

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912080-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$2,692.98

### **FACTS:**

***Oil Spill Incident:*** On August 4, 2010, California Emergency Management Agency received a report of a 5x35 foot sheen coming from a storage tank on Alcatraz Island in San Francisco Bay. The person reporting the sheen also stated that a bird was found dead and three others were covered in oil.

California Fish and Game (F&G) Warden(s) responded to the scene off Alcatraz Island and were unable to locate any oil sheen. F&G Warden(s) moored their vessel at the Island and dropped off personnel to check the surrounding area for dead birds. Two dead birds were recovered from the shore line but neither had any visible signs of oil on them.<sup>1</sup>

***Description of Removal Activities for this Claimant:*** No sheening was observed by responding officials and no removal activities were included in the claim package.

***The Claim:*** On July 16, 2012, the State of California, Department of F&G, Office of Spill Prevention and Response (OSPR) submitted a removal cost claim to the National Pollution Funds Center (NPFC) seeking reimbursement of their alleged uncompensated removal costs in the amount of \$2,692.98.

### **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

<sup>1</sup> California Fish and Game Arrest/Investigation Report for incident - PCA Code 51989.

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. No FOSC Coordination has been established. 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of an alleged discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters although no oil was ever witnessed by responding parties.
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. No RP has been determined for this incident. 33 U.S.C. § 2701(32).
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all alleged removal costs presented were not for actions in accordance with the NCP and that the costs for these actions were not proven to be reasonable or 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 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 Claimant has not provided sufficient evidence to demonstrate that an OPA event occurred or appropriate documentation to substantiate this claim as removal costs.

**C. Determined Amount:**

The NPFC hereby denies this claim because (1) the Claimant has failed to demonstrate that an OPA event had occurred, (2) the costs presented were not properly documented, and (3) the Claimant failed to demonstrate that the actions undertaken were compensable “removal actions” under OPA.

**Amount: \$0.00**

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *9/18/12*

Supervisor Action: *Denial approved*

Supervisor’s Comments: