within close proximity of the sheen.<sup>13</sup> The FOSC provided laboratory conclusions proving the product that was in the LCR on October 24, 2018 was in fact, a lubricating oil.<sup>14</sup>

## **II. CLAIMANT AND NPFC:**

On December 13, 2019 the NPFC received a claim for \$4,968.43 from the Washington State Department of Ecology, dated November 25, 2019.<sup>15</sup>

On December 19, 2019, the NPFC requested Claimant submit additional information for the purpose of continuing adjudication of the claim, including a rate schedule/pricing sheet to validate the costs paid for services documented in the claim.<sup>16</sup> On January 2, 2020, Claimant responded to the NPFC's request for a rate schedule with a pricing sheet documenting the rates

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<sup>9</sup> SITREP, dated October 24, 2018.

<sup>10</sup> Washington State Department of Ecology Initial Incident Detail Report, dated October 24, 2018.

<sup>11</sup> Washington State Department of Ecology Incident Summary, dated October 24, 2018.

<sup>12</sup> Northwest Helicopters, LLC Invoice 22257, dated November 16, 2018.

<sup>13</sup> Email from FOSC to Claims Manager, dated January 6, 2020.

<sup>14</sup> Marine Safety Laboratory Case Number 19-009, dated November 19, 2018.

<sup>15</sup> Washington State Department of Ecology claim submission, dated November 25, 2019.

<sup>16</sup> Email from Claims Manager to Claimant, dated December 19, 2019.

for goods and services,<sup>17</sup> a summary report of all lab rates<sup>18</sup> and an official time report disclosing the specified rates for services correspondent with personnel costs presented in the claim.<sup>19</sup>

### **III. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>20</sup> 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.<sup>21</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>22</sup> 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.

### **IV. DISCUSSION:**

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>23</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup>

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<sup>17</sup> Northwest Helicopters, LLC Rate Schedule WA Contract 04413, certified February 15, 2016.

<sup>18</sup> Manchester Environmental Laboratory Analytical Price List FY 17.

<sup>19</sup> Washington State Department of Ecology Time Report, dated November 15, 2018.

<sup>20</sup> 33 CFR Part 136.

<sup>21</sup> 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)).

<sup>22</sup> 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).

<sup>23</sup> See generally, 33 U.S.C. § (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>24</sup> 33 CFR Part 136.

<sup>25</sup> 33 CFR 136.105.

<sup>26</sup> Email from FOSC to Claims Manager, dated January 6, 2020.

(d) That the removal costs were uncompensated and reasonable.<sup>27</sup>

The NPFC analyzed each of these factors and determined that all costs incurred and submitted by Washington State Department of Ecology herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing, and all approved costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

**VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, WA DOE's request for uncompensated removal costs is approved in the amount of \$4,968.43.

This determination is a settlement offer,<sup>28</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>29</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>30</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

	(b), (b) (6)
Claim Supervisor:	(b), (b) (6)
Date of Supervisor's review:	<i>1/14/2020</i>
Supervisor Action:	<i>Offer Approved</i>
Supervisor's Comments:	

<sup>27</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>28</sup> 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).

<sup>29</sup> 33 CFR § 136.115(b).

<sup>30</sup> 33 CFR § 136.115(b).