

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912045-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$8,552.66

FACTS:

Oil Spill Incident: On March 29, 2008, the operator of a tractor-trailer owned by VRS Carriers, LLC, fell asleep while traveling eastbound on State Route 92, causing the vehicle to leave the road way, striking a telephone pole and transformer box before coming to a stop in the Eden Landing Ecological Reserve pond 10.¹ Damage caused by the collision caused the rupture of the tractor-trailer's fuel saddle tanks and resulted in the spill of approximately twenty gallons of diesel fuel into the tidally influenced pond, which leads to the San Francisco Bay.²

Description of Removal Actions: The owners of VRS Carriers, LLC were denied servicing by NRC Environmental Services due to lack of sufficient ability to pay.³ California Department of Fish & Game, Office of Prevention and Response (OSPR) contacted NRC Environmental Services to handle the cleanup. On March 30, 2008, [REDACTED] NRC Regional Marine Operations Manager, directed the cleanup effort at the site. Previously deployed pads and sorbent boom were collected and drummed, and diesel fuel contaminated vegetation was removed from the scene.⁴ Additionally, 1350 gallons of oil/water mixture were pumped out of the pond area where the spill occurred.⁵

The Claim: California Department of Fish & Game, Office of Prevention and Response (OSPR) presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$8,552.66 for their uncompensated removal costs.

The claim consists of OSPR Incident Summary Sheet, OSPR payroll time sheet records, OSPR incident report, OSLTF Claim Form, and OSPR Investigation Report, witness lists, evidence sample log, copies of photos from the incident, contractor invoicing, some detailed daily information, and copies of disposal manifests.

Upon further investigation, the NPFC was able to obtain the NRC rate schedule and confirmation of payment made to them for their invoices, and witness statements.

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).

¹ See, DFG Arrest/Investigation Report, dated March 29, 2008.

² Ibid.

³ Ibid.

⁴ NRC Memo from [REDACTED] to [REDACTED] dated March 31, 2008.

⁵ Ibid.

"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:

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 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 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.

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 some of the removal costs presented and incurred were billed appropriately at the time services were rendered. The NPFC performed independent research into the incident and obtained copies of the Coast Guard Pollution Reports and a copy of all evidence in the Coast Guard MISLE system.

The Claimant billed personnel time in the amount of \$909.48 from March 29, 2008 through March 30, 2008, January 29, 2011, February 6, 2011 and February 22, 2011. Operating Expenses for OSPR in the amount of \$6,549.43 which includes contractor billing to OSPR, and \$1,093.75 in indirect/admin costs were also billed. The NPFC confirmed the presence of the Claimant throughout the incident response and activities.

The NPFC denied the \$1,093.75 in OSPR indirect/admin costs as unsubstantiated and therefore not a proper use of the OSLTF.

The NPFC has also denied \$427.35 in OSPR personnel costs. Six total hours for [REDACTED] as an OSPR Program Analyst and one hour for [REDACTED] as OSPR Legal Counsel are denied as not within the active response timeframe nor is there a description of duties to indicate they were removing oil as opposed to other legal or administrative matters years later.

The NPFC denied \$360.00 associated with NRC invoice # 527593. Crosby & Overton billed NRC for these costs, and markup was applied by NRC and paid. Therefore, NPFC denied this amount as it constitutes a duplicate charge.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$6,671.56 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 #912045-0001.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$6,671.56 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912045-0001. 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: 6/13/12

Supervisor Action: *Approved*

Supervisor's Comments: