

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	A16027-0002
<b>Claimant:</b>	City of Benicia- Fire Department
<b>Type of Claimant:</b>	Local Government
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$12,586.85

### FACTS:

**Oil Spill Incident:** On September 21, 2016, USCG Sector San Francisco received a National Response Center (NRC) report of a sheen in San Pablo Bay, a navigable waterway of the United States.<sup>1</sup> Sector San Francisco directed Phillips 66 facility and T/V YAMUNA SPIRIT to initiate their response plans due to their vicinity to the sheen. On 21 SEP 2016, a Coast Guard over-flight spotted an oil sheen in the vicinity of the Phillips 66 refinery, the Federal On Scene Coordinator (FOSC) opened the Oil Spill Liability Trust Fund (OSLTF) in order to initiate removal activities.<sup>2</sup> City of Benicia Fire Department hired Ponder Environmental Services to boom off Benecia Marina that was in the path of the sheen in order to protect the vessels in the Marina.<sup>3</sup>

**Description of Removal Activities for this Claimant:** Ponder Environmental Services personnel responded and conducted removal actions on September 21-22, 2016. The response concentrated on protecting the Benecia Marina by placing containment boom across the entrance to the Benecia Marina. The removal actions were conducted using personnel, protective equipment, containment boom, a response vessel, and pick-up trucks.<sup>4</sup>

**Responsible Party:** The Responsible Party (RP) has been identified as both Phillips 66 and the operator of the T/V YAMUNA SPIRIT, Teekay Shipping. The Claimant submitted their claim to both RPs on June 14, 2017 and received no response.<sup>5</sup> The NPFC issued an RP Notification Letter to Teekay Shipping via Email c/o ██████████, Attorney representing Teekay Shipping<sup>6</sup> and the NPFC sent an RP Notification Letter to Phillips 66 via certified mail dated September 26, 2017.<sup>7</sup>

**The Claim:** On April 13, 2017, the NPFC received a removal cost claim from City of Benicia Fire Department for reimbursement of their uncompensated removal costs in the amount of \$12,586.85.<sup>8</sup> The claim is based on invoice #15489 from Ponder Environmental Services in the amount of \$12,586.85.<sup>9</sup> On April 17, 2017, the Claims

<sup>1</sup> See, NRC Report # 1159561.

<sup>2</sup> See, MISLE Case #1045897.

<sup>3</sup> See, Claimant's OSLTF Claim Form, page 2, question 11, dated April 3, 2017..

<sup>4</sup> See, Claimant's OSLTF Claim Package received by the NPFC on April 13, 2017.

<sup>5</sup> See, Email attachment from Claimant to ██████████ dated September 18, 2017.

<sup>6</sup> See, Email from ██████████ to ██████████ dated September 26, 2017.

<sup>7</sup> See, Rp Notification Letter dated September 26, 2017.

<sup>8</sup> See, Claimant's OSLTF Claim Package received by the NPFC on April 13, 2017.

<sup>9</sup> See, Ponder Environmental Services invoice 15489 dated September 26, 2016.

Manager instructed the Claimant that according to the Oil Pollution Act of 1990, the claim presentment must first be made to the Responsible Party.<sup>10</sup> On September 18, 2017 the Claimant presented the claim to the Fund after waiting 90 days to allow the Responsible Party to pay the claim.<sup>11</sup>

**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.

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<sup>10</sup> See, Email from ██████████ to Claimant dated April 17, 2017.

<sup>11</sup> See, Email form Claimant to ██████████ dated September 18, 2017.

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. LCDR [REDACTED] USCG Sector San Francisco, was the Federal On-Scene Coordinator (FOSC) for this incident and he determined that the actions undertaken by Ponder Environmental Services were consistent with the NCP<sup>12</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);<sup>13</sup>
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 to the Fund within the six year period of limitations for removal costs claims. 33 U.S.C. §2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the 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.

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<sup>12</sup> See, email from LCDR [REDACTED] to [REDACTED] dated April 19, 2017.

<sup>13</sup> See, City of Benicia-Fire Department Claim Package originally received April 13, 2017.

***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 by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon adjudication of the claim, the NPFC considered the Claimant’s evidence which consisted of proof of payment, Ponder Environmental invoice, and rate schedule of prices for Ponder Environmental. The NPFC requested additional information and an explanation of the costs and actions that were performed throughout the process.

Based on its review, the NPFC has determined that the costs incurred by Claimant are compensable under the OPA. The costs were reasonable and necessary to mitigate the effects of the incident and were determined by the FOSC to be consistent with the NCP. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule that was in place at the time the services were rendered and were determined by the FOSC to be consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay \$12,586.85 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A16027-0002. All costs claimed are for charges incurred 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.

**AMOUNT: \$12,586.85**

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *10/16/17*

Supervisor Action: *Approved*