

CLAIM SUMMARY / DETERMINATION

Claim Number: E11908-0004
Claimant: State of California Dept. Fish & Wildlife, OSPR
Type of Claimant: State
Type of Claim: Removal Costs
Claim Manager: [REDACTED]
Amount Requested: \$9,819.16

Facts

Oil Spill Incident

On or about January 9, 2011, the 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, LACDPW,¹ and the Regional Water Quality Control Board (RWQCB). 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],³ 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.

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 [REDACTED].

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

Claim

On July 16, 2013, the Department of Fish and Wildlife submitted its claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated personnel and lab costs in the amount of \$9,819.16⁵. This claim (E11908-0004) is for response related costs that the California Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR) incurred due to the "Carson Dominguez Channel Mystery" oil spill incident.

Initially, the claim was submitted to the NPFC on July 16, 2013 with a sum certain request of \$2,375.57 for response related costs. However, during the adjudication process, the Claims Manager discovered that based on the hours and the hourly rates that were submitted with the claim, the personnel costs totaled to \$7,819.16. The Claims Manager contacted the claimant via email and sent a copy of the work sheet that provided each OSPR employee's name, hours they worked and rates that each employee earns per hour.⁶ After the claimant received the information, OSPR provided a corrected Cost Summary (Invoice # 56276) to the NPFC in the amount of \$9,819.16 on August 6, 2013.

Description of Removal Activities

OSPR responded to the mystery spill with the other various State, Local, and Federal Agencies. OSPR provided two (2) Fish and Game Wardens, an Oil Prevention Specialist, and a Staff Environmental Scientist. These employees provided investigative as well⁷ as analytical reports⁸ regarding the oil that was emanating from the Channel floor.

⁴ See POLREPS # 1 through # 5.

⁵ The Personnel Costs are for \$7,819.16 and the Lab Costs are for \$2,000.00

⁶ See, Email to claimant from [REDACTED] dated July 26, 2013 with spreadsheet attachment.

⁷ See, Warden [REDACTED]'s Arrest/Investigation Report dated May 18, 2011.

⁸ See, California Department of Fish and Game, Office of Spill Prevention and Response Petroleum Chemistry Laboratory Analysis Results.

OSPR took six (6) samples of the oil, from various points of the Channel.⁹ Samples (Lab numbers 1, 2, 4, and 5)¹⁰ were analyzed by GC/MS using PCL Method PH51 for petroleum hydrocarbon confirmation and comparison to spill samples S-006-11-2, 4 & 5. This method incorporates quality control and quality assurance procedures to assure stable and consistent analytical system response for valid fingerprint comparison.¹¹ Petroleum hydrocarbons were confirmed in the samples 1, 2, 4, and 5. The analysis provided for sample # 1 demonstrates that in the Analyst's opinion, sample # 1 is similar to spill samples 2, 4 and 5. The differences between sample # 1 and samples # 2, 4, and 5 are found in the n-alkanes and the naphthalenes and could be caused by weathering.

APPLICABLE LAW:

"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.

⁹ See, Sample Information and Analysis Results, dated Thursday, January 27, 2011.

¹⁰ Lab # 1 was taken from West Hynes, 93 line, Exxon Mobil, Lab # 2 was taken from oily scum & water from Dominguez Channel (coordinates provided in lab analysis), Lab # 3 was taken from a clean sorbent boom, Lab # 4 was taken from oiled sorbent boom from Dominguez Channel (coordinates provided in lab analysis), Lab # 5 was taken from 223rd & Channel, Lab # 6 was taken from 223rd & Channel.

¹¹ Samples 3 and 6 were placed on hold.

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

The NPFC Claims Manager has reviewed the actual cost invoices and data 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, and 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.

OSPR seeks reimbursement of their uncompensated response costs associated the “Carson Dominguez Channel Mystery” oil spill incident. After submitting their costs in the amount of \$2,375.57 to the NPFC on July 16, 2013, OSPR provided a corrected sum certain in the amount of \$9,819.16.

In support of OSPR’s costs, the claimant provided Attendance Labor Distribution Reports,¹² State of California Response Cost Transmittal, Analysis Results, Investigation Report, Incident Action Plan (IAP),¹³ and two (2) Notices of Federal Interest.¹⁴

Based on the State’s cost documentation provided by OSPR, the NPFC finds that **\$9,819.16** in State response costs are compensable under OPA.¹⁵ Additionally, the NPFC was able to confirm the presence and oversight by the Claimant as the State On Scene Coordinator (SOSC) for this incident.

Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$9,819.16** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E11908-0004. 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: <i>8/15/13</i>
Supervisor Action: <i>Approved</i>
Supervisor’s Comments:

¹² See, Reports for Edward K. Boyes, Ben Thompson, Christian Corbo, and Corey Kong.

¹³ Operational Period From 2/24/11 13:00 TO: 3/3/11 13:00

¹⁴ Environmental Protection Agency’s Notice of Federal Interest Oil Discharge into Dominguez Channel dated February 22, 2011 and January 25, 2011.

¹⁵ See, NPFC Adjudication (spreadsheet)