

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912078-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$20,246.37

### FACTS:

**Oil Spill Incident:** On August 11, 2007 a semi-tractor trailer truck owned by Saffron Intermodal ruptured its fuel tank as it negotiated a U-turn on Neptune Drive and Williams Street in San Leandro, CA.<sup>1</sup> The operation of the vehicle by the driver occurred in such a way as to bring the fuel tank into direct and damaging contact with the street curb, which resulted in the rupture of the fuel tank. The driver parked the truck in front of Saffron Intermodal at 1791 Neptune Street, where the ruptured tank leaked diesel fuel onto the street. The diesel fuel flowed from this location via the street gutter and into the storm sewer, approximately 100 feet away, where it discharged into the San Francisco Bay.<sup>2</sup>

**Description of Removal Actions:** The Claimant arrived on scene on August 11, 2007 and contracted NRC to perform removal actions due to the fiscal inability of Saffron Intermodal (Responsible Party) to retain their services for response to the spill. The affected shoreline and storm drains were assigned crews for cleanup and boom placement.<sup>3</sup> Both solid and liquid wastes were generated and hauled away for proper disposal.

**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 \$20,246.37.

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, miscellaneous receipts, 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, all Pollution Reports, 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).

<sup>1</sup> See, CA OES Report 07-4810, dated August 11, 2007.

<sup>2</sup> See, CA OES Report 07-4810, dated August 11, 2007.

<sup>3</sup> See, NRC Report Job No. 30121, dated August 14, 2007.

"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 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 \$1,722.95 from August 11, 2007 through August 24, 2007, Operating Expenses for OSPR in the amount of \$14,872.68 which includes contractor billing to OSPR, DFG-owned Petroleum Chemistry Lab fees in the amount of \$1,000.00 and OSPR also billed \$2,650.74 in indirect/admin costs. The NPFC confirmed the presence of the Claimant throughout the incident response and activities.

The NPFC denies the \$2,650.74 in OSPR indirect/admin costs as unsubstantiated and therefore not a proper use of the OSLTF.

The NPFC has also denied \$127.40 in OSPR personnel costs. One hour for [REDACTED] as OSPR Legal Counsel is denied as not within the active response timeframe nor is there a description of duties to indicate she was removing oil as opposed to other legal matters, and one hour for [REDACTED] as an Environmental Scientist is unsubstantiated as not within the active response timeframe.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$17,468.23 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 912078-0001.

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 \$17,468.23 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 912078-0001. 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:  D

Date of Supervisor's review: 8/27/12

Supervisor Action: *Approved*

Supervisor's Comments: