

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 911120-0001
Claimant	: Ocean Blue Environmental Services, Inc.
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Amount Requested	: \$116,133.21

FACTS:

Oil Spill Incident: On or about 21 April 2011, Ocean Blue Environmental Services, Inc., the Claimant (Claimant) was contacted by the Los Angeles Department of Public Works (LADPW) to respond to an oil pollution incident in the vicinity of the Mega Steel Facility (Mega Steel) in Gardena, California. Upon the Claimant's arrival to the scene, they found oil in the water.¹ According to the submission, the facility had an above ground storage tank that spilled oil (cutting oil)² and overflowed into a storm drain which was traced back to their facility by Los Angeles County Public Works. According to the evidence presented in the submission to the Fund, there was an undetermined but significant amount of oil released.³

Once released, the product traveled west where it entered a storm drain line and traveled underground approximately 2.5 miles, then to an open channel (Dominguez Channel). The contamination then traveled approximately 200 feet into a creek located at the northeast corner of Artesia Blvd (91 Freeway) and Vermont, where the oil mixed with standing water in the creek. The Claimant estimated the amount of oil to be approximately 100, 000 gallons.⁴ The size of the discharge was estimated to be approximately 500 feet long by 25 feet wide by 4 feet deep.

The oil mixed with the water in the creek to the point that the California Department of Fish and Game who was the designated State On Scene Coordinator (SOSC) determined that the Claimant had to pump all of the water from the creek and contain it into a portable tank for disposal. The Dominguez Channel leads to the Port of Los Angeles, which leads to the Pacific Ocean, a navigable waterway of the United States.⁵

CLAIM AND CLAIMANT:

On 26 September 2011, Ocean Blue (Claimant) presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$191,133.21 for the services provided on or about 21 April 2011 through 4 May 2011. The Claimant received a deposit of \$75,000.00 from the responsible party; therefore the amount remaining and requested from the Fund is \$116,133.21.

On 8 March 2012, Mr. [REDACTED], the EPA FOSC assigned to the area of the discharge, informed the NPFC that he would not be willing to provide FOSC coordination for this incident. On 3 April 2012, the NPFC denied this claim because the Claimant failed to demonstrate that the actions undertaken were properly coordinated with the EPA FOSC pursuant to the governing claims regulations found at 33 CFR 136.203 and 136.205.

¹ Optional OSLTF Claim Form dated 20 September 2011

² Claimant's Incident Action Plan

³ E-mail from [REDACTED], of Ocean Blue to CPFC claims manager, dated 14 February 2010, in response to a request of additional information.

⁴ Claimant's IAP

⁵ 33 U.S.C. 2701

Claimant sought reconsideration on April 12, 2012 and provided a signed letter from Mr. Robert Wise, USEPA FOSC, that stated in part "I am certifying, post removal, based on the information provided, that \$116,133.21 in claim 911120-0001 is consistent with the work completed for reimbursement under the third party claims process." Claimant provided no further information in support of its claim.

In an effort to aid the Claimant, the NPFC contacted the State OSC and requested its file to determine what actions had been taken or overseen for this incident. Lt. [REDACTED], who was familiar with the incident, notified the NPFC that the file was unavailable because it was a part of the documentation provided as evidence in a criminal trial against the responsible party.

On September 21, 2012, the NPFC denied the claim on reconsideration because the FOSC letter did not explain the actions taken by Claimant or that such actions were necessary to prevent, mitigate or minimize the effects of the incident or that the actions taken were consistent with the NCP.

On or about November 16, 2012, Mr. [REDACTED], Division Chief, NPFC Claims Division, communicated with the State OSC regarding the incident. The State OSC stated that the State was present during the response and its primary concern was preventing the oil from entering Dominguez Channel. He noted that there is documentation to support the State's presence on scene but that it was currently unavailable because of the criminal trial.

On November 19, 2012, Mr. [REDACTED], based on his discussion with the State OSC, rescinded the denial on reconsideration. The NPFC held the claim in abeyance until the State could provide additional information on the response actions taken. On May 28, 2013, the NPFC received additional information from the SOSC which were the daily contemporaneous field logs indicating response work being performed and oversight being performed by California Department of Fish & Game in its capacity as SOSC.⁶

NPFC Determination on Reconsideration

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. 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

⁶ See 28 May 2013 email from [REDACTED] to NPFC with SOSC field logs attached for the incident.

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].

The NPFC considered all the documentation submitted by the Claimant and performed a *de novo* review of the entire claim submission.

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.

The NPFC reviewed the contemporaneous daily field logs provided by California Department of Fish & Game as SOSC after the conclusion of their criminal case against the Responsible Party. The logs indicate that the actions were overseen by the California Fish and Game. The NPFC also determined that the actions taken by the Claimant and its subcontractor(s) were reasonable and necessary in order to mitigate the discharge and continuing threat of discharge to the environment as also confirmed by the SOSC. Pursuant to its delegation the NPFC determined that the actions taken by the Claimant were consistent with the NCP.

Upon review of the claim submission and supplemental information the NPFC has determined that the costs presented and incurred were billed in accordance with the rate schedule and determined reasonable at the time services were rendered with the exception of \$7,000.01 in costs denied by the NPFC which will be addressed later.

After reviewing all costs incurred and paid as evidenced by proof of payment by the Claimant, the NPFC has denied the following charges:

4/21/11 – The NPFC denies the charge for Project Manager as it is excessive since the NPFC is allowing two supervisors. Amount denied is \$582.50;

The NPFC denies one vehicle charge since personnel was reduced by one Project Manager. Amount denied is \$180.00;

4/22/11 – The NPFC denies the charge for Project Manager as it is excessive since the NPFC is allowing for one supervisor. Amount denied is \$2,102.50;

The NPFC denies one vehicle charge since personnel was reduced by one Project Manager. Amount denied is \$742.50;

4/23/11 – The NPFC has reduced the spill management position from Project Manager to the Supervisor rate. Amount denied is \$607.50;

4/28/11 – The NPFC has reduced the charge for Level C PPE to a Level D as the Level C is an inappropriate charge for this oil spill response. The amount denied is \$72.00;

4/29/11 - The NPFC has reduced the charge for Level C PPE to a Level D as the Level C is an inappropriate charge for this oil spill response. The amount denied is \$72.00;

5/12/11 – The NPFC has denied the administrative markup charge in the amount of \$2,315.51 as Ocean Blue has not identified this as a term or condition on their rate schedule; and

5/4/11 - The NPFC has denied the administrative markup charge in the amount of \$325.50 as Ocean Blue has not identified this as a term or condition on their rate schedule.

TOTAL DENIED - \$7,000.01

Based on the foregoing, the Claims Manager hereby determines that the Claimant did in fact incur **\$109,133.20** 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 presented to the NPFC under claim 911120-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from approximately 21 April 2011 through 2 May 2011. The Claimant represents that \$109,133.20 of the costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Determined Amount: \$109,133.20

Claim Supervisor

Date of Supervisor's review: *07/01/13*

Supervisor Action: *Reconsideration approved*

Supervisor's Comments: