

## CLAIM SUMMARY / DETERMINATION FORM

Date : 11/17/2011  
Claim Number : 911118-0001  
Claimant : State of California  
Type of Claimant : State  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$1,608.54

### **FACTS:**

***Oil Spill Incident:*** On July 19, 2006, the California State Department of Fish and Game Office of Spill Prevention and Response (OSPR) were notified by the California State Office of Emergency Services that the Tank Ship OVERSEAS ALLENMAR (VIN # L8805004) was docked at berth 164 in Los Angeles Harbor. A statement was provided by the Chief Engineer of the vessel and noted by the Master. This statement provided that on July 19, 2006 at 0415, the boiler had an irregular combustion due to stoppage of the Forced Draft Fan. This brought about the momentary emission of excessive soot on the Inert Gas System. While the boiler system was unstable the scrubber of the inert gas system carried over soot content from the system into the water via the usual overboard discharge, which produced soot spot sections around the vessel's berth.

The National Response Center (NRC) was notified; incident #804675 documented the notification. According to the site safety plan created by the OSPR, approximately ten pounds of soot was released into the water. The Incident Action Plan (IAP) created by OSPR documents that Valero personnel witnessed the first release occurring at 2030 hours on July 18, 2006 and the second release occurring at 0430 on July 19, 2006.

***Description of Removal Activities for this claimant:*** OSPR personnel responded on July 19, 2006 as part of the Incident Command and to oversee booming operations conducted by Ship Services. Cleanup was deemed complete at 1630. The invoice provided includes personnel, vehicle and administrative expenses.

***The Claim:*** On August 29, 2011 OSPR submitted a "response cost" claim, which the National Pollution Fund Center (NPFC) placed under the Oil Pollution Act (OPA) category as a removal cost, for reimbursement of their uncompensated personnel expenses in the amount of \$1,557.70, Vehicle expenses totaling \$41.89 and Administrative expenses totaling \$8.95.

### **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(e)(8), the reasonable costs incurred by the claimant do not include administrative costs associated with preparation of 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. 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.

Sector Long Beach provided FOSC coordination. However, upon review of the claim submission, the NPFC finds that the Claimant failed to provide evidence that the discharge of "soot" into the waterway is an "oil" under the Oil Pollution Act (OPA). The NPFC emailed the claimant on October 13, 2011<sup>1</sup> notifying them that the NPFC would deny this claim unless it could be proven there were petroleum hydrocarbons mixed with the soot by way of lab analysis. Claimant's submission documents show that [REDACTED] secured some samples from the discharge on OSPR's Daily Activity Report dated 7/19/2006. The NPFC offered that lab analysis of these samples may be the Claimants best approach to proving its claim is OPA compensable. The NPFC granted the Claimant 30 days to provide its proof.

As of this date, the NPFC has not heard anything back from the Claimant regarding this claim, except an email dated October 13, 2011 from Ms. [REDACTED] stating she was working on the OVERSEAS ALLENMAR Incident. This email was sent over 30 days ago.

***B. Determined Amount:***

The NPFC hereby determines this claim is denied because the Claimant failed to prove that the "soot" which was discharged from the OVERSEAS ALLENMAR falls under the definition of an "oil" as provided under OPA.

**AMOUNT: \$0.00**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 11/17/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

<sup>1</sup> See, NPFC email to Ms. [REDACTED] dated October 13, 2011.