

## CLAIM SUMMARY / DETERMINATION FORM

Date : 4/26/2012  
Claim Number : A05029-0001  
Claimant : State of California  
Type of Claimant : State  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$6,083.91

### **FACTS:**

1. **Oil Spill Incident:** On September 14, 2005 at approximately 1900 hrs,<sup>1</sup> Coast Guard Sector San Francisco received notification of a sunken barge at Mare Island, Vallejo, CA that spilled an unknown quantity of diesel fuel into Mare Island Strait, a navigable waterway of the US. The Coast Guard Pollution Team mobilized to the spill. NRC Environmental was the contractor hired by the Coast Guard once the unit opened a Federal Project identified as A05029 for this incident.

The Coast Guard issued a Notice of Federal Interest to both Industrial Marine Company and Sanship Inc. as the Responsible Parties for this incident.<sup>2</sup> MST1 [REDACTED] provided a witness statement of events for this incident. He stated he arrived on scene on September 15, 2005 at around 0830am. He reports that upon initial inspection of the scene, he noticed a sunken barge that had a small 15' x 2' sheen, with a large ship (M/V ARTSHIP) moored outside of it. The M/V ARTSHIP was moored to the dock and had a slight list to its port side. Cleanup contractors on scene were NRC Environmental and Universal Environmental.

He states that a representative of Sanship Inc., Mr. [REDACTED] arrived on scene and advised that he had full authority to do what was necessary to remedy the situation. MST1 [REDACTED] further reported that since there was a responsible party who was taking ownership of the incident, the USCG remained on scene only to monitor the situation. The Coast Pollution Reports identify the Claimant, OSPR, on scene as well as the State On Scene Coordinator (SOSC).<sup>3</sup>

The Coast Guard determined the site clean and the end of the incident via their Pollution Report # 5 which was issued on October 12, 2005. The NPFC sent an RP Notification Letter to Sanship Inc. The NPFC did not issue an RP Notification Letter to Industrial Marine Co. since that business is no longer viable at the time of this adjudication.<sup>4</sup>

2. **Description of Removal Actions:** The Claimant arrived on scene on September 15, 2005 and provided joint oversight along with Sector San Francisco during the removal actions performed by the RP.
3. **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 \$6,083.91. The claim consists of OSPR personnel costs in the amount of \$6,023.24, Photocopy costs in the amount of \$51.06, and indirect costs (admin costs) in the amount of \$9.61.

<sup>1</sup> See Coast Guard Pollution Report # One.

<sup>2</sup> See NOFI dated January 19, 2006 to both Industrial Marine Co. and Sanship Inc.

<sup>3</sup> See CG Pollution Report # Two dated September 18, 2005.

<sup>4</sup> See RP Letter dated April 26, 2012 to Sanship Inc.

The claim consists of OSPR Incident Summary Sheet, OSPR payroll time sheet records, OSPR incident report, OSLTF Claim Form, and OSPR Investigation Report.

**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(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 the 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.

#### ***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.

Upon review of the claim submission, the NPFC has determined that the majority of 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 five Coast Guard Pollution Reports, a copy of the two Notices of Federal Interest issued to Industrial Marine Co. and Sanship Inc., a copy of a witness statement from MST1 Brewer of Sector San Francisco, the NPFC confirmed that the RP took responsibility and paid all costs with the exception of these costs by the Claimant because these costs were not presented to them by the Claimant.

The NPFC did confirm that one of the RPs, Industrial Marine Co. is no longer viable therefore the NPFC has only issued a notification letter to Sanship Inc. for the costs subject of this claim. Upon review of the Coast Guard's reports as the Federal On Scene Coordinator (FOSC) for this incident, the NPFC has confirmed that the end of the incident was determined to be October 12, 2005 therefore all costs billed by the Claimant past that date are denied.

The Claimant billed personnel time in the amount of \$520.29 for [REDACTED] \$1,504.62 and \$607.64 for [REDACTED] and \$170.64 for [REDACTED] after the end date of the response as determined by the FOSC therefore these costs are denied in the total amount of \$ 2,803.19. Also, the Claimant billed \$51.06 for photocopy services which are denied as unsubstantiated. The receipt indicates 53 color copies of letters were made which the Claimant has not provided the details on exactly what these letters were and how they relate to the oversight and removal of oil and as such, the cost is denied. Finally, the Claimant

billed \$9.61 for unsubstantiated admin costs which are also denied. Based on the foregoing, the NPFC denies a total of \$2,863.86 of the \$6,083.91 requested.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$3,220.05 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 #A05029-0001.

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.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$3,220.05 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A05029-0001. 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.

**AMOUNT: \$3,220.05**

Claim Supervisor

Date of Supervisor's review: 4/20/12

Supervisor Action: *Approved*

Supervisor's Comments: