
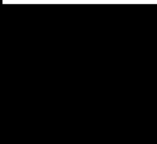


## CLAIM SUMMARY / DETERMINATION FORM

Claim Number : E07902-0001  
Claimant : State of California  
Type of Claimant : State  
Type of Claim : Removal Costs  
Claim Manager :   
Amount Requested : \$13,038.67 

### **FACTS:**

#### ***1. Oil Spill Incident***

On or about 13 December 2006, the Claimant, State of California, Fish & Game, Office of Spill Prevention & Response (OSPR) received a report of a discharge of fuel oil that was the result of the failure of a fuel oil transfer system that initially discharged into a storm drainage system and ultimately into the Guadalupe River and Alviso Slough, both navigable waters of the US.

The Claimant responded with personnel who made a determination regarding the source of the discharge and to monitor the response actions. It was determined that the source of the discharge was a facility owned and operated by Savvis Communications located at 2055 Lafayette Road, Santa Clara, California and approximately 2,000 gallons of oil was discharged.

The NPFC issued a RP Notification letter to the responsible party, Savvis Communications, Inc. on May 8, 2012.

#### ***2. Description of Removal Actions***

The Claimant arrived on scene on 13 December 2006 and provided joint oversight with the United States EPA, USCG, and the Santa Clara Fire Department. The Claimant notified the National Response Center of the incident (NRC Report #820797)

A Federal Project Number (FPN) was opened by the Federal On Scene Coordinator (FOSC), United States Environmental Protection Agency (EPA). EPA then hired Clean Harbors Services (Clean Harbors) to perform removal actions under the FPN and to mitigate the effects of the spill into navigable waters.

The Claimant initially dispatched Wardens, Oil Spill Prevention Specialists, and Scientists to the scene. They observed the oil in the River at the outfall, gauged the liquid recovery tanks, conducted a root cause analysis and quantification, determined the amount of oil spilled, prepared the Incident Report, Biological Injury Report which included photographs of the incident scene. The Wardens were present in December 2006 and then they along with Scientists returned to monitor the scene in March 2007.

### **CLAIM & CLAIMANT:**

This claim was presented by the State of California, Fish & Game, Office of Spill Prevention and Response (OSPR) for reimbursement of uncompensated removal costs in the amount of \$13,038.67 on or about 19 March 2012. The Claimant provided the following with the initial submission:

1. A Cover letter;
2. Oil Spill Liability Trust Fund (OSLTF) Optional Claim Form;
3. An SF1081, "Voucher & Schedule of Withdrawal & Credits" documenting total claimed costs;
4. An OSPR Incident Billing Form;
5. An Attendance & Labor Distribution Reports for Personnel Costs;
6. A Response Cost Transmittal Form;
7. A Travel Expense Claim Form;
8. An Investigation Report & Narrative Supplemental dated October 2007 & July 2011 respectively;
9. A Hazardous Materials Spill Report, including "Liquid Product Disposal Tracking Forms";
10. A Santa Clara Fire Department Investigation Report, Case Number 06-8263, 18 January 2007 and signed by Angela Giuliani;
11. A Santa Clara Fire Department, Property & Evidence Report, 13 December 2006;
12. A DFG Request for Analysis & Chain of Custody Record. 15 December 2006, and
13. A Supplemental Report: Biological Injury Report (OES # 06-7355)

#### **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].

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 U.S. EPA via Federal Project Number E07902.
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)(1)
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 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 the claim submission, the NPFC has determined that a majority of the removal costs presented and incurred were billed appropriately at the time services were rendered. The Claimant billed for personnel costs in the amount of \$12,612.10 from December 2006 through June 2007, travel expenses in the amount of \$248.24, and per diem costs in the amount of \$103.25. OSPR also billed \$75.08 in administrative costs.

The NPFC confirmed the presence of the Claimant from the time of the incident in December 2006 until March of 2007 through reports submitted in support of the claim. The NPFC has determined that Personnel costs claimed from 4 May 2007 – 22 June 2007 are not properly supported by documentation and are therefore denied in the amount of \$1,279.53.

The NPFC also denies the \$75.08 in indirect/administration costs as unsubstantiated and therefore not a proper use of the OSLTF.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$11,759.14 of uncompensated removal costs and that this 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 number E07902-0001.

The Claimant states that all costs in the amount of \$11,759.14 are for uncompensated removal costs incurred by the Claimant for this incident. The Claimant represents that these costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

**DETERMINED AMOUNT:**

The NPFC hereby determines that the OSLTF will pay \$11,759.14 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number E07902-0001.

**AMOUNT: \$11,759.14**

Claim Supervisor:

Date of Supervisor's Review: 6/5/12

Supervisor Action: *Approved*

Supervisor's Comments: