

## CLAIM SUMMARY / DETERMINATION FORM

Date : 4/28/2011  
Claim Number : 911053-0001  
Claimant : State of Washington  
Type of Claimant : Corporate  
Type of Claim : Removal Costs  
Claim Manager : ██████████  
Amount Requested : \$6,622.09

### FACTS:

- 1. Oil Spill Incident:** On 12 July 2008, the Washington State Department of Ecology (WDE) responded to a large oil sheen located at Steamboat Slough, which flows into Skagit Sound, a navigable waterway in the US. Upon arrival, WDE personnel discovered that approximately 5 gallons of red-dyed diesel oil was spilled into the water, with the potential of 300 gallons. The source of the spill was determined to be the P/C King Oscar, a derelict vessel beached a few hundred yards away with no visible WN number. No Responsible Party (RP) could be identified. This incident was reported to the National Response Center (NRC) via report # 877072 on 12 July 2008.
- 2. Description of removal actions performed:** The claimant, WDE, hired National Response Corporation Environmental Services (NRCES) for cleanup and removal activities. WDE assisted NRCES in deploying boom and absorbent materials. NRCES placed approximately 200 feet of boom around the vessel. It also checked the oil tanks, removed the battery, wrapped sweep around the vessel, placed pads within it, removing them as needed, and monitored the vessel for potential sheening. No samples were taken and the sheen was not recoverable.  
  
USCG Sector Seattle assisted WDE in coordinating a helicopter flyover, but there was no Federal On-Scene Coordinator (FOSC) for this incident.
- 3. The Claim:** On 14 April 2011, WDE submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$6,622.09 for the services provided from 12-17 July 2008. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

This claim consists of copies of: invoicing, posted rate schedule; NRC Report # 877072; State of WA Project Cost Sheet for Mr. ██████████ WDE Indirect Costs Worksheet; State of WA Travel Expense Voucher; proof of payment to NRCES; State of WA Invoice Voucher for NRCES; WDE Environmental Report Tracking System report # 607003; WDE Detail of Expenditures sheet; photographs of the flyover and internal email correspondence.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

**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. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. A Responsible Party could not be determined. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if 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 Claims Manager confirmed that the claimant did in fact perform a joint site assessment with the USCG on October 6, 2008. While the Claims Manager validated the costs incurred and determined they were reasonable and necessary, it was also determined that the removal actions were not performed in accordance with the National Contingency Plan (NCP).

Due to the preponderance of the evidence, the NPFC has found that, of the \$6,622.09 claimed, only \$6,384.96 is compensable. The breakdown of costs approved and costs denied are as follows:

#### **Salary:**

**Total Salary Costs Claimed: \$666.42**

**Total Salary Costs Approved: \$666.42**

**Reasoning:** The WDE provided the NPFC with a breakdown of personnel costs attributed to this spill. After cross-checking the hours associated with WDE Project # 8PS8-02-00 (State of WA Travel Expense Voucher) and based on the rates provided to the NPFC by WDE (State of WA Project Cost Sheet for Mr. [REDACTED]), the amount of compensable personnel costs totals \$666.42.

**Contracts:**

**Total Contract Costs Claimed: \$5621.79**  
**Total Contract Costs Approved: \$5621.79**

**Reasoning:** The WDE submitted both dailies and invoicing from its contractor, Veolia. After cross-checking and verifying contractor costs (Contractor: NRCES spreadsheet of costs and invoice; Mileage: AFRS Journal Voucher), based on the rates provided to the NPFC by WDE, the amount of compensable personnel costs totals \$55621.79.

**Travel:**

**Total Supply Costs Claimed: \$97.50**  
**Total Supply Costs Approved: \$96.75**

**Reasoning:** The invoices provided for supply costs calculate a total of \$96.75. The NPFC cross-checked these claimed costs (State of WA Travel Expense Voucher) and found \$97.50 to be compensable under OPA. The denied \$0.75 is a result of the WDE rounding up mileage allowances from the Travel Expense Voucher, from the actual \$29.25 to \$30.00 in the Detail of Expenditures sheet.

**Indirect Charges:**

**Total Indirect Charges Claimed: \$236.38**  
**Total Indirect Charges Approved: \$0.00**

**Reasoning:** The WDE did provide the NPFC with a breakdown of money allotted to Indirect Costs for this project during FY 2009; however, it did not provide documentation as to how the totals were derived. Therefore, due to the lack of evidence to support its claim, all WDE Indirect Costs have been denied.

***C. Determined Amount:***

The NPFC hereby determines that the OSLTF will pay \$6,384.96 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #911053-0001. 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: \$6,384.96**

Claim Supervisor [REDACTED]

Date of Supervisor's review: