

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGP924030-URC001
<b>Claimant:</b>	Oregon Department of Transportation
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$5,881.89
<b>Action Taken:</b>	Offer in the amount of \$5,591.83

### **EXECUTIVE SUMMARY::**

On October 16, 2023 at approximately 5:30 pm local time, the National Response Center (“NRC”) was notified of a sheen from an unknown source on the Willamette River, a navigable waterway of the United States.<sup>2</sup> The discharge originated from a stormwater drain located near an outfall adjacent to US30 and residential area located uphill and west of the highway.<sup>3</sup> The United States Coast Guard (“USCG”) Sector Columbia River is the Federal On Scene Coordinator (FOSC) for the incident. Oregon Department of Transportation (“Claimant” or “ODOT”) hired US Ecology to perform response actions.<sup>4</sup>

USCG and Oregon DEQ responded to the incident and notified Oregon Department of Transportation of the spill and Oregon DOT requested Republic Services / US Ecology (OSRO) dispatch a marine unit to determine the source of the sheen and deploy a containment boom.<sup>5</sup> The source of the sheen was not found and containment and removal activities were performed by US Ecology.<sup>6</sup>

Oregon DOT presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$5,881.89 on March 20, 2024. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$5,591.83 is compensable and offers this amount as full and final compensation of this claim.

---

<sup>1</sup> This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant’s rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant’s rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

<sup>2</sup> National Response Center (NRC) Report #1381934 dated October 16, 2023.

<sup>3</sup> State of Oregon Department of Transportation POLREP #1 Initial and Final dated February 8, 2024.

<sup>4</sup> *Id.*, Narrative section, page 1 of 2.

<sup>5</sup> State of Oregon Department of Transportation POLREP #1 Initial and Final dated February 8, 2024. *See also*, Oregon DOT Spill Response Memo dated November 14, 2023.

<sup>6</sup> *See*, US Ecology Invoice # 1011704 dated January 12, 2024.

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

### ***Incident***

On October 16, 2023, the NRC received notification of an unknown sheen from an unknown source on the Willamette River<sup>7</sup> and ODOT was notified by Oregon DEQ who requested the dispatch of Republic Services/US Ecology to investigate the source of the spill and deploy containment boom.<sup>8</sup> Oregon DOT verified the US30 route as informed by the FOSC and investigated the possible source of the spill but did not observe evidence of active spills on the highway between Kittridge Ave (MP 3.9) and Linnton (MP 8.3).<sup>9</sup>

### ***Recovery Operations***

On October 16, 2023, Republic Services / US Ecology (“US Ecology” or “OSRO”) reported to the scene and boomed off the outfall, identified as AAC504<sup>10</sup> and did not find evidence of an active spill there or at any other outfall on the west side of the river between MPs 5.8 and 7.8.<sup>11</sup> On October 17, 2023, US Ecology returned to the scene and saw no evidence of sheen inside the containment boom surrounding the outfall AAC504 but saw a large amount of organic debris with splotchy weathered sheen accumulating along a pretroboom deployed by Seaport Midstream, an adjacent business to the outfall. On October 23, 2023, ODOT instructed US Ecology to remove the containment boom and on October 24, 2023, US Ecology demobilized the boom from the outfall at AAC504.<sup>12</sup>

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

On March 20, 2024, the NPFC received a claim for \$5,881.89 from the Oregon Department of Transportation.<sup>13</sup> Oregon DOT provided the NPFC with an OSLTF claim form, Incident Report, Invoices and Work Order, NRC Report, ODOT Spill Response Memo and POLREP.<sup>14</sup> The NPFC requested additional information on several occasions to better understand and adjudicate the claim and the claimant provided all information requested.<sup>15</sup>

## **III. DETERMINATION PROCESS:**

---

<sup>7</sup> National Response Center (NRC) Report #1381934 dated October 16, 2023.

<sup>8</sup> Oregon DOT Spill Response Memo dated November 14, 2023.

<sup>9</sup> Oregon DOT Spill Response Memo dated November 14, 2023.

<sup>10</sup> State of Oregon Department of Transportation POLREP #1 Initial and Final dated February 8, 2024, section entitled Site Description).

<sup>11</sup> Oregon DOT Spill Response Memo dated November 14, 2023, US Ecology Daily Work Report dated October 16, 2023.

<sup>12</sup> Oregon DOT Spill Response Memo dated November 14, 2023, US Ecology Daily Work Report dated October 24, 2023.

<sup>13</sup> Original Claim submission dated March 6, 2024 received on March 20, 2024.

<sup>14</sup> Original Claim submission dated March 6, 2024 received on March 20, 2024.

<sup>15</sup> See, NPFC additional information requests dated 3/29/24, 4/1/24, 4/15/24, 4/16/24, and 6/5/24. See also, Claimant responses to NPFC’s requests for additional information dated 4/1/24, 4/15/24, 4/16/24, and 6/6/24.

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>16</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>17</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>18</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:**

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>19</sup> An RP's liability is strict, joint, and several.<sup>20</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>21</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>22</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>23</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>24</sup> The NPFC has promulgated a comprehensive set

---

<sup>16</sup> 33 CFR Part 136.

<sup>17</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>18</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>19</sup> 33 U.S.C. § 2702(a).

<sup>20</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>21</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>22</sup> 33 U.S.C. § 2701(31).

<sup>23</sup> 33 U.S.C. § 2701(30).

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

of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>25</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>26</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>27</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>28</sup>

The NPFC analyzed each of these factors and determined that the majority of the costs incurred and submitted by ODOT herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate Republic Services / US Ecology published rates and all approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).<sup>29</sup>

Based on the location of this incident, the FOSC for this incident is the United States Coast Guard (USCG).<sup>30</sup> The FOSC was present at the location and found that the actions taken by the claimant and US Ecology were consistent with the NCP after reviewing all available incident and response documentation.<sup>31</sup>

After a complete review of all documentation and after contacting the FOSC, the NPFC was able to corroborate the actions undertaken by the claimant and confirm that the FOSC determined City of McCall's actions to be properly coordinated with the FOSC. The NPFC has determined that the invoiced costs were billed in accordance with the rate schedule in place at the time services were rendered.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$55,301.83 while \$580.06 are deemed non-compensable for the following reasons:<sup>32</sup>

---

<sup>25</sup> 33 CFR Part 136.

<sup>26</sup> 33 CFR 136.105.

<sup>27</sup> Emails from USCG FOSC Sector Columbia River Re FOSC Coordination dated May 6 and May 7, 2024.

<sup>28</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>29</sup> ODOT claim submission dated March 6, 2024 received on March 26, 2024 and additional information requested by NPFC on multiple dates and an email from the FOSC to NPFC Re FOSC Coordination dated May 6, 2024 and May 7, 2024 acknowledging the actions taken by ODOT and US Ecology on behalf of ODOT were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

<sup>30</sup> See generally, 40 CFR 300.120(a)(2).

<sup>31</sup> See, Email from FOSC to NPFC Re FOSC Coordination dated May 6, 2024 and May 7, 2024 acknowledging the actions performed by ODOT and US Ecology, on behalf of ODOT, were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

<sup>32</sup> Enclosure 3 to this determination provides a detailed analysis of these costs.

1. US Ecology Invoice number 1011704:

- a. Invoiced Boom Mooring Light at \$20.00 per hour, NPFC adjusted the rate accordingly per the rate schedule provided.<sup>33</sup> NPFC denies \$12.00 as excessive and not in accordance with rate sheet pricing.

2. Oregont DOT CAO23999626

- a. On January 29, 2024, HazMat Coordinator was invoiced for one hour in the preparation of claim submission. NPFC denies \$126.85 as claim preparation is not an OPA compensable removal cost.
- b. The NPFC requested a breakdown of the “Field Supervision and Overhead costs” item and the claimant was unable to provide a breakdown of the fees included in this charge. NPFC denies \$151.21 as not supported by the record and unsubstantiated.

**Overall Denied Costs = \$290.07<sup>34</sup>**

**V. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Oregon Department of Transportation request for uncompensated removal costs is approved in the amount of **\$5,591.83**.

This determination is a settlement offer,<sup>35</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>36</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>37</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

---

<sup>33</sup> See, US Ecology rate sheet, page 4 of 15, under Equipment, subsection Boom and Accessories # 1002.

<sup>34</sup> Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

<sup>35</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>36</sup> 33 CFR § 136.115(b).

<sup>37</sup> 33 CFR § 136.115(b).

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *7/1/24*

Supervisor Action: *Offer Approved*

Supervisor's Comments: