

CLAIM SUMMARY / DETERMINATION

Claim Number:	921025-0001
Claimant:	Washington State Department of Ecology
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$30,081.05
Action Taken:	Offer in the amount of \$29,876.03

EXECUTIVE SUMMARY:

On March 2, 2018 at approximately 4:30 pm local time, United States Coast Guard (USCG) Sector Columbia River made a notification to the National Response Center (NRC), via report # 1205697 and reported that a fishing vessel (F/V) had discharged an unknown amount of diesel fuel into the Hoquiam River, a navigable waterway of the United States.¹

Washington State Department of Ecology (“Claimant” or “Ecology”), in its capacity as the State On Scene Coordinator (SOSC), responded to the incident and found the F/V LADY GRACE actively releasing diesel fuel into the Hoquiam River, a navigable waterway of the United States.²

Ecology contacted the United States Environmental Protection Agency (USEPA), in its capacity as the Federal On Scene Coordinator (FOSC) and it was agreed that Ecology would handle the response.³ The SOSC took the lead in the response and operations and contracted Global Diving and Salvage (Global) and Cowlitz Clean Sweep (CCS) in order to remove the fuel onboard the vessel and in the water.⁴ Ecology, in its capacity as the State On Scene Coordinator (SOSC), oversaw and monitored the removal and cleanup operations performed by Global and CCS throughout the response. Ecology and Washington Department of Fish and Wildlife (WDFW) took three environmental samples on March 4, 2018 that contained diesel and lube oils that were determined to be a match to the source sample.⁵

In accordance with the Oil Pollution Act of 1990, (b) (6). (“Mr. (b) (6)” or “RP”) is identified as the responsible party (RP)⁶ for the incident that resulted in a discharge of oil from the fishing vessel LADY GRACE⁷. (b) (6) (“RP), is the owner and operator of the vessel and the responsible party (RP) as defined by the Oil Pollution Act of 1990.⁸ Global Diving and Salvage (Global), commenced cleanup operations on the water after being hired by the SOSC. Ecology presented its uncompensated removal cost claim to the

¹ NRC Report # 1205697 dated March 2, 2018.

² Tab W of Claim Submission, Spills Program Investigation Summary Form, p. 4.

³ Tab A, Ecology Original Claim Submission dated July 27, 2021 received July 27, 2021, page 3 of 5.

⁴ Tab W of Claim Submission, Spills Program Investigation Summary Form, p.6.

⁵ Tab G of Claim Submission, Ecology Manchester Environmental Laboratory Project Statement dated April 1, 2018, pages 4-5.

⁶ 33 U.S.C. § 2701.

⁷ Tab V of Claim Submission, USCG Bill of Sale for LADY GRACE Vessel No. 227284 dated February 2, 2018.

⁸ Tab V of Claim Submission, USCG Bill of Sale for LADY GRACE Vessel No. 227284 dated February 2, 2018.

National Pollution Funds Center (NPFC) for \$29,022.85 on July 27, 2021.⁹ On August 5, 2021, the NPFC received an email from Ecology amending the sum certain for the claim to \$30,081.05.¹⁰ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$29,582.28 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On March 2, 2018, Ecology responded to the NRC report regarding an oil sheen on the Hoquiam River due to a discharge of diesel fuel from the ninety (90) year old 70-foot wooden-hulled vessel, LADY GRACE, (previously a commercial fishing vessel) in the vicinity of 220 Monroe Street in Hoquiam, Washington. Ecology arrived on the scene and found multiple vessels in various stages of disrepair but was unable to locate the reported oil sheen. The SOSC responders returned the next day and observed the LADY GRACE listing to starboard and the vessel owner, (b) (6) (b) (6), was attempting to power up the vessel. Due to a faulty generator, the vessel's sump pumps were not operating and the hull had reportedly been damaged by a log, causing it to take on water.¹¹

SOSC responders did not find an oil sheen at this time. (b) (6) was able to pump out the vessel's hold and SOSC responders observed the vessel beginning to stabilize and with no visible sheen, the SOSC responders demobilized. Ecology was contacted again at 2218 and was informed that the sump pumps were once again inoperable, as the generator on board had run out of gas and the LADY GRACE was again taking on water while releasing diesel and antifreeze.¹²

After speaking with the FOSC, Ecology hired Global Diving and Salvage (Global) to conduct booming and diving operations in order to remove oil from the sunken vessel's tanks. Cowlitz Clean Sweep (CCS) was hired to provide a vac-truck.¹³

Recovery Operations

Global deployed a containment boom, soft absorbent boom, and absorbent sweep around the vessel. On March 4, 2018, Ecology was on scene monitoring the spill response efforts of Global and CCS. A three-man dive team from Global arrived via a Global boat and worked to assess the vessel's condition and recover any fluids found in the six on-board tanks, including hydraulic oil, diesel, and possibly vegetable oil. Using the CCS vac-truck, Global removed approximately 890 gallons of oily water.¹⁴

II. CLAIMANT AND RP:

⁹ Tab A, Ecology Original Claim Submission dated July 27, 2021 received July 27, 2021, page 3 of 5.

¹⁰ August 5, 2021 email to NPFC amending sum certain for the claim to \$30,081.05.

¹¹ Tab W of Claim Submission, Spills Program Investigation Summary Form, page 3.

¹² Tab W of Claim Submission, Spills Program Investigation Summary Form, page 3.

¹³ Tab A, Ecology Original Claim Submission dated July 27, 2021 received July 27, 2021, page 2 of 5.

¹⁴ Tab A, Ecology Original Claim Submission dated July 27, 2021 received July 27, 2021, page 4 of 5.

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.¹⁵ On March 3, 2018 while Ecology responders were on scene, they witnessed the RP attempting to pump the water out of the vessel. Later that day, the RP left the vessel and has not been located since.¹⁶ According to Ecology's investigation, they learned on January 25, 2019, that Mr. (b) (6) was in the Hoquiam Jail awaiting release on February 1, 2019. Ecology reports that on April 1, 2019, (b) (6) was found dead in Hoquiam following an accidental gunshot wound.¹⁷

The NPFC sent a Responsible Party Notification Letter on August 5, 2021 to Mr. (b) (6) (b) (6). c/o his father (b) (6).¹⁸ 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. On August 13, 2021, the NPFC received a call from the father of the RP, who verbally confirmed that Mr. (b) (6) is in fact now deceased.¹⁹

III. CLAIMANT AND NPFC:

On July 27, 2021, the NPFC received a claim for uncompensated removal costs from Washington State Department of Ecology in the amount of \$29,022.85 dated July 27, 2021. On August 5, 2021, the NPFC received an email from Ecology amending the sum certain for the claim to \$30,081.05.²⁰ The claim included the Oil Spill Liability Trust Fund Modified Claim Form, WADOE Invoice breakdown, WADOE Indirect Costs EPA Agreement, Ecology personnel costs, WADOE Costs Invoice for OSRO, Lab Costs and Results, WA Fish and Wild Life Invoice, WADOE Global Diving Voucher and Proof of payment, Disposal Manifest invoice, Global Diving Invoice, Global Diving Contract, Pacific Northern Environmental and WADOE Voucher Proof of payment, Cowlitz Clean Sweep Invoice, Pacific Northern Environmental - Rate Schedule, Oil Spill Chain of Custody Form, Lab Results, ICS214a-OS p.2-11, Petroleum Spill Hazard Assessment Worksheet, WADOE Incident Detail Report, Map of Spill location, OSRO Global Narrative of job activities, Social Media Post and News Articles about incident, Ecology and USEPA email communications, Vessel Owner information, and WADOE Spills Program Investigation Summary Form.

Upon review of the submission, the NPFC requested additional information and Ecology provided the following: Timesheet Detail for State personnel, Global Diving Labor Costs Calculator Excel file, Master Contract for OSROs involved in response, Global Diving and Salvage Price list Excel file.

IV. DETERMINATION PROCESS:

¹⁵ 33 U.S.C. §2712 (a) (1) (b).

¹⁶ Tab A, Ecology Original Claim Submission dated July 27, 2021 received July 27, 2021, page 4 of 5.

¹⁷ Tab A, Ecology Original Claim Submission dated July 27, 2021 received July 27, 2021, page 3 of 5.

¹⁸ NPFC RP Notification letter dated August 5, 2021.

¹⁹ August 13, 2021 Phone call recap summary between NPFC and Mr. (b) (6)

²⁰ August 5, 2021 email to NPFC amending sum certain for the claim to \$30,081.05.

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

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.”²¹ 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.”²² 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.”²³

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁴ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁵ 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.²⁶

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;

²¹ *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).

²² 33 U.S.C. § 2701(31).

²³ 33 U.S.C. § 2701(30).

²⁴ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁵ 33 CFR Part 136.

²⁶ 33 CFR 136.105.

- (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.²⁷
- (d) That the removal costs were uncompensated and reasonable.²⁸

The NPFC analyzed each of these factors and determined that all costs incurred and submitted by 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 state published rates and all approved costs were supported by adequate documentation and outlined as a joint assessment and response by the FOSC.

The amount of compensable costs is \$29,876.03, while \$205.02 was deemed not compensable for the following reasons:

1. The Overtime Rate for a Heavy Equipment Operator under Cowlitz Clean Sweep rate sheet found attached to a 9/17/21 Email to the NPFC, in a file identified as “DES Master Contract Price List,” on Page 2 of 5, is the Cowlitz price sheet and page 1 of 2 of the rate worksheet, line H11 identifies the Overtime Rate as \$81.00 per hour vice the \$101.00 per hour charged. As such, NPFC denied \$205.00 in excessive costs for this labor rate.²⁹
2. A \$.02 denial adjustment has been applied for an unidentified difference in total costs claimed and supported. See line 77 of Enclosure 3 for identification of the identified discrepancy.

Overall Denied Costs = \$205.02³⁰

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Ecology’s request for uncompensated removal costs is approved in the amount of **\$29,876.03**.

²⁷ Email from USEPA (b) (6) dated September 30, 2021 demonstrates the response actions performed by Ecology, Global and CCS were determined to be consistent with the NCP. After reviewing all available incident documentation, the amounts claimed by Ecology are supported by the record. The FOSCR also confirmed through email that the actions performed by the OSRO were determined to be consistent with the National Contingency Plan.

²⁸ 33 CFR 136.203; 33 CFR 136.205.

²⁹ See, Enclosure (3), line 59 for itemization of the costs charged and adjudicated.

³⁰ See, Enclosure (3), line 79 for itemization of the costs charged and adjudicated.

This determination is a settlement offer,³¹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³³ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *10/21/2021*

Supervisor Action: *Approved*

Supervisor's Comments:

³¹ 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).

³² 33 CFR § 136.115(b).

³³ 33 CFR § 136.115(b).