

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : A11032-0001
Claimant : State of California
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : XXXXXXXXXX
Amount Requested : \$2,103.21

FACTS:

Oil Spill Incident: On May 19, 2011, the State of California Department of Fish and Game, Office of Spill Prevention and Response (OSPR), investigated an oil spill discovered in Alviso Slough, San Jose, California. CA OSPR coordinated with Coast Guard (CG) Sector San Francisco while conducting initial response and investigation. No responsible party was identified. The Coast Guard opened a Federal Project Number (A11032) and hired National response Corporation (NRCES) in order to conduct an assessment of the pollution threat.

Description of Removal Activities for this claimant: The National Response Corporation (NRCES) was contracted to perform an assessment, remove fuel from tanks and perform cleanup of the containment area. Fuel removal was completed May 23, 2011. The Claimant jointly monitored the response actions of the contractor. Invoices include state personnel costs, operating expenses, and administration costs.

The Claim: On June 26, 2012, OSPR presented a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$2,103.21.

OSPR is claiming state personnel expenses of \$1,721.11, operating expenses of \$316.20 and administration costs of \$65.90.

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 was made by Sector San Francisco via Federal project Number A11032.
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 for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that most 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 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 this claim submission, the NPFC verified the timesheets of hours worked by personnel in response to the incident and determined that the hours were billed appropriately as documented. The npfc ALSO DETERMINED THE ACTIONS UNDERTAKEN BY THE Claimant were performed jointly with the Coast Guard and determined to be consistent with the NCP. The

NPFC has determined that \$65.90 in Administration costs are not properly supported by the record and therefore denied.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$2,037.31 of uncompensated removal costs and 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 #A11032-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on May 19, 2012. 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 \$2,037.31 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A11032-001. 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 Claimants.

AMOUNT: \$2,037.31

Claim Supervisor:

Date of Supervisor's review: *7/24/12*

Supervisor Action: *Approved*