

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : A06026-0002
Claimant : State of California
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : ██████████
Amount Requested : \$212,225.88

FACTS:

1. ***Oil Spill Incident:*** On July 20, 2006, the Commercial Fishing Vessel Susan Diane sank at its mooring in Morro Bay Harbor. The owner estimated it had 300-gallons of diesel onboard. Morro Bay Harbor is a tributary to the Pacific Ocean, a navigable waterway of the US.¹ The San Luis Obispo Fire Department was the first on scene and deployed its sorbent boom.²

The incident was reported to the National Response Center (NRC) via report # 804820.³ The potential responsible party, Mr. ██████████ resides in Texas and he stated that he did not have insurance or the financial capability to mitigate the scene.⁴ A Unified Command was set up by Marine Safety Detachment (MSD) Santa Barbara and the Claimant, California Department of Fish & Game Office of Spill Prevention and Response (OSPR).⁵

2. ***Description of removal actions performed:*** On July 20, 2006, OSPR accessed their spill fund to hire a total of four (4) contractors (Depth Perception Divers, Pacific Petroleum, Associated Pacific Contractors, and Clean Seas) for the removal of all oil/hazmat on board. Depth Perception Divers determined that access to all of the fuel tanks was not possible due to the position of the vessel.

Depth Perception Divers placed float bags allowing enough lift for the Osprey II⁶ to motor away from the scene. Associated Pacific sent divers down to weld off the outriggers and mast in order to aid in the raising of the vessel. While operations were ongoing, Clean Seas utilized small boats for boom adjustment and on water collection of saturated sorbents and debris. The vessel was successfully raised on July 22, 2006, the contents of all four (4) tanks were removed and the vessel was able to stay afloat with the assistance of dewatering pumps.

Seventy five gallons of diesel, lube and engine oil are estimated to have been discharged while the remaining 125 gallons were recovered. On July 23, 2006, the Coast Guard and OSPR oil/hazmat removal operations were completed and ownership of the scene was handed over to the City waterfront for salvage of the vessel. The Oil Spill Liability Trust Fund (OSLTF) had been initially opened as a precautionary measure and the Coast Guard

¹ See, Coast Guard MISLE Case # 302710 by MSD Santa Barbara.

² See, NPFC Claim # A06026-001 from San Luis Obispo City Fire Department.

³ See, NRC Report # 804820 dated July 20, 2006.

⁴ See, USCG Pollution Report One and Final dated July 20, 2006.

⁵ See, USCG Pollution Report One and Final dated July 20, 2006.

⁶ The F/V SUSAN DIANE allided with the OSPREY II as she sank.

reports that all removal costs were assumed by OSPR.⁷

3. **The Claim:** On 3 May 2011, California Department of Fish & Game Office of Spill Prevention and Response (OSPR) presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$212,225.88 for the services provided from approximately July 20, 2006 through September 15, 2006. Copies of the applicable vendor rate schedules are included with this claim.⁸

On April 25, 2012, the NPFC sent an RP Notification letter to Mr. [REDACTED] advising of the claim submission. To date, the NPFC has not received a response from the Responsible Party (RP).⁹

This claim consists of copies of the following: NRC Report # 804820; a cover letter, dated April 26, 2011; OSPR Standard Form 1080, OSLTF Claim Form dated 4/29/11, OSPR Incident Billing Summary sheet, OSPR Attendance and Labor Distribution Report by individual, OSPR individual travel claim form with supporting documentation, OSPR rate schedule, OSPR monthly travel log, ICS 202 form signed by all Unified Command participants indicating the end of active response, OSPR lab analysis and chain of custody, Miscellaneous color photos, Associated Pacific invoicing and associated supporting documentation, Depth Perceptions Diving invoicing, Clean Seas invoicing and associated supporting documentation, Pacific Petroleum invoicing and supporting documentation, vendor rate schedules, email statement from OSPR confirming payment of all contractor invoices.

Copy of Case Management Case Assessment and Decision Form, NPFC RP Notification letter dated April 25, 2012, Complete copy of Coast Guard MISLE Case # 302710, Coast Guard Pollution Report One and Final, OSPR Environmental Incident Report and copy of OSPR case file for the subject incident, and internal email correspondence.

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 FOOSC, and (4) whether the costs were adequately documented.

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).

“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

⁷ See, Coast Guard Pollution Report One and Final.

⁸ See, OSPR claim submission file A06026-0002.

⁹ See, NPFC notification letter dated April 25, 2012.

oil, the costs to prevent, minimize, or mitigate oil pollution from an incident”. 33 USC § 2701(31).

"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.

No claim may be presented to the Fund for reimbursement of removal costs for an incident unless the claim is presented within six years after the date of completion of all removal actions for that incident. 33USC § 2712(h)(1).

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. Findings of Fact:

1. FOSC coordination is established via Federal Project Number A06026 and Coast Guard MISLE Case # 302710 by MSD Santa Barbara;

2. The incident involved the report of a discharge and substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
4. A Responsible Party was identified for this incident. 33 U.S.C. § 2701(32);
5. 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;
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that certain 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. All costs denied and referenced below are missing adequate supporting documentation and as such, the NPFC is unable to determine the reasonability of the costs.

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 costs presented and incurred were billed in accordance with the rate schedules in place at the time services were rendered. The NPFC also determined that the actions taken by the Claimant and its contractors were reasonable and necessary in order to mitigate the discharge and continuing threat of discharge to the environment.

The NPFC spoke directly with the Coast Guard regarding all response efforts undertaken to mitigate the incident. The FOSC determined that all work performed by the Claimant and its contractors was necessary and appropriate. It is important to note that the location of this incident is designated as a National Estuary; therefore, activities were coordinated with the Unified Command and approved by the FOSC. Proper disposal has been performed and documented.

Upon adjudication of the underlying costs, the NPFC has denied \$45,472.02 in costs for failure to provide receipts to support some charges as well as missing disposal documentation for some of the disposal performed.¹⁰ Following is a summary of the costs denied:

OSPR Indirect administrative costs in the amount of \$34,352.66 are denied as unsubstantiated and therefore denied;

Pacific Petroleum invoice # 5479 in the amount of \$250.00 for supplies is denied as no receipts have been provided to support the charge;

Pacific Petroleum invoice # 5488 in the amount of 965.79 for supplies (pads and boom) plus associated markup is denied as no receipts for the purchase of supplies have been provided to support the charges;

¹⁰ See, Enclosure (2) NPFC Summary of Costs spread sheet.

Pacific Petroleum invoice # 5519 in the amount of \$75.00 for pressure washer is denied as the item is not on the vendor rate schedule and no receipt has been provided to support the charge;

Pacific Petroleum invoice # 5662 in the amount of \$4,612.63 for third party services is denied as no receipts have been provided to support the charges billed;

Pacific Petroleum invoice # 5663 in the amount of \$563.60 for third party services is denied as no receipts have been provided to support the charges billed;

Pacific Petroleum invoice # 5664 in the amount of \$87.50 for third party services and cleaning supplies are denied as no receipts have been provided to support the charges;

Pacific Petroleum invoice # 5847 in the amount of \$4,564.82 for disposal and associated markup is denied as no manifests have been provided to support the charges billed.

Based on the above, the Claims Manager hereby determines that the Claimant did in fact incur \$166,753.86 of uncompensated removal costs payable from the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and presented to the NPFC under claim #A06026-0002.

C. *Determined Amount: \$166,753.86*

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *5/21/12*

Supervisor Action: *Approved*

Supervisor's Comments: