

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 917011-0002
Claimant	: Tahoe Keys Property Owners Association
Type of Claimant	: Private
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$17,917.09

FACTS:

1. Oil Spill Incident: On May 25th, 2016 at approximately 2:45PM the Tahoe Keys Property Owners Association (TKPOA) received a call to report a spill of some type in the lagoon water located at the Tahoe Keys West Lagoon - Spinnaker Cove. It was reported by a TKPOA Water Quality Staff member that he noticed a sheen and smell of fuel in Spinnaker Cove near Beach Drive and White Sands.

The State of California, Department of Fish and Wildlife (DFW) received notification from TKPOA and opened its own investigation into the incident, under Cal OES # 16-3111.¹

This incident was reported to the National Response Center via incident #1173737.²

Description of removal actions performed: TKPOA deployed boom and hired a contractor, Clean Harbors, to handle cleanup. DFW Warden Mr. [REDACTED] arrived that evening and made contact with TKPOA personnel. TKPOA had placed absorbent booms in the lagoon to prevent the sheen from migrating into Lake Tahoe proper, and pointed out the pockets of heaviest concentration of the sheen, which had an odor of diesel fuel. Warden [REDACTED] collected samples from the water and submitted them to the DFW lab for processing. Lab results showed that the contaminated water samples contained product that was consistent with diesel fuel.³ Federal responders were not available or on scene for the course of the event. The spilled product was cleaned without further incident at this location.

THE CLAIMANT AND THE CLAIM:

On June 28, 2017, TKPOA submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$17,917.09 for the services provided from April 26 through April 28, 2016. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided with the claim.

This claim was originally submitted this claim on April 5, 2017, receiving NPFC Claim # 917011-0001.⁴ However, the claimant was unable to obtain the necessary documentation it needed in order to be compensated for its claimed costs, TKPOA withdrew its claim via a

¹ See, Cal OES # 16-3111, opened 5/25/2016.

² See, NRC Report # 1173737, dated 3/21/2017.

³ See, CA DEFW Laboratory Report # S-022-16, dated 1/24/2017.

⁴ See, TKPOA Original Claim Submission, dated 4/27/2017 and received by the NPFC on April 5, 2017.

request to the NPFC on May 23, 2017.⁵ Once the necessary documentation was obtained,⁶ TKPOA re-submitted its claim to the NPFC, now being assigned NPFC Claim # 917011-0002.⁷

Due to an error when calculating claimed personnel costs, TKPOA reduced its claim sum certain from \$18,001.09 (as originally submitted) to \$17,917.09.⁸

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (OPA 90), 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for the removal costs and damages described in 33 USC § 2702(b) that result from the incident. The responsible party's liability includes the "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 at 33 USC § 2701(31) 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].

Under 33 USC §2713(a), all claims for removal costs or damages must (with certain exceptions not applicable here) be presented first to the responsible party or guarantor of the

⁵ See, Withdrawal Letter, dated 5/23/2017, sent via email by Mr. [REDACTED], TKPOA, to Ms. [REDACTED], NPFC, on 5/23/2017.

⁶ See, Cal OES Incident Status Report and Lab Analyses, sent via email from Ms. [REDACTED], OSPR, to Ms. [REDACTED], NPC, on 6/16/2016.

⁷ See, Resubmission Letter, dated 6/28/2017, sent via email by Mr. [REDACTED], TKPOA, to Ms. [REDACTED], NPFC, on 6/28/2017.

⁸ See, Email from Mr. [REDACTED], TKPOA, to Ms. [REDACTED], NPFC, confirming the new sum certain of \$17,917.09, dated 7/13/2017.

designated source of the incident. Then, as provided in 33 U.S.C. §2713(d), “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 Director, 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.”

In addition, 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. The NPFC has determined that the actions undertaken by the Claimant are consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted to NPFC within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has not been identified 33 U.S.C. § 2701(32).

5. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified that no suit has been filed by or on behalf of the Claimant in court for the claimed uncompensated removal costs.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim, and further documentation provided by CA OSPR, and has determined which of the removal costs presented were incurred for removal actions taken by the Claimant in accordance with the National Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

B. *Analysis:*

The NPFC Claims Division (CA) reviewed the cost invoices and dailies submitted by the Claimant to determine whether the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA 90 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented, and were reasonable and necessary.

The Claimant, Tahoe Keys Property Owners Association, submitted a well-documented claim to demonstrate that the actions it performed were OPA 90 removal actions, and that the work performed mitigated the effects of the oil spill that was discharged into Spinnaker Cove, a tributary of Lake Tahoe (a navigable waterway of the US). Additionally, both California Oil Spill Response Department (OSPR) and the California Department of Fish & Welfare (DFW) confirmed the actions represented by the Claimant and its subcontractor in response to this incident were necessary for its location and the time of year. The incident occurred over the Memorial Day weekend on Lake Tahoe. Upon adjudication of the claim, the NPFC verified that the rates charged were billed in accordance with the published rates of the subcontractor. As such, the NPFC has determined which amounts invoiced and paid, are reasonable. That said, in its adjudication of the claim, the NPFC found that only one as opposed to the two invoiced supervisors are reasonable for a two-hour boom bag deployment and site monitoring activity. Therefore, \$58.00 in claimed TKPOA personnel costs are denied as the NPFC reduced the rate of one Supervisor to the Spill Cleanup staff rate. See the attached NPFC Summary of Costs for reference.

Based on a review of all the supporting documentation and incident information, the Claims Manager determined that the Claimant did in fact incur \$17,859.09 in uncompensated removal costs that were reasonable and necessary, 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 #917011-0002. Those costs claimed are for uncompensated removal costs incurred by the Claimant for this incident for removal actions by the claimant from April 26 through April 28, 2016 that are consistent with the NCP.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$17,859.09 as full compensation for the claimed reimbursable removal costs incurred by the Claimant and submitted to the NPFC

under claim 917011-0002. All such costs were incurred by the Claimant for removal actions as that term is defined in OPA 90 and, are compensable removal costs, payable by the OSLTF as presented by the Claimant. Of the claimed costs, \$58.00 are denied.

AMOUNT: \$17,859.09

Claim Supervisor



Date of Supervisor's review: *7/26/17*

Supervisor Action: *Approved*

Supervisor's Comments: