CLAIM SUMMARY / DETERMINATION FORM

Claim Number	:	E11908-0001
Claimant	:	Los Angeles County Department of Public Works, Flood Maintenance Division
Type of Claimant	:	Local Government
Type of Claim	:	Removal Costs
Claim Manager	:	[redacted]
Amount Requested	:	$252,275.62

Facts:

On or about January 9, 2011, the Claimant, Los Angeles County Department of Public Works, Flood Maintenance Division (LACDPW), discovered a sheen in the Dominguez Channel, a riprap lined, earthen bottom flood control channel. Investigations reflected that the sheen was originating from an area approximately 100 meters south of the intersection of Carson Boulevard and the Channel. The Channel is tidally influenced from the Pacific Ocean and drains into the Port of Los Angeles, which is contiguous with the ocean.

A series of investigations and sampling of the sheen was directed by [redacted], the EPA FOSC, the LACDPW[1] and the Regional Water Quality Control Board (RWQCB)[2]. The LACDPW and RWQCB performed file and database searches in an effort to identify potential sources of the sheen. LACDPW investigated county sewer lines, channel berm sub-surface drain lines, and local facilities that were not currently in the databases. RWQCB facilitated access to local assessment and remediation sites for further investigation, coordinated with California State Fire Marshal, Health Hazardous Materials Division (SFM) in identifying the universe of pipelines in the vicinity of the site.

On January 25, 2011, the EPA FOSC, [redacted], issued a Notice of Federal Interest (NOFI) to Los Angeles County Department of Public Works and directed the Claimant to continue oil collection operations. EPA START sampled two remediation sites with known light non-aqueous phase liquids (LNAPL) for fingerprint analysis. Laboratory results were inconclusive. EPA excavated across the pipeline corridor to the north of the release on the Active RV property. No evidence of petroleum release was noted.

LACDPW and RWQCB identified two potential sources with known LNAPL contamination of ground water. On February 10, 2011, EPA START sampled monitoring well #1 at the Carson Air Harbor site (CAH-MW#1). On February 14, 2011, EPA START sampled a monitoring well at the 76 Station. These samples were sent to the USCG Marine Safety Lab for fingerprint analysis. The laboratory results were received on February 23, 2011, and were inconclusive.

Claimant's investigation of the sub-surface drain lines on the east bank of the channel indicated gasoline infiltration. Speculation was that the gasoline contamination is from an off-site source

[1] The LA County Department of Public Works, Watershed Management Division, is the planning and policy arm of the Flood Control District.
[2] The Regional Water Quality Control Board for LA County regulates ground and surface waters under its jurisdiction, protects water quality and establishes requirements for discharges into LA County waters.
[3] On January 26, 2011, the FOSC role was transferred to FOSC Martin Powell.

to the north of the site, and migrating along the backfill of the Plains pipeline #93 or one of the abandoned Shell lines. During the week of April 18, 2011, EPA directed ERRS to excavate across the pipeline corridor that includes Plains #93. The excavation located the pipelines in question and stopped at a depth of approximately 13.5 feet. No evidence of petroleum release was noted.

On April 26, 2011 the RWQCB issued California Water Code 13267 Investigative Orders to the following parties:[4] LACDPW, Chevron Pipeline, Conoco Phillips, Crimson Pipeline, Shell Oil Products, Tesoro Corp, Prowell Family Trust, Chevron Environmental Management, and BP Pipelines. These orders were issued individually, and require the parties to assess their properties/infrastructure, and to determine, if possible, the source of the release.

Pursuant to the latest EPA information, POLREP #5, dated May 26, 2011, the source of the discharge is unknown.

Description of Removal Activities for this Claim:

On January 10, 2009, the Claimant hired Ocean Blue Environmental Services (Ocean Blue) for response and clean-up of the oil. Ocean Blue arrived on scene at 1630 and immediately deployed sorbent boom and sorbent pads on the Dominguez Channel at Carson Street. Ocean Blue removed oil as it accumulated at the boom, stood boom watch around the clock, and continuously changed out the sorbent pads. These activities were continuous as the officials could not locate the source of the oil and therefore could not mitigate the oil from seeping into the channel. It is important to note that maintaining boom on the Channel is labor intensive due to it being tidally influenced to the point of reversing direction of flow.[5]

Claim and Claimant:

On March 22, 2011, Claimant, Los Angeles County Dept. of Public Works, Flood Maintenance Division, Imperial Yard submitted a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of $252,275.62. The costs encompass Ocean Blue invoices in the amount of $230,586.27 and LA County employee costs in the amount of $21,691.33. These costs are for the time period of January 10, 2011 through February 25, 2011. This claim has been identified as E11908-0001.[6]

On June 30, 2011, the NPFC denied both claims on the bases that Los Angeles County Department of Public Works, Flood Maintenance Division, is a Responsible Party (RP) because it owns the infrastructure of the Dominguez Channel. The NPFC required that if the Claimant decided to request reconsideration, it must present its defense in accordance with the law and produce all associated documentation demonstrating it is in fact not the Responsible Party.

[4] See POLREPS #1 through #5

[5] POLREP #5

[6] On May 23, 2011, Claimant submitted a second removal cost claim to the NPFC in the amount of $331,457.57. Those costs encompass Ocean Blue invoices in the amount of $313,526.08 and LA County employee costs in the amount of $17,931.49 and were for the time period of March 28, 2011 through May 15, 2011. That claim has been identified as E11908-0002 and is adjudicated separately.

Request for Reconsideration:

On June 30, 2011, the Claimant requested reconsideration via email; however, it requested 160 calendar days from June 30, 2011 to prepare their Reconsideration Request.[7] On July 14, 2011, the NPFC sent the Claimant a letter stating that we would hold their claim in abeyance until the investigation surrounding the spill on the Channel was complete. The NPFC also advised that as the Claimant, it is their responsibility to keep the NPFC up to date on the process of the investigation and whether or not a different Responsible Party has been identified. The letter also stated that the Claimant must provide an update every six weeks or the NPFC will have no alternative but to move forward with the adjudication.[8]

In support of the mandatory up-date to the NPFC, the Claimant provided information proving that they remain diligent on the response and cleanup of the oil. Claimant provided updates to the Fund to support the fact that they were continuously cleaning up oil on the Dominguez Channel.

Claimant provided the evidence to prove that they do not own or operate oil or oil related facilities on the Channel and that they are mitigating the oil spill incident as well as preventing future incidents from occurring.[9]

Applicable Law:

Each responsible party for a vessel or facility from which oil is discharged, or poses a substantial threat of a discharge of oil, into or upon the navigable waters is liable for removal costs and damages thar result from such incident. 33 USC 2702(a).

"Facility" means "any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. 33 USC 2701(9).

"Removal" means "containment and removal of oil or a hazardous substance from water and the shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines and beaches." 33 USC 2701(30).

"Removal costs" means "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 such incident." 33 USC 2701(31).

Determination of Loss*:*

A.Findings of Fact:

1. Federal On-Scene Coordination was provided by OSC [redacted], U.S. EPA, Region IX.

[7] 2011 06 30 EM FR Claimant to NPFC requesting Reconsideration.
[8] 2011 07 14 Letter to Claimant FR NPFC RE Claims in Abeyance.
[9] Information was provided on August 27, 2011, October 5, 2011, December 14, 2011, and January 9, 2012.

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. Evidence in the administrative record establishes that the Claimant is not the responsible party for this incident.
5. The claim was submitted within the six-year statute of limitations for claims. 33 U.S.C. § 2712 (h)(1).
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that some 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 as set forth below.
7. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as "Compensation Allowable" under 33 CFR§ 136.205.

B. Reconsideration Analysis and Determined Amount:

The NPFC performed a ***de novo*** review of the entire claim submission upon reconsideration.

The Responsible Party.

The EPA FOSC issued a Notice of Federal Interest (NOFI) to the Department of Public Works, identifying it as the responsible party for this incident and ordering it to conduct investigation and removal activities. Claimant complied with the NOFI, hiring Ocean Blue to deploy boom and sorbent pads and changing the sorbent pads as needed. Claimant also utilized its own employees to support the removal actions.

EPA provided no evidence to support its identification of the Claimant as the responsible party. Presumably, the EPA identified the Claimant on the grounds that it owned the property evidencing the sheening. The Claimant does not own or operate the property. The Flood Control District, a component of the LACDPW, has the responsibility to maintain the earth-bottom of the channel. Maintenance includes removing sediment, vegetation, debris and other obstructions that would reduce the hydraulic capacity and to ensure unrestricted flow in the channel. This does not equal ownership or operatorship.

Further, and more importantly, OPA provides that the owner or operator of the source of the discharge, a facility or vessel, is the responsible party. The EPA states in its latest POLREP that as of May 26, 2011 the source of the discharge is a mystery; therefore, it is unclear how the EPA identified Claimant as a responsible party liable for removal costs when EPA has not identified the source of the discharge. The NPFC requested specific information from EPA in support of its identification. The EPA has not responded to this request, has not provided evidence that Claimant is in fact the responsible party, or withdrawn the NOFI identifying Claimant as the responsible party.

Thus, based on the evidence in the administrative record the NPFC determines that the Claimant is not the responsible party and is entitled to present a claim for removal costs to the Fund.

The Removal Costs.

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 actions taken were determined by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claimant seeks reimbursement of their uncompensated removal costs associated with LA County response costs as well as Ocean Blue personnel and equipment costs. The uncompensated County costs in the amount of $21,691.33 and Ocean Blue response costs in the amount of $230,584.29.

Upon adjudication of the underlying removal costs, the NPFC has determined the following:

In support of the County costs, the Claimant provided time cards and supporting back up documentation for the following employees[10]; [redacted]. Claimant requested $21,691.33 in County costs, however, the Claimant only provided $16,813.97 in documented costs via time cards with supporting documentation. The NPFC requested all LA County Employee costs on March 24, 2011.[11]

Based on the County cost documentation provided by Claimant, the NPFC finds that **$16,813.97** in County response costs are compensable under OPA.[12]

Claimant provided six Ocean Blue invoices[13] that came to the amount of $230,584.29. Claimant provided proof of payment,[14]Ocean Blue 2008 Published Rate Schedule, and Personnel Work Tickets documenting the field activity. The NPFC finds that **$226,848.65** is compensable under OPA[15]. Ocean Blue costs in the amount of $1,651.14 were denied due to the claimed costs not coinciding with the Ocean Blue Published Rate Schedule. Additionally, Ocean Blue invoices PER6009 in the amount of $1,084.52 and PER6012 in the amount of $1,000.00 were denied in their entirety as the Claimant did not provide support documentation that proves those invoices were related to the Carson Street spill as opposed to a separate unrelated incident involving paint which is not considered an OPA compensable oil and would therefore not be eligible for consideration by the NPFC.

The unsubstantiated/denied costs are as follows:

PER5111	Labor and Equip denied in the amount of	$61.44
PER5117	Labor and Equip denied in the amount of	$327.96
PER6003A	Labor and Equip denied in the amount of	$780.48

[10] SemiMonthly Time Reports, County of Los Angeles Expenditure Details Report, and Los Angeles County Class and Salary Listing.
[11] See email dated March 24, 2011 to Mr. [redacted] from Ms. [redacted]
[12] See NPFC adjudication (spreadsheet)
[13] PER5111, PER5117, PER6003A, PER6009, PER6012, and PER6003B
[14] County of Los Angeles check numbers TS 0013735005, TS 0013705570, TS 0013682584, TS 0013580689, TS 0013527425, TS 0013757464.
[15] See NPFC adjudication (spreadsheet)

PER6003B	Labor and Equip denied in the amount of	$481.26
PER6009	Labor and Equip denied in the amount of	$1,084.52
PER6012	Labor and Equip denied in the amount of	$1,000.00
LACounty	Labor costs denied in the amount of	$4,877.36

Total denied amount for E11908-0001 $8,613.00

In summary, the NPFC has determined that $243,662.62 is OPA compensable for the actions presented to the NPFC in this claim submission. All costs determined compensable have been coordinated with the FOSC and determined to be consistent with the NCP. On this basis, the NPFC Claims Manager hereby determines that the Claimant did incur $243,662.62 in uncompensated removal costs that are supported by the record 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# E11908-0001.

Determined Amount:

The NPFC hereby determines that the OSLTF will pay **$243,662.62** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# E11908-0001. 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 claimant.

Claim Supervisor: [redacted]

Date of Supervisor's review: ***3/18/13***

Supervisor Action: ***Determination on reconsideration approved***

Supervisor's Comments: