

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number : A09016-0001  
Claimant : State of California  
Type of Claimant : State  
Type of Claim : Removal Costs  
Claim Manager : XXXXXXXXXX  
Amount Requested : \$6,919.35

### FACTS:

- 1. Oil Spill Incident:** On April 14, 2009, California Department of Fish & Game, Office of Spill Prevention and Response (OSPR) was notified at approximately 1734 hours that the *F/V DANDY BILL* (aka *BIG TIMBER*), a 70-Foot wood hull fishing vessel, had lost propulsion and drifted into the north side of the San Mateo Bridge in the San Francisco Bay, a navigable waterway of the US. The Coast Guard (CG) conducted a search and rescue operation to rescue three crewmembers on board. CA OSPR coordinated with CG Sector San Francisco while conducting initial response and investigation. The quantity of oil spilled is unknown and cannot be determined since the owner did not maintain log books. The CG opened a Federal Project Number (A09016).
- 2. Description of Removal Actions:** On April 15, 2009, NRC Environmental Services (NRCES) and Parker Diving were contracted to provide protection to the environment and remove any petroleum hydrocarbons that remained on board the vessel. NRC also used sorbent pads and boom to collect the oil off the surface of the water in the vicinity of the sunken vessel. Traditional containment boom would have been ineffective in the turbulent water conditions. The USCG also contracted 'Vortex' to salvage the vessel. Approximately 1,324 gallons of diesel fuel was removed from the vessel.
- 3. The Claim:** On June 29, 2012, 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 \$6,919.35. The claim consists of OSPR personnel costs in the amount of \$6,693.35, OSPR vehicle usage charges in the amount of \$187.72 and administrative costs in the amount of \$38.28.

### APPLICABLE LAW:

"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. FOSC coordination has been established via Federal Project Number A09016 by Sector San Francisco.
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)(2).
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 FOOSC, to be consistent with the NCP or directed by the FOOSC, 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 appropriately at the time services were rendered. The NPFC also determined that the actions taken by the Claimant was reasonable and necessary in order to mitigate the discharge to the environment. Proper disposal has been performed and documented by NRC who performed the actual disposal.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$6,881.07 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 #A09016-0001.

The NPFC has denied \$38.28 of administrative costs as unsubstantiated and therefore not a proper use of the OSLTF and hereby denied.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on April 14, 2009 through April 15, 2009. 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 \$6,881.07 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A09016-0001. 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: \$6,881.07**

Claim Supervisor: 

Date of Supervisor's review: 8/9/12

Supervisor Action: *Approved*