CLAIM SUMMARY / DETERMINATION

Claim Number:	914027-0001
Claimant:	Contra Costa Health Services- Hazardous Materials Programs
Type of Claimant:	County Government
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$3,075.00

FACTS:

On June 10, 2010, Contra Costa Fire Department personnel reported a sunken dredge barge in the Fulton Shipyard next to a boat launch on the San Joaquin River, a navigable water of the United States. An oil sheen was observed in the water. Atlas Metal, LLC., Atop Total Recycle Center, Inc. was identified as the owner of the barge and, thus, the responsible party (RP). The Contra Costa Health Services – Hazardous Materials Programs department responded and deployed boom around the vessel.

CLAIMANT AND CLAIM:

Claimant is a county agency that responded to the spill incident. Claimant deployed hard boom around the vessel to contain the oil discharge. Claimant seeks reimbursement of $3,075.00 in removal costs for the hard boom, which was left on scene until it became deteriorated beyond repair.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), **each** responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into or upon the navigable waters is liable for removal costs and damages 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".33 USC § 2701(31).

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party or guarantor. 33 USC § 2713(a).

If a claim is presented in accordance with subsection (a) of this section and the claim is not settled by any person by payment within 90 days after the date on which the claim was presented the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund. 33 USC § 2713(c)(2).

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 (NCP) 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:

Overview:

1. There is evidence that a CG Federal On-Scene Coordinator (FOSC) directed the Claimant's response to this incident. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The Claimant stated that it presented its claim to the responsible party before presenting it to the Fund and has not been paid since the RP filed for bankruptcy.

3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified that no suit has been filed in court for the claimed costs.
4. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that no costs are allowable under OPA and 33 CFR § 136.205.

NPFC CA reviewed the documentation provided. The review focused on: (1) whether a discharge or substantial threat of a discharge to a navigable waterway occurred; (2) 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 an incident); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

Under 33 CFR 136.203, a claimant must establish that the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. In this case, the Claimant provided documentation in the form of contemporaneous field notes stating that the Coast Guard assisted in laying out the boom. 500' of boom was initially laid out in June 2010, and 200' feet of boom was removed in September 2010. The NPFC has determined that the Claimant's actions were necessary and reasonable under the circumstances. The cost is reasonable as a rental rate for the remaining 300' of boom that was left on scene for several months and consistent with industry standard pricing. The claim is compensable in the full amount claimed of $3,075.00.

[redacted]

Claim Supervisor: [redacted]

Date of Supervisor's review: *3/14/14*

Supervisor Action: ***Approved***