

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	913034-0001
<b>Claimant:</b>	State of California
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	
<b>Amount Requested:</b>	\$9,919.16

### **FACTS:**

**Oil Spill Incident:** On December 3, 2010, a semi tractor trailer<sup>1</sup>, tanker, was traveling eastbound on Calofronia Highway 32 when traction was lost with the roadway and the semi slid off the right hand side of the roadway. The tractor and trailer came to rest on its right side. The trailers<sup>2</sup> dome cover for the second forward cargo tank failed spilling approximately 760 of the 1006 gallons of Fuel Oil, Diesel UN 1993, carried. An estimated 45 gallons of diesel was also spilled from the tractors<sup>3</sup> fuel tank. The spilled fuel flowed down the embankment under the snow toward Deer Creek.<sup>4</sup>

Deer Creek is a tributary to the Sacramento River, a navigable waterway of the US.

The National Pollution Funds Center (NPFC) sent a RP Notification letter to the Responsible Party (RP) on February 21, 2013 and March 18, 2013.

**Description of Removal Activities for this Claimant:** Ben's Trucking (Bio Industries Inc.) responded to the scene for the clean-up of the site. California Department of Transportation (Cal-Trans) supervised the removal of 320 cubic yards of contaminated soil and transportation of the contaminated soil to Redding, CA. The excavated site was backfilled with clean soil.<sup>5</sup> Absorbent boom was placed in several locations as a precaution for leaching diesel fuel into the creek.<sup>6</sup>

During the response OSPR personnel collected product samples from various locations of Deer Creek and the excavated soil and had them chemically analyzed at the CDFG Water Pollution Control Laboratory.

**The Claim:** On February 14, 2013, State of California Department of Fish and Game, Office of Spill Prevention and Response (DFG OSPR), presented a removal cost claim to the National Pollution Funds Center (NDFC) for reimbursement of their uncompensated removal costs in the amount of \$9,919.16.<sup>7</sup>

DFG OSPR is claiming personnel costs of \$5,246.28, travel expenses of \$40.00, vehicle usage costs of \$459.00, lab analysis of \$3,368.00, and administrative costs of \$805.88.<sup>8</sup>

<sup>1</sup> Owned by Frost Oil Transport, PO Box 932, Chico, CA 95927.

<sup>2</sup> 1994 Beall Fuel Tanker, California Tag Number 1VJ9509.

<sup>3</sup> 1995 Peterbilt Conventional, California Tag Number 9A50697.

<sup>4</sup> Incident details obtained from California Highway Patrol Traffic Collision Report dated December 21, 2010.

<sup>5</sup> California Highway Patrol Traffic Collision Report dated December 21, 2010.

<sup>6</sup> California Fish and Game Arrest/Investigation Report dated March 16, 2013.

<sup>7</sup> NPFC Standard Claim Form dated February 3, 2013.

<sup>8</sup> Standard Form 1081, Voucher and Schedule of Withdrawal and Credits, Document Number 6700 58585.

### **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].

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 has been provided by the United States Environmental Protection Agency (USEPA) in accordance with CFR § 136.203.<sup>9</sup>
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 U.S.C. § 2712(h)(2), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were 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.

The Claimant is requesting \$805.88 for indirect administrative costs incurred by the Claimant for this incident. The NPFC will not reimburse for administrative costs with regards to the Federal Indirect Cost Rate as the costs are unsubstantiated. Therefore, the administrative costs of \$805.88 are denied.

All other costs were validated and the NPFC has determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$9,113.28 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 #913034-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on December 3, 2010. 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 \$9,113.28 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim

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<sup>9</sup> Email to [REDACTED] US EPA, on December 16, 2010.

#913034-0001. 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: \$9,113.28**

Claim Supervisor:

Date of Supervisor's review: 3/29/13

Supervisor Action: *Approved*

Supervisor's Comments: