

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912071-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$30,282.73

FACTS:

Oil Spill Incident: On July 22, 2008, shoreline dredging operations in the vicinity of 2700 Shelter Drive, San Diego, CA disturbed contaminated sediment which caused a sheen to appear in the San Diego Bay.¹ The property on which the shoreline dredging was performed was owned by the Port of San Diego and leased to Driscoll's Boat Works. The lessee commenced shoreline dredging as a preparatory effort for commercialization in the area adjacent to the San Diego Bay.²

The incident was reported to the National Response Center (NRC) via report # 878109.³

Description of Removal Actions: On the initial day of the incident, the USCG reported a 200x100 rainbow-hued sheen appearing in the vicinity of the shoreline dredging operation.⁴ USCG, Port of San Diego, and CA OSPR personnel assessed the pollution impact subsequent to the initial sheen event. Water and soil samples were taken for testing by OSPR as well as other environmental companies contracted by Driscoll's and the Port of San Diego.⁵ Diesel fuel was determined to be the contaminate, as evidenced by the lab results submitted with the claim.

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 \$30,282.73.

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, contractor invoicing, some detailed daily information, miscellaneous receipts, and copies of disposal manifests.

Upon further investigation, the NPFC was able to obtain the state chemistry lab rate schedule and confirmation of payment made to them for their invoices, a complete copy of the MISLE Case created by the Coast Guard, all Pollution Reports, and witness statements.

APPLICABLE LAW:

¹ See, State of CA DFG Investigation Report dated July 22, 2008.

² See, State of CA DFG Investigation Report dated July 22, 2008.

³ See, NRC Report 878109 dated July 22, 2008.

⁴ See, NRC Report 878109 dated July 22, 2008.

⁵ See, State of CA DFG Investigation Report dated July 22, 2008.

"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)(2)
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 FOOSC, to be consistent with the NCP or directed by the FOOSC, 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 \$5,301.17 from July 19, 2008 through August 8, 2008, Operating Expenses for OSPR in the amount of \$1,578.53 which includes contractor billing to OSPR, DFG-Owned Petroleum Chemistry Lab costs in the amount of \$19,172.00, and OSPR also billed \$4,231.03 in indirect/admin costs. The NPFC confirmed the presence of the Claimant throughout the incident response and activities.

The NPFC denies the \$4,231.03 in OSPR indirect/admin costs as unsubstantiated and therefore not a proper use of the OSLTF.

The NPFC has also denied \$109.74 in OSPR personnel costs. Two hours for [REDACTED] claimed which predates the incident response as presented in the claim by two days is unsubstantiated.

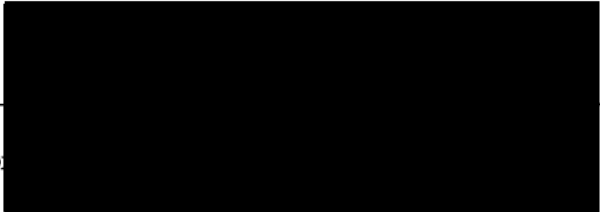
The NPFC has also denied \$73.25 in fees and interest levied against lab service fees charged by the DFG-owned Petroleum Chemistry Lab. The original invoice amount was \$1,505.28 and was issued on net-30 terms. The delay in payment of the lab fees which resulted in the interest being charged is not allocable to the Fund for remuneration.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$25,868.71 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 912071-0001.

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 \$25,868.71 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 912071-0001. 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: *8/27/12*

Supervisor Action: *Approved*

Supervisor's Comments:

