

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : A06011-0001
Claimant : State of California
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$10,670.25

FACTS:

1. ***Oil Spill Incident:*** On January 26, 2006, the *F/V Miss Kelley* ran aground 1 NM south of Fort Bragg, California, with a reported estimate of 2,000 gallons of diesel fuel and 20 gallons lube oil on board. United States Coast Guard Sector Humboldt Bay first reported the incident to the National Response Center (NRC).¹ The Coast Guard detected a strong diesel odor and observed the fuel discharging from the vessel, as well as a red discoloration directly surrounding the vessel, when over flights of the incident site were performed. The discharge occurred in the Hare Creek, a navigable waterway of the United States that flows into the Pacific Ocean.

Sector San Francisco contacted the owner of the vessel regarding the clean-up of the incident. The Federal On- Scene Coordinator Representative (FOSCR) MST2 [REDACTED] responded to the incident and coordinated with the State On-Scene Coordinator (SOSC), Warden [REDACTED]. They set up a unified incident command with the owner, Gene Kelley, and the owner's response contractor, Parker Diving Service (Parker Diving). They also reported the incident to the NRC.² Parker Diving determined that approximately 500 gallons of diesel fuel and 250 gallons of lube oil remained on board the vessel.

2. ***Description of Removal Activities for this Claimant:*** Parker Diving was hired to respond to the incident. The Claimant, OSPR Northern Field Response Team (OSPR) assisted and monitored the response actions and ensured the clean-up was consistent with the National Contingency Plan. The clean up continued through January 29, 2006. Invoices include OSPR personnel and equipment expenses (vehicle use) for mitigation of the spill.
3. ***The Claim:*** On September 28, 2011, OSPR submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$10,670.25.

OSPR is claiming personnel costs of \$9,577.23, travel expenses (per diem) of \$696.80 for two employees, State equipment expenses (vehicle usage) of \$223.02, and \$173.20 for overhead costs at 18.83%.

¹ See NRC Report #786326.

² See NRC Report #786421.

This claim consists of copies of OSPR employees' Attendance and Labor Distribution Reports and associated dailies, OSPR Narrative Supplemental report, press releases, and Hazardous Materials Spill Reports.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

Federal Project Number A06011 was opened for this matter for Coast Guard costs only.

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 FOSCR coordination was provided by MST2 [REDACTED] of the United States Coast Guard Sector San Francisco.
2. The incident involved a 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 limitation for claims.
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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

Upon review, the Claims Manager hereby determines that there are discrepancies regarding the total hours worked by Warden [REDACTED] for the incident. Claimant billed

As listed on the Claimant's Incident Billing, they requested reimbursement of \$173.20 in Administration Costs regarding uncompensated removal costs incurred for this incident. Their submitted Voucher and Schedule of Withdrawal and Credits notes that the cost is actually the Claimant's overhead costs at 18.83%. 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 \$173.20 are denied.

C. Determined Amount:

AMOUNT: \$9,880.85

Date of Supervisor's review: 3/26/12

Supervisor Action: *Approved*

Supervisor's Comments: