

CLAIM SUMMARY / DETERMINATION FORM

Date : 4/25/2012
Claim Number : 912043-0001
Claimant : State of California
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$4,738.96

FACTS:

- 1. Oil Spill Incident:** On September 1, 2011, at approximately 8:30am PST, California Department of Fish & Game, Office of Spill Prevention and Response (OSPR) received a report regarding a fishing panga vessel that capsized along the surf in Ventura County, 1 mile south of Sycamore Cove. The vessel was carrying fuel and marijuana which were floating in the surf along the shore after the vessel capsized. Thirteen containers of gasoline remained a threat to the Pacific Ocean, a navigable waterway of the US. The incident was reported to the National Response Center (NRC) via report # 988086.
- 2. Description of Removal Actions:** At approximately 9:36am PST, [REDACTED] Environmental Scientist with OSPR was requested on scene to accompany Ranger [REDACTED]. Upon arrival to the scene, OSPR reports that several agencies had been on scene prior to their arrival and all bales of marijuana and the thirteen containers of gasoline (approximately 175 gallons) was left on the side of Pacific Coast Highway (PCH) and posed a threat of discharge into the Pacific Ocean if left unattended.

OSPR called Patriot Environmental Services (Patriot) to perform proper disposal of all containers in accordance with the National Contingency Plan (NCP). Patriot mobilized two responders to the scene along with 7 drums and 2 tyvek suits and gloves for each. They performed proper disposal and provided a copy of the disposal manifest showing proper disposal of all petroleum liquids.
- 3. The Claim:** California Department of Fish & Game, Office of Prevention and Response (OSPR) presented a removal cost claim to the National Pollution Funds Center (NPFCC) in the amount of \$4,738.96. The claim consists of personnel costs in the amount of \$908.95, Contractor costs in the amount of \$3,112.56 and indirect costs (admin costs) in the amount of \$717.45.

The claim consists of OSPR Incident Summary Sheet, Patriot invoice, Patriot daily field sheets, copy of disposal manifest, OSPR payroll time sheet records, OSPR incident report, NRC report, Patriot rate schedule, OSLTF Claim Form, and copy of incident photos.

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".

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 substantial threat of 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 within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of 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.

Upon review of the claim submission, the NPFC has determined that the costs presented and incurred were billed in accordance with the rate schedule in place at the time services were rendered. The NPFC also determined that the actions taken by the Claimant and its contractor were reasonable and necessary in order to mitigate the discharge and substantial threat of discharge to the environment. The disposal manifest corroborates the presence of strictly oil contamination. Proper disposal has been performed and documented by Crosby & Overton, Inc. who performed the actual disposal for Patriot. The NPFC contacted the contractor, Patriot to confirm their invoice was paid in full by the Claimant on March 27, 2012.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$4,021.51 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #912043-0001.

The NPFC has denied \$717.45 of admin costs as unsubstantiated and therefore not a proper use of the OSLTF and hereby denied.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on September 1, 2011. 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 \$4,738.96 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912043-0001. 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.

Claim Supervisor:

Date of Supervisor's review: 4/25/12

Supervisor Action: *Approved*

Supervisor's Comments: