

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	920028-0001
<b>Claimant:</b>	State of Washington
<b>Type of Claimant:</b>	STATE
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6), (b)
<b>Amount Requested:</b>	\$1,248.67
<b>Action Taken:</b>	Offer in the amount of \$1,248.67

### **EXECUTIVE SUMMARY:**

On October 25, 2019, a Washington State, Department of Fish & Wildlife (WDFW) employee discovered four abandoned used motor oil drums in a state wildlife area parking lot. One drum had leaked onto the gravel parking lot adjacent to Vancouver Lake, which discharges to the Lower Columbia River. As a rain storm was approaching, which would wash the oil into the lake, the WDFW employee contacted the Washington State, Department of Ecology (WDOE). Two State On Scene Coordinators (SOSCs) from WDOE responded and cleaned up the spill.

The NPFC reviewed the documentation submitted with the claim and has determined that the claim should be paid in full in the amount of \$1,248.67.

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

#### ***Incident***

On Friday, October 25, 2019, a WDFW employee discovered four recently abandoned drums of what appeared to be used motor oil/lubrication oil. One drum was on its side and was actively leaking fluid onto the ground. The drums were located at the Shillapoo Wildlife Area in Vancouver, Washington in a parking lot next to Vancouver Lake. Vancouver Lake discharges directly to the Lower Columbia River, a navigable water of the United States. The SOSCs determined that in light of current weather conditions, a substantial threat of discharge was imminent if the product was not cleaned up prior to the arrival of the incoming storm.

#### ***Responsible Party***

No responsible party has been identified.

#### ***Recovery Operations***

The WDFW notified the WDOE of the spill. Two WDOE SOSCs responded to the site. They uprighted the fallen drum and staged recovery equipment. Since a rainstorm was approaching, they determined that the spilled oil would reach the parking lot stormwater system and then discharge to the lake. WDOE personnel performed a field chemical test on the product and determined that it was an OPA oil. They transferred all the oil into the two best drums.

They used sorbent pads to clean up the pooled oil and shovels to excavate the contaminated gravel, and placed the contaminated materials into containers. After they cleaned up the spill they notified the National Response Center (NRC) of the incident. The United States Coast Guard (USCG) Sector Columbia River phoned one of the SOSCs for a briefing and decided that a USCG response was not necessary in light of WDOE's response.<sup>1</sup> WDOE and USCG Federal On Scene Coordinator's Representative (FOSCR) corresponded by email regarding the response and disposal. WDOE transported the drums, contaminated sorbents and gravel to Clean Harbors Environmental Services for disposal.

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

The claimant is an agency of the State of Washington. As a state, it may submit its claim directly to the OSLTF without first presenting it to the responsible party.<sup>2</sup> The NPFC received the claim seeking reimbursement of \$1,248.67 on June 17, 2020. The claimed costs consist of labor costs for two WDOE SOSCs who responded and cleaned up the spill, and disposal costs paid to Clean Harbors Environmental Services. No responsible party has been identified by either the FOOSC or the SOSC for this incident.<sup>3</sup>

## **III. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>4</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>5</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>6</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:**

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<sup>1</sup> Claimant's OSLTF Claim Form and WDOE Incident Summary

<sup>2</sup> 33 U.S.C. § 2713. In this incident, the responsible party has not been identified anyway.

<sup>3</sup> Claimant's OSLTF Claim Form and WDOE Incident Summary

<sup>4</sup> 33 CFR Part 136.

<sup>5</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>6</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).

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.<sup>7</sup> An RP's liability is strict, joint, and several.<sup>8</sup> 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."<sup>9</sup> 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 incident."<sup>10</sup> 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."<sup>11</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>12</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>13</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>14</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.
- (d) That the removal costs were uncompensated and reasonable.<sup>15</sup>

The NPFC analyzed each of these factors and determined that the costs incurred by Claimant and submitted herein are compensable removal costs based on the supporting documentation provided. The claimant has provided written email documentation from the FOSCR evidencing

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<sup>7</sup> 33 U.S.C. § 2702(a).

<sup>8</sup> See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

<sup>9</sup> *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).

<sup>10</sup> 33 U.S.C. § 2701(31).

<sup>11</sup> 33 U.S.C. § 2701(30).

<sup>12</sup> See generally, 33 U.S.C. § 2712(a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>13</sup> 33 CFR Part 136.

<sup>14</sup> 33 CFR 136.105.

<sup>15</sup> 33 CFR 136.203; 33 CFR 136.205.

coordination with the FOSCR for actions undertaken, payroll and daily documentation and invoicing documentation along with proof of payment has been provided; and documentation in support of the state's indirect rate computation as been provided. Lastly, field cat testing information was also provided in support of evidence that the spill is an OPA compensable oil.

**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 **\$1,248.67**.

This determination is a settlement offer,<sup>16</sup> and the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>17</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>18</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p>(b) (6), (b)(b) (6), (b)(b) (6), (b) (b) (6), (b)(b) (6), (b)(b) (6), (b) (b) (6), (b)(b) (6), (b)(b) (6), (b)</p>
Claim Supervisor: (b) (6), (b)
Date of Supervisor's review: <i>6/24/2020</i>
Supervisor Action: <i>Offer Approved</i>

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<sup>16</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>17</sup> 33 CFR § 136.115(b).

<sup>18</sup> 33 CFR § 136.115(b).