

CLAIM SUMMARY / DETERMINATION

Claim Number: E10903-0001
Claimant: State of California
Type of Claimant: State
Type of Claim: Removal Costs
Claim Manager: [REDACTED]
Amount Requested: \$94,335.64

Facts:

On January 2010, the County of Orange reported an oil release into the Huntington Beach Channel. The first report of sheen in the channel was at 1300 on 21 January 2010, and personnel from the County of Orange were on scene to investigate by 1400 that day. The following morning, County of Orange personnel noticed that there was more petroleum in the channel and personnel from the Dept. of Fish and Game Office of Spill Prevention and Response (CDFG-OSPR) were dispatched to the spill. The growing spill volume prompted the County of Orange to hire a cleanup contractor and a spill response team with the Unified Command.

Responsible Party:

An investigation revealed that the release originated from a facility owned by Angus Petroleum.¹ Angus Petroleum has filed bankruptcy. On August 9, 2012, the NPFC sent the RP's Legal Counsel, Mr. [REDACTED] an RP notification Letter.² On August 13, 2012, Mr. [REDACTED] contacted the NPFC via email and stated that he received the RP notification letter. He also stated that "his client agrees to consider the claim" and requested a copy of the claim.³ On August 14, 2012, the NPFC prepared a disk with a copy of the claim and the NPFC sent it to Mr. [REDACTED]'s office via FedEx.⁴ To date, the NPFC has not received word from Mr. [REDACTED]'s office as to whether his client is going to pay the invoices or not.

Claim and Claimant:

On 02 August 2012, the State of California presented a removal cost claim in the amount of \$94,335.64 to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated State response costs. The claim consists of a voucher and schedule of withdrawal and credits, Incident Cost Billing Summary, Attendance and Labor Distribution Report, Invoices, Response Cost Transmittal, Posting Tags as proof of payment, Invoice for Services and Equipment Supplies, Warden [REDACTED] OSPR Report, Pictures, and Hourly Rates by Classification.

¹ POLREPS 1 - 7.

² RP notification letter dated August 9, 2012.

³ Email traffic between NPFC and Mr. [REDACTED]

⁴ FedEx TRK # 7987 3581 1652

Request for Reconsideration:

On November 15, 2012, the State of California requested reconsideration of their claim via email.⁵ Claimant provided the Daily Activity Reports for [REDACTED] and [REDACTED]. Claimant provided a brief explanation regarding the charges for [REDACTED] as the NPFC misinterpreted these costs to be duplicative. Also, Claimant provided an Activity log for Mr. [REDACTED] and respectfully requested that the NPFC reconsider these line items.

NPFC Removal Costs Determination on Reconsideration:

Under 33 CFR 136.105(a) and 136.105(e)(6), Claimant bears the burden of providing the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Further, a request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d). As noted above a claimant must establish the criteria provided in 33 CFR § 136.203 for removal cost claims.

The NPFC's analysis on reconsideration was a *de novo* review of the Claimant's entire claim submission.

Determination of Removal Costs on Reconsideration:

A. Findings of Fact:

1. The FOSC coordination was provided by the United States Environment Protection Agency (USEPA) region 9.⁶
2. The incident involved a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701 (23), to navigable waters.
3. A Responsible Party was identified. 33 U.S.C. § 2701(32). The NPFC notified the RP that a claim was filed with the NPFC for the removal costs. The RP has not made payment of costs to date.
4. 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.
5. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2).
6. 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 cost for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 with the exception denied costs.

B. Analysis:

The NPFC Claims Manager has reviewed the actual cost documentation to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken

⁵ Reconsideration email dated November 15, 2012.

⁶ See POLREPS 1 – 7.

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 directed by or determined by the FOSC to be consistent with the NCP; (4) whether the costs were adequately documented and reasonable.

Under reconsideration status claimant requested reconsideration of the following line items:

1/29 - 1/30	[REDACTED]	\$785.00
1/22 - 1/28	[REDACTED]	\$940.03
4/26	[REDACTED]	\$251.20
1/22 - 1/29	[REDACTED]	\$205.91
1/24 - 1/28	[REDACTED]	\$6,800.00

Itemization of Denied Costs under Reconsideration:

It is important to note that all previously denied line items that were denied during the initial adjudication remain denied as the claimant did not request Reconsideration of their costs and are hereby considered uncontested.

While the claim was under Reconsideration Status the following line item was denied:

1/22 & 1/29 [REDACTED] \$205.91 Under Reconsideration the claimant provided OSPR Daily Activity Reports. On 1/22, this person was on Furlough therefore OPA will not pay for the claimed .5 hours because the claimant has not incurred this cost. Also, the 3 hours that Claimant is claiming for answering media calls are considered unsubstantiated costs and therefore is denied.

Total Amount Denied under Reconsideration =	\$205.91
Total Amount that Remains Denied =	<u>\$11798.68</u>
Total Amount Denied =	\$12004.59

AMOUNT: \$82,331.06

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 12/4/2012

Supervisor Action: *Approved*

Supervisor's Comments: