

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: A06010-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$114,132.81

FACTS:

Oil Spill Incident: On January 23, 2006, the F/V *Intrepid*, formerly the F/V *Aquarius*, sank in Crescent City, CA with an unknown amount of diesel fuel onboard. The Harbor placed hard boom around the vessel and deployed sorbent material. The owner had a friend plug one fuel vent but was unable to conduct further mitigation or clean up due to the continuous release of diesel.

Coast Guard Marine Safety Detachment Humboldt initially arrived on scene on January 23, 2006. The USCG made contact with the owner who stated she would not be able to conduct adequate response operations due to lack of insurance or other funds.

The Federal On Scene Coordinator's Representative (FOSCR) from Sector San Francisco determined further response actions were warranted and as such, a Federal Project was opened and the Coast Guard hired NRC Environmental (NRC) to conduct clean up operations.¹ The incident was reported to the National Response Center (NRC) via report # 785993.²

Description of Removal Actions: The Claimant arrived on scene on January 23, 2006 and provided joint oversight along with the USCG during the removal actions performed by NRC who was hired by the CG. On the initial day of the incident, the USCG reported that an estimated 60 gallons of fuel had discharged into the waterway and another 50 gallons was recovered from sorbent materials. Contract divers successfully plugged both fuel vents within the splash zone. The USCG determined that raising the vessel was necessary in order to access oil remaining in the fuel tanks and vessel itself. An unknown amount of fuel remained on the vessel.

On January 26, 2006, an attempt to raise the vessel failed. The USCG had the contractor tend boom and sorbent materials through the night. USCG advised that divers would make one more attempt to re-float the vessel the next morning during high tide in order to gain access to the fuel tanks and free the oil in the vessel's hull and superstructure.³

Attempts to raise the vessel the next day failed again. Responders secured from refloat attempts as the vessel continued to slide back under the dock after each attempt. The Unified Command met and discussed other options. It was agreed the dock would need to be removed in order to successfully refloat the vessel. Removal of the dock in the vicinity of the sunken vessel commenced on January 27, 2006 using State funding accessed by the Claimant as the State On Scene Coordinator (SOSC). Removal of the dock was completed later that day.⁴

On January 28, 2006, the vessel was raised by the Claimant; the contractor sounded the fuel tanks and determined that no fuel was in them. A small amount of residual fuel was removed from the interior

¹ See, Coast Guard Pollution Report # 1 dated January 25, 2006.

² See, NRC Report dated January 23, 2006.

³ *Id*

⁴ See, Coast Guard Pollution Report #3 dated January 27, 2006.

spaces by the contractor. The vessel will be kept afloat by the Harbor Master with the Harbor's containment and sorbent boom.⁵

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 \$114,132.81.

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, payments received from the RP, 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, a complete copy of the MISLE Case created by the Coast Guard, 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).

"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

⁵ See, Coast Guard Pollution Report # 5 and Final dated January 28, 2006.

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. FOSC coordination was made by Sector San Francisco via Federal Project Number # A08006.
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 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 \$5,223.54 from January 23, 2006 through April 1, 2006, travel expenses for OSPR in the amount of \$294.10, Operating Expenses for OSPR in the amount of \$93,187.31 which includes contractor billing to OSPR, OSPR vehicle usage charges in the amount of \$1,056.00, and OSPR also billed \$15,891.76 in indirect/admin costs. The NPFC confirmed the presence of the Claimant throughout the incident response and activities.

The NPFC denies the \$15,891.76 in OSPR indirect/admin costs as unsubstantiated and therefore not a proper use of the OSLTF.

The NPFC has also denied \$136.84 in OSPR personnel costs. One hour for Savannah Morgan is unsupported by timesheet records, 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] three months after the response ended is unsubstantiated as a reasonable removal cost.

The NPFC has denied charges by the Crescent City Harbor District in the amount of \$47,515.75. On April 27, 2012, the NPFC sent an official request for additional information associated with these charges. In that request, the NPFC explained to the Claimant what the issues were with the invoiced costs. On May 10, 2012, the Claimant sent the NPFC an email advising they are still trying to obtain the information requested from Crescent City. Based on the update by the Claimant, the NPFC granted an extension of time to the Claimant until June 1, 2012 to obtain the necessary information to support the contract invoicing. As of the date of this determination, the Claimant did not provide any additional information to support the charges and as such, the NPFC denies all charges for Crescent City as unsubstantiated.

The NPFC denied \$810.00 associated with NRC invoice # 509686 as the invoice contains a math error. Finally, the NPFC acknowledges the fact that the RP has made payments totaling \$1,520.00 which is deducted from the amount determined OPA compensable which leaves a determined amount of \$49,778.46. Please see Enclosure 1 – Summary spreadsheet of costs for an itemization of all costs presented.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$49,778.46 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 #A06010-0001.

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 \$49,778.46 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A06010-0001. 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: [REDACTED]

Date of Supervisor's review: *6/7/12*

Supervisor Action: *Approved*

Supervisor's Comments: