U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Phone: [redacted]
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5890
February 3, 2014

via e-mail: kabe@ospr.dfg.ca.gov

State of California
ATTN: Kelly Abe
Department of Fish and Game
Office of Spill Prevention and Response
1700 K Street Suite 250
Sacramento, CA 95811

Re: Claim No. 914007-0001

Dear Ms. Abe:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 914007-0001 involving Laguna Blvd Truck Accident oil spill.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number 914007-0001.

Mail reconsideration request to:
Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard
Arlington, VA 20598-7100

Sincerely,

[redacted]

GINA A. STRANGE
Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION

Claim Number: 914007-0001
Claimant: State of California
Type of Claimant: State
Type of Claim: Removal Costs
Claim Manager: Gina Strange
Amount Requested: $975.65

FACTS:

Facts of the Incident:

On or about 16 March 2011, at approximately 1611 hours there was a vehicle accident near Laguna Blvd & I-5, in Sacramento County, California. The vehicle involved was a large truck that ran off the road and came to rest off the bank and in the waters of Stone Lake Preserve. The Preserve is an area of both dry and wet lands providing local habitat to both fish and animal wildlife. State Personnel responded to the event.

Removal Actions

The State personnel received a call from OSPR regarding this incident and Battalion Chief Holmes responded to the accident. The Chief estimated there was approximately 100 gallons of fuel product released into a portion of the water. According to the submission, the water was not moving quickly and the spill appeared to be localized. A small boat was dispatched and floated 100 feet of boom around the discharge. The Chief ensured that proper notifications were made.

In its response to the incident, OSPR placed approximately 100 feet of boom in the waterway around the discharge of petroleum product released from the truck. At the time of the incident, not much was known about the Responsible Party except he had been taken to the hospital for medical treatment.

There was an attempt by the Claimant's response personnel to locate materials to respond to the incident. There was a problem getting materials because of a predicted Tsunami and an affiliated response to that. The State response personnel continued the search for materials to respond to the incident. The search for materials continued at approximately 1935 hours when personnel received a call to initiate a clean up crew and have the responsible party billed.

A family member of the Responsible Party arrived on scene and was informed that they were going to be billed for the two hours for the time of the clean up company that had arrived on scene.

During a phone conversation the next day, OSPR personnel were advised that the spill was almost completely contained. However, during an on site inspection, there were some pooled

pockets of fuel seeping into the water. Contact had been made with NRC, and samples were taken.

The Claim & The Claimant

The Claimant is the State of California, Department of Fish & Wildlife (OSPR). The Claimant submitted this claim to the Oil Spill Liability Trust Fund (OSLTF) via the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of $975.65. This submission only contains costs for personnel/monitoring costs.

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].

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. No Federal On Scene Coordinator (FOSC) coordination or "after the fact" coordination has been provided by the Claimant;
2. There is not sufficient evidence to determine that the incident involved a discharge and substantial threat of a discharge of oil into "navigable waters", as defined by 33 U.S.C. 2701 (21);
3. A Responsible Party was determined for this incident. 33 USC 2701 (32). The Claimant presented all costs to the RP but was unsuccessful in reaching a resolution for payment;
4. The claim was submitted within the six year statute of limitations for removal costs. 33 U.S.C. 2712(h)(1);
5. In accordance with 33 CFR 136.105(e)(12), the claimant has certified no suit has been filed incourt for the claimed uncompensated removal costs.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were not for actions in accordance with the NCP, or whether the costs for these actions were reasonable and allowable under OPA and 33 CFR 136.205.

B. Analysis

The claim is denied. 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. The NPFC considered all documentation presented by the Claimant.

In the course of its review of this submission, the NPFC Claims Manager conducted independent research. That research appeared to point to the location of the incident as inside the Stone Lakes Preserve, which is part of the Stone Lakes National Wildlife Refuge. This raised

questions regarding whether the incident impacted or threatened to impact navigable waters as defined in 33 U.S.C. 2701 (21).

On 11 December 2013, the NPFC Claims Manager contacted the Claimant via email requesting additional information on the presence of a federal authority and documented coordination by the FOSC for the actions undertaken by the Claimant in response to the oil spill. Specifically, the NPFC requested that the FOSC indicate whether the oil posed an actual or substantial threat of discharge into or upon a navigable water of the US and whether the affected wetland or water body is subject to the ebb & flow of the tide. The NPFC has conducted research and was not able to locate a POLREP for this incident. Included in our request was also a request for such documentation.

To date, the NPFC Claims Manager has not received a response from the Claimant.

Based on the foregoing, this claim is denied because the Claimant has failed to demonstrate that the actions undertaken were properly coordinated with the FOSC pursuant to the governing Claims Regulations found at 33 CFR 136.203 & 205 nor has the incident been determined to be consistent with the National Contingency Plan (NCP).

AMOUNT: $0.00

Claim Supervisor: [redacted]

Date of Supervisor's review: ***2/3/14***

Supervisor Action: ***Denial approved***

Supervisor's Comments: