

CLAIM SUMMARY / DETERMINATION

Claim Number:	915102-0001
Claimant:	State of Washington, Department of Ecology
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$6,661.35

FACTS:

Oil Spill Incident: On September 3, 2012, the P/C PARADOX sank at Marine Service Specialties, Inc. Marina on the Lower Columbia River, Vancouver, WA. The Vancouver fire department was the first on-scene and initiated pollution removal activities by booming the vessel and deploying sorbent material inside the hard boom. An undetermined amount of oil was discharged from the sunken vessel into the Lower Columbia River, a navigable waterway of the United States.¹ The Coast Guard National Response Center (CG NRC) was notified of the discharge and all appropriate agencies were notified as required.²

Description of Removal Activities for this Claimant: On September 4, 2012, WA Department of Ecology (WA DOE) personnel responded and found the vessel sunk at the dock and discharging oil into the Lower Columbia River. Unable to identify the owner/operator of the vessel, WA DOE personnel directed the operator of the marina to begin salvage operations³ of the sunken vessel and deployed additional sorbent material inside the hard boom. A phone call was placed to CG Sector Columbia River advising them of the status of the sunken vessel along with the requirement placed upon the marina operator to salvage the vessel.⁴

On September 5, 2012, WA DOE personnel returned to the marina and found the vessel still sunk at the dock and discharging fuel into the lower Columbia River from its fuel vents. Not wanting to begin fuel removal operations until the vessel was properly raised, a decision was made to leave the vessel as is and return the following day for further evaluation. CG Sector Columbia River was again contacted and made aware of the pending pollution removal activities and ongoing salvage operations.⁵

On September 6, 2012, WA DOE personnel returned to the marina and found that the marina operator had properly refloated the vessel. As there was hydraulic, lube and diesel fuel coating the surfaces of the P/C PARADOX along with an undetermined amount of oil in the bilge and fuel tanks, a decision was made to hire a contractor to remove the oil from the vessel and surrounding waters. Cowlitz Clean Sweep (CCS) was contacted by WA DOE and plans were made for CCS to respond the following morning to begin the pollution removal activities.⁶

¹ See OSLTF Modified Claim Form submitted by the claimant dated July 29, 2015.

² See NRC Report #1023194 dated September 3, 2012.

³ Marine Service Specialties Marina is located on aquatics lands leased from the WA Department of Natural Resources. As such, the lease agreement holds the owner/operator of marina responsible for the marina and for removing sunken vessels when the owners are not available or responsive.

⁴ See OSLTF Modified Claim Form submitted by the claimant dated July 29, 2015.

⁵ Id.

⁶ Id.

On September 7, 2012, CCS personnel responded under the supervision of WA DOE and removed approximately 481 gallons of oil and water from the bilges and fuel tanks of the vessel. In addition, oiled sorbent material was collected from inside the hard boom and placed in four (4) 55 gallon drums for disposal.⁷ The oil and water was disposed of properly at Orrco Oil Refining Company, Portland, OR⁸ while the oiled sorbents were disposed of properly at Weyerhaeuser NR Company, Castle Rock, WA.⁹

On September 10, 2012, two additional fuel tanks were discovered on the vessel by the operator of the marina. With the potential of the vessel sinking again and discharging additional oil into the Lower Columbia River, CG Sector Columbia River was notified and opened Federal Project Number (FPN) S12028 to remove approximately 1000 gallons of oil and water from the newly discovered fuel tanks.¹⁰

The Claim: On July 29, 2015, WA DOE submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated pollution removal costs as well as the costs of CCS personnel and equipment in the amount of \$6,661.35.¹¹ On August 21, 2015, the NPFC contacted WA DOE for additional information needed in support of their claim to include the wage rate for CCS personnel and an explanation of disposal costs for both ORRCO Oil Refining Company and Weyerhaeuser NR Company.¹² On September 4, 2015, WA DOE responded to the NPFC's request and provided additional information in support of their claim.¹³

Responsible Party: Throughout the week of the response, WA DOE personnel worked closely with CG Sector Columbia River personnel on the coordination of pollution removal activities, salvage and attempts at locating the owner/operator of the vessel. WA DOE attempted to issue a \$600 penalty and administrative order for reimbursement to Mr. [REDACTED] as he was the last registered owner of the P/C PARADOX. However, Mr. [REDACTED] filed an appeal to both the administrative order and civil penalty and was able to prove that he was not the owner/operator of the vessel at the time of the sinking. Attempts to identify the owner/operator of the vessel by WA DOE, CG Sector Columbia River and NPFC personnel have all been unsuccessful.

APPLICABLE LAW:

"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".

⁷ Id.

⁸ See Non Hazardous Waste Manifest #9312295-1 dated September 7, 2012.

⁹ See Non Hazardous Waste Manifest #9312295 dated September 13, 2012.

¹⁰ See OSLTF Modified Claim Form submitted by the claimant dated July 29, 2015.

¹¹ Id.

¹² See email from Mr. [REDACTED], NPFC to Mr. [REDACTED], WA DOE dated August 21, 2015.

¹³ See email from Mr. [REDACTED], WA DOE to Mr. [REDACTED], NPFC dated September 4, 2015.

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. WA DOE personnel maintained daily communications with CG Sector Columbia River, who provided FOSC coordination under 33 U.S.C. § 2702(b)(1)(B) and 2712 (a)(4);
2. The incident involved the 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.

The NPFC has determined that the majority of the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or contractual agreements in place at the time the services were rendered, unless otherwise indicated below, and were determined by the FOSC to be consistent with the NCP.

Categories of denied costs:

1. Disposal costs for Weyerhaeuser NR Company and ORRSCO Oil Refining Company;

Weyerhaeuser Invoice 09/12-769 doesn't support Claimants \$500.00 charge (4 barrels for \$125.00 each) for disposal of material non-regulated by DOT. The Weyerhaeuser Invoice only supports disposal charges per ton, specifically; \$34.92 per ton for non routine material, \$40.00 per ton for PCS material, \$24.00 per ton for PCS3 material, \$30.00 per ton for PCS4 material, \$35.00 per ton for road debris and \$40.00 per ton for steam cleaner/truck washing sumps. It remains unclear how the Claimant established a rate of \$125.00 per barrel for disposal of their DOT non regulated material and therefore this charge is denied. In addition, ORRSCO invoice 331291 documents a total cost of \$80.00 for chemical testing and truck wash out. The Claimant failed to provide additional information needed to support the \$20.00 difference between ORRSCO's billed expense and the amount billed by Claimant.

The NPFC has confirmed that the remaining rates charged by the Claimant are in accordance with the published rates at the time services were rendered and were coordinated with the FOSC and determined to be consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay \$6,141.35 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 915102-0001. 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 Claimant.

AMOUNT: \$6,141.35

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *Septem*

Supervisor Action: *Approved*

Supervisor's Comments: