

CLAIM SUMMARY / DETERMINATION

Claim Number:	913080-0001
Claimant:	State of California Dept. Fish & Wildlife, OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$8,442.93

Facts

Oil Spill Incident

On July 25, 2011 the California Department Fish & Wildlife (OSPR) received a phone call regarding an oil spill at 553 E. Ramsey Street, Banning, California. California Fire arrived on scene at 0937. The first responders advised OSPR that the substance spilled was used motor oil that was contained in five drums located behind 553 E. Ramsey Street¹. Four out of five drums had spilled over causing approximately 150 gallons of oil to run out of the concrete containment area that the drums were held in².

Fish and Game Warden [REDACTED] from OSPR arrived on scene the same day at 1400 and took command of the incident. Warden [REDACTED] and Cal Fire Battalion Chief [REDACTED] followed the spilled oil's path, east down Ramsey Street to where the storm drain was uncovered and followed the path of the oil flow under Interstate 10 between the Freeway and Union Pacific's railway. The spill stopped in the channel between the 10 Freeway and Union Pacific's Railroad, where the outfall was full of oil and water.

During the investigation, OSPR found hazardous waste labels on four of the five barrels. One of the labels identified the generator of the waste as, DJ Smog Stop, with an address of 376 W. Ramsey Street, Banning, California.³ The label further stated the manifest to be used oil. The label was removed in one piece from the barrel to secure as evidence.⁴

OSPR was informed that the call made to local authorities regarding the spill was made by [REDACTED] who is an employee at Desert Junction Auto and Smog located at 521 E. Ramsey Street. OSPR learned that the business belonged to Mr. [REDACTED]. Mr. [REDACTED] called the Warden on his cell phone. During the conversation, Mr. [REDACTED] told the Warden that the drums were not his and did not know how the drums got there.⁵

Later during the investigation, a transient named [REDACTED] was found inside the building's front office area. Ms. [REDACTED] was interviewed by Banning Police, Detective [REDACTED]. During the interview, Ms. [REDACTED] describes another transient known to frequent the

¹ See Banning Police Department Report in email from OSPR dated 8/21/2013.

² See pictures with email from OSPR, dated 8/21/2013. Please note that the Cal Fire Department righted the knocked over barrels to stop further release of oil before the pictures were taken.

³ See pictures with email from OSPR, dated 8/21/2013.

⁴ See narrative in claim file.

⁵ On August 1, 2013, the NPFC sent Mr. [REDACTED] an RP Notification letter a [REDACTED]. To date, the NPFC has not heard from Mr. [REDACTED].

area and believed he may be involved. Detective Fischer found the transient and had him voluntarily go to the Banning Police Station where he was interviewed. The transient was identified as Mr. [REDACTED]

Banning Police Detective Robert Fischer filed a formal complaint with the District Attorney's office. According to the narrative submitted in the claim file, there has been no further action taken after filing the complaint.

The National Pollution Funds Center (NPFC) sent an RP Notification Letter to the Responsible Party on August 1, 2013 and to date no response has been received.

Claim

On July 31, 2013, OSPR submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$8,442.93.

OSPR is claiming Personnel Costs in the amount of \$8,044.53, CDFW-Owned Vehicle Usage Costs in the amount of \$325.38, and Administration Costs in the amount of \$73.02.

Description of Removal Activities

HCI Environmental and Engineering Service was hired to respond to the incident. The cleanup continued through August 4, 2011. It is important to note that the environmental contractor invoices are not part of this claim.

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. Findings of Facts

1. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.
2. The incident involved a 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 cost claims.
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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis

The NPFC Claims Manager has 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 costs were adequately documented and reasonable.

After a review of the documentation⁶, the State of California was able to demonstrate that due to this oil spill incident, the State incurred \$8,369.91 in personnel costs as well as CDFW-owned vehicle mileage. The NPFC determines that these costs are reasonable and necessary in order to mitigate the threat to the environment and are payable by the OSLTF. All rates were charged in accordance with the state's salary and equipment schedule.

As listed on the Claimant's Incident Billing, they requested reimbursement of \$73.02 in Administration Costs regarding uncompensated removal costs incurred for this incident. The NPFC will not reimburse the administrative costs with regards to the Federal Indirect Cost Rate as the costs are unsubstantiated. Therefore, the administrative costs of \$73.02 are denied.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$8,369.91 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 913080-0001. 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 Claimant.

Claim Supervisor:

Date of Supervisor's review: 9/10/13

Supervisor Action: *Approved*

Supervisor's Comments:

⁶ See claim submission and emails to the NPFC from the Claimant.