

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912086-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$2,130.12

FACTS:

Oil Spill Incident: On April 2, 2008 a California Department of Fish and Game Warden received a report of oil floating on the water in the Lazy M Marina originating from a dredge located downstream, the Italian Slough. The Warden followed rainbow sheen to the bow of the dredge Edythe (O.N. 538926). Once on board, he observed a ruptured 55 gallon plastic drum on deck that was leaking and a hydraulic line that was ruptured and leaking a petroleum product on the deck and into the water. The warden then contacted Office of Emergency Services and reported the spill, spill number 08-2496.

Description of Removal Activities for this Claimant: Contra County Health Services responded to the scene. The ruptured drum was placed inside a containment drum and the dredge was then boomed off. An attempt was made to place duct tape around the ruptured hydraulic line.

The dredge owner (Responsible Party), Ms. [REDACTED], was contacted by the Warden and directed to remove waste oil barrels from the dredge to prevent any further pollution incidents. The RP was later instructed to repair the hydraulic line and clean all oil off the deck of the dredge.

Oil samples were taken from the liquid inside the ruptured drum and another from the Italian Slough. Analysis of both samples was positively identified as petroleum hydrocarbon.

The Claim: On August 16, 2012, State of California Department of Fish and Game, Office of Spill Prevention and Response (DFG OSPR), presented a removal cost claim to the National Pollution Funds Center (NDFC) for reimbursement of their uncompensated removal costs in the amount of \$2,130.12.

DFG OSPR is claiming personnel expenses of \$640.44, operating expenses of \$110.00, laboratory expenses of \$1,000.00, vehicle expenses of \$166.50 and administrative expenses of \$213.18.

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).

"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 discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 U.S.C. § 2712(h)(2), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were 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.

It is noted that the vast majority of the determinations were only being supported by the Warden's Daily Activity Reports. The copies provided were of very poor quality and did little to assist in supporting the claim. A request was made by the Claims Manager for new copies that were more legible but the new copies supplied by the Claimant were of no better quality than the originals.

The Claimant is requesting \$640.44 for personnel costs regarding uncompensated removal costs incurred by the claimant for this incident. The Claimant contends that on April 4, 2008 the DFG Warden expended three hours to this incident. During the review of the supporting documentation, the Warden's Daily Activity Report, the Warden was 10-98 (assignment complete) at 1740. After that entry, the Warden went to the dredge to collect oil samples. At some time during the 1800 hour the Warden recorded he was 10-98. This is interpreted that he completed his oil sampling mission. Due to the poor copy quality of the Daily Activity Report, the Claims Manager is unable to determine the exact time spent on oil sampling. Therefore, the personnel costs for this day are determined to be \$53.37 (one hour) and total personnel costs for this incident are approved in the amount of \$533.70.

The Claimant is requesting \$166.50 for vehicle costs regarding uncompensated removal costs incurred by the claimant for this incident. The Claimant contends that on April 2, 2008, the Warden drove a total of 53 miles; on April 4, 2008 the Warden drove a total of 161 miles; and on May 15, 2008 the Warden drove a total of six miles in support of this incident. During the review of the supporting documentation, the Warden's Daily Activity Reports, the Warden was also dispatched to other assignments on April 2 and 4, 2008. NPFC requested on August 23, 2012, an itemized break down of the Warden's daily mileage to calculate which miles supported the response to this incident as opposed to other assignments as identified in the daily reports. As of this date, no further information has been provided. On May 15, 2008, the Warden's only activity associated with this incident was recorded as administrative time in the office therefore no miles are permitted on this date for this incident. Based on the foregoing lack of detailed documentation, the vehicle costs for the referenced dates are denied.

The Claimant is requesting \$213.18 for administrative costs regarding uncompensated removal costs incurred by the claimant for this incident. The NPFC will not reimburse for administrative costs with regards to the Federal Indirect Cost Rate as the costs are unsubstantiated. Therefore, the administrative costs of \$213.18 are denied.

All other costs were validated and the NPFC has determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$1,643.70 of uncompensated removal costs and 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 #912086-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on April 2, 2008. 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 \$1,643.70 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912086-0001. 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 Claimants.

AMOUNT: \$1,643.70

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 9/27/12

Supervisor Action: *Approved*

Supervisor's Comments: