

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/14/2009
Claim Number	: 909055-001
Claimant	: State of Washington
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$15,652.05

FACTS:

1. Oil Spill Incident: On March 4, 2007, Sector Seattle received a report of an abandoned vessel that had sunk near the Pleasant Harbor Marina in Hood Canal, a navigable waterway of the US. As a result of the sinking, approximately 5-10 gallons of gasoline and other miscellaneous oils discharged from the vessel and created a sheen on the water. The claimant, Washington Department of Ecology (WA DOE) also received notification and responded to the incident. WA DOE's response officer was Ms. ██████████. The vessel was found to be the F/V SWAN II (WN399SKK), owned by a Mr. ██████████, SR. Many attempts were to contact Mr. ██████████. When he was finally notified, he failed to take any action for environmental cleanup and salvage of the vessel. The USCG kept in contact with the SOSC and obtained the following information from her timeline:

Pleasant Harbor Marina residents and the Skokomish Tribal police informed WA DOE that the vessel had been anchored there for about 6 months and that it belonged to Mr. ██████████ Sr. The Skokomish Tribal police made efforts to contact Mr. ██████████ to inform him that his vessel was sinking. The police went to his residence and left a note taped to his front door. WADOE hired Global Diving & Salvage in order to make an assessment of the vessel, and attempt to plug the vents and remove any possible fuel onboard. Because the way the vessel was laying on the bottom, they could not sting the tanks or plug the vents. They re-scheduled to come out on March 7, 2007 with some salvage equipment.

On March 5, 2007, there was no response from Mr. ██████████. WA DOE rep, Ms. ██████████ drafted a letter to Mr. ██████████ informing him that his vessel had sunk, and sent it via Federal Express to his residence along with a Notice of Potential Legal Liability. On March 7, 2007, there was still no response from Mr. ██████████. Global Diving returned to the site location in order to conduct salvage in order to mitigate the ongoing threat. Ms. Unger met Global on site to oversee the operation. Global was able to up-right the vessel, but because of the poor condition of the vessel, they had to wait until low tide the next morning to attempt to get any fuel off. Global reported seeing fuel bubbling up from the tanks and absorbent sweep was then placed around the vessel.

On March 8, 2007, there was still no response from Mr. ██████████ so Ms. ██████████ returned to his residence and spoke with a woman who stated she was his wife and she confirmed that Mr. ██████████ did live there. She also told Ms. ██████████ that the fishing vessel in Pleasant Harbor did belong to Mr. ██████████. She denied ever seeing a note left on the door by the Skokomish Tribal police, or receiving any letters that were sent via FedEx. ██████████ gave copies of the letters to the woman, and told her that it was very important that Mr. ██████████ contact her, and take action to cleanup after his sunken vessel. Global Diving finished pumping off the vessel and was able to

get it floating again. They estimated that approximately 5-10 gallons of gasoline and other miscellaneous oil had discharged from the vessel in the past 4 days that it was sinking.

MST1 [REDACTED] of USCG Sector Seattle, contacted Mr. [REDACTED] of the Skokomish Tribe's Department of Fisheries, and he confirmed that Mr. [REDACTED] Sr. was the registered owner of the vessel in question. The incident was reported to the National Response Center (NRC) via report #828113 on March 4, 2007 by Mr. [REDACTED] of Pleasant Harbor Marina. The claimant made presentment of the claim costs to Mr. [REDACTED], Sr. on July 23, 2008.

2. The Claim: On January 6, 2009, WA DOE submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$15,652.05.

WA DOE is claiming State personnel expenses of \$2,010.03, indirect expenses of \$782.91, response contractor expenses of \$12,215.11, travel costs of \$59.00, and Laboratory costs of \$585.00.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. 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".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate

compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (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 determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

DETERMINATION OF LOSS:

A. Overview:

1. MST1 [REDACTED] of Sector Seattle provided FOSC coordination.
2. The incident involved the substantial threat and actual discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$15,652.05 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #909055-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on March 4, 2007. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$15,652.05 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 909055-001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimants.

AMOUNT: \$15,652.05

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: