

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	A16027-0001
<b>Claimant:</b>	State of California Department of Fish and Wildlife
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$50,186.20

### FACTS:

**Oil Spill Incident:** On September 20, 2016, the State of California Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR) was notified by the United States Coast Guard (USCG) Sector San Francisco of a strong pungent odor and half mile sheen of oil residing in San Pablo Bay, CA<sup>1</sup>. San Pablo Bay is a navigable waterway of the United States. OSPR personnel confirmed Teekay Shipping LMD and ConocoPhillips Company as the two Responsible Parties (RP's) after verifying that the T/V YAMUNA SPIRIT had transferred a cargo of Arabian Extra Light Crude Oil from Phillips 66 Refinery on the night of September 19, 2016. Sample analysis results confirmed the sheen as a match to the Arabian Extra Light Crude oil transferred<sup>2</sup>. The NPFC issued RP Notification letters to both RPs via a letter dated June 1, 2017.<sup>3</sup>

**Description of Removal Activities for this claimant:** Prior to RP verification, OSPR personnel boarded T/V YAMUNA SPIRIT and observed and monitored the ship's Chief Officer while he conducted a sampling of the ship's oil tanks. OSPR performed chemical analysis on all samples provided. OSPR personnel also investigated the nearby Mare Island, searching the island's grounds for a possible link to the oil sheen. OSPR personnel discovered no link between Mare Island and the oil sheen.

**The Claim:** On May 31, 2017, the State of California Department of Fish and Wildlife submitted a removal costs claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$50,186.20.<sup>4</sup>

The NPFC sent RP Notification Letter's to both Teekay Shipping LMD, and ConocoPhillips Company on June 1, 2017.<sup>5</sup> Representatives of Teekay Shipping LMD requested copies of Claim #A16027-0001 and NPFC forwarded copies of the claim package to the representatives on June 6, 2017. Teekay Shipping LMD notified NPFC that they would not pay the claimant's costs prior to NPFC's determination, but requested notification of NPFC's determination as well as any additional information provided by the claimant. NPFC forwarded additional information to Teekay Shipping LMD's representatives on June 13, 2017. ConocoPhillips has not responded to the RP Notification Letter sent on June 1, 2017.

<sup>1</sup> See MISLE Case Report 1045897 dated September 21, 2016.

<sup>2</sup> See Chemist [REDACTED]'s report dated September 30, 2016.

<sup>3</sup> See RP Notification Letters to ConocoPhillips and Teekay Shipping LMD dated June 1, 2017.

<sup>4</sup> See State of California Department of Fish and Wildlife's Claim package dated May 31, 2017.

<sup>5</sup> See RP Notification Letters to ConocoPhillips and Teekay Shipping LMD dated June 1, 2017

**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. Overview:**

1. CDR ██████████ of Sector San Francisco, USCG, was the Federal On-Scene Coordinator (FOSC) for this incident and he determined that the actions undertaken by NRCES were consistent with the NCP<sup>6</sup> for the payment of uncompensated removal costs 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 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. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the removal costs presented were for actions in accordance with NCP and the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

#### **B. Analysis:**

NPFC CA 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 to be consistent with the NCP in accordance with the NPFC delegation of authority for determination of consistency, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant in this determination are OPA compensable removal costs based on the supporting documentation provided. The NPFC has determined that the costs invoiced were in accordance with the state’s rates that were in effect at the time services were rendered.

Upon adjudication of this claim, the NPFC made requests for additional information from the Claimant and based on the evidentiary support for the claim submission the NPFC has determined that \$46,174.60 is supported by the record and fully documented.<sup>7</sup> The NPFC has denied the following amounts:

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<sup>6</sup> See POLREPS.

<sup>7</sup> See State of California Department of Fish and Wildlife’s Claim package dated May 31, 2017 and all additional information provided to or obtained by the NPFC.

**Denied Items:**

1. Costs paid to Information Officer [REDACTED] in the amount of \$89.44/hour, are denied by NPFC as public affairs/media relations and is not an OPA compensable removal cost. Furthermore, costs paid for [REDACTED] lodging and eating expenses are likewise denied. As such, all amounts invoiced for Amy [REDACTED], totaling \$2,210.66, are denied;
2. Costs paid to Assistant Chief Counsel [REDACTED] in the amount of \$170.92/hour, are denied by NPFC as no field notes or sampling, analysis and research activity explanations for this OSPR employee was provided by the claimant to demonstrate the nature of their response, containment and clean up activities relative to the oil spill incident. As such, all amounts invoiced for [REDACTED], totaling \$1,538.28, are denied; and
3. Costs paid for [REDACTED] lodging expenses are denied by NPFC as no field notes or sampling, analysis and research activity explanations for this employee was provided by the claimant to demonstrate the nature of their response, containment and clean up activities relative to the oil spill incident. As such, all amounts invoiced for [REDACTED], totaling \$262.66, are denied.

**Overall Denied Costs** = \$4,011.60<sup>8</sup>

Based on the foregoing, the NPFC hereby determines that the OSLTF will pay \$46,174.60 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A16027-0001. 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.

Should the Claimant decide to request reconsideration of this Determination, it will need to provide more detailed daily information of work performances for both [REDACTED] and [REDACTED], as well as obtain all case information for actions undertaken by [REDACTED] for the time periods of which it is requesting cost reimbursement.

**AMOUNT:** \$46,174.60

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *06/21/2017*

Supervisor Action: *Approved*

Supervisor's Comments:

<sup>8</sup> See Claim A16027-0001 Spreadsheet for specifics regarding the amounts approved and denied by the NPFC.