

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : A09020-0001
Claimant : State of California
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$13,833.72

FACTS:

1. **Oil Spill Incident:** On August 17, 2009, Sector San Francisco was notified that the Tug WENONAH (YT-148), a decommissioned, 100 FT Navy tug, sank at the Treasure Island Pier 1, adjacent to Clipper Cove. The 1940's vintage vessel has been inactive and moored at Treasure Island for several years. It is owned by the Historic Tugboat Education and Restoration Society, (Society, Responsible Party, RP) however the Society is financially insolvent and the Society's access to the WENONAH was denied by Treasure Island Development Authority (TIDA – the Lessor) due to the RP being in default on its lease payments for mooring the vessel at Pier 1. The vessel remained at this location without inspection for six months until the time of the sinking. TIDA did not maintain the vessel while it was moored at Pier 1 and was permitted to remain in its decaying state with an unknown amount of petroleum products on board.

The National Response Center was notified via Incident Report # 915182 as well as Local, State, and County Officials.¹

State of California Department Fish and Game Office of Spill Prevention & Response (OSPR) (Claimant) immediately responded and assessed the incident. OSPR met with LT Robert Stiles and MSTC David Mosley of the United States Coast Guard. LT [REDACTED] explained to the President of the Historic Society, Ms. [REDACTED] the federal process for oil spill response and clean-up and asked for her cooperation. LT [REDACTED] and MSTC [REDACTED] issued a Notice of Federal Interest (NOFI) and a Notice of Federal Assumption (NOFA) to release the tug WENONAH over to the U.S. Coast Guard for fuel removal and clean-up. Ms. [REDACTED] was willing to cooperate but was unwilling to sign anything however she did acknowledge receipt of the two notices. Ms. [REDACTED] also stated that the Society had no money.²

On August 19, 2009, the incident was federalized and given Federal Project Number (FPN) A09020. The Oil Spill Liability Trust Fund (OSLTF) was opened for this project with an authorized ceiling for this case in the amount of \$150,000.00. On August 25, 2009, the authorized ceiling was raised to \$250,000.00. By the end of the clean-up activities, the ceiling for this case was in the amount of \$780,000.00.

2. **Description of Removal Activities for this Claimant:** The Federal On-Scene Coordinator (FOSC), Captain [REDACTED] retained National Response Corporation (NRC) and

¹ National Response Center Incident Report # 915182

² State of California Department of Fish and Game, Narrative Supplemental, page 3.

Parker Diving to contain and mitigate the oil from the vessel. Sector San Francisco conducted an over flight and the flight crew reported an oil sheen 150 feet wide by 1 ½ miles, extending from Treasure Island toward the Berkeley Marina.

All fuel and lube oil tanks were pumped out and the vessel was successfully dewatered. Fifteen batteries were removed as well as all other miscellaneous oil and hazardous materials. The OSROs plugged six small breaches in the hull on the star board side. OSPR quantified the total amount of oil that was removed from the vessel to be 1,034 gallons.³

TIDA is responsible for making arrangements for final removal of vessel.

3. **The Claim:** On July 18, 2012, the OSPR submitted its claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated response costs that were not covered by the Pollution Removal Funding Authorization (PRFA) in the amount of \$13,833.72. The claim is for Personnel Costs in the amount of \$36,633.58, Travel Expenses in the amount of \$589.20, Operating Expenses in the amount of \$537.66, and DFG-Owned Facilities, Equipment, and Supplies in the amount of \$1,073.28. The actual costs come to \$38,833.72 however a \$25,000.00⁴ PRFA was applied to the invoice amount, leaving \$13,833.72 (sum certain) in costs that the Claimant is requesting be compensated through this claim # A09020-0001.

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].

³ POLREP 11 and Final.

⁴ Final PRFA payment of \$25,000.00, dated May 24, 2011.

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 was made by Captain [REDACTED] 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 is 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 removal costs presented were not for actions in accordance with the NCP, or whether the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

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 regulation

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.

The State of California, Department of Fish and Game submitted costs to the Fund in the amount of \$38,296.06 for the "Tug WENONAH" incident; however, a \$25,000.00 PRFA was issued from the OSLTF and covered the majority of the Claimant's invoice leaving a balance of \$13,833.72.⁵ Claimant requested that the PRFA pay for the entire invoice however, the FOSC sent the Claimant a letter, dated March 12, 2010 advising that the PRFA could not pay for the invoice in its entirety because the ceiling was already set and the Claimant had not made a formal request to the FOSC to raise the ceiling amount during the ninety day period.⁶ Claimant has submitted their costs to the Fund for \$13,833.72.

Personnel Costs	\$36,633.58
Travel Expenses	\$589.20
Operating Expenses	\$1,073.28
	= \$38,296.06
PRFA ⁷	(\$25,000.00)
	= \$13,833.72

The Claims Manager reviewed all costs presented along with the supporting documentation provided by Claimant. The NPFC finds the Personnel Costs, Travel Expenses, and the fuel purchase are all OPA compensable based on the supporting documentation and receipts that were provided by the Claimant. However, the Admin Costs are deemed not OPA compensable by the NPFC Claims Division as they are unsubstantiated and undocumented costs although the Claims Division has determined that those costs were covered under the PRFA pursuant to that contract with the Claimant. The total costs compensable for this claim is \$13,833.72

AMOUNT: \$13,833.72


Claim Supervisor 

Date of Supervisor's review: 7/26/12

Supervisor Action: *Approved*

Supervisor's Comments:

⁵ See Claimant's Cost Summary Invoice # 56252/6600

⁶ See letter from Captain  to California Department of Fish and Game, dated March 12, 2010.

⁷ PRFA signed by Senior Case Officer, dated May 24, 2011