

CLAIM SUMMARY / DETERMINATION

Claim Number:	918018-0001
Claimant:	State of California OSPR
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,415.38

FACTS:

Oil Spill Incident: On April 28, 2017, the State of California’s Office of Spill Prevention and Response (OSPR) was notified of a 100 yards by 50 feet oil sheen observed in Tower Park Marina. Tower Park Marina is located in Lodi, CA, adjacent to the Mokelumne River, a navigable waterway of the United States. OSPR personnel responded to the oil spill site on April 29, 2017, reporting “Isolated sightings to within 5-6 docks, but sheen dissipated, no further signs of pollution.”¹ Subsequent to additional reports of sheening overnight, OSPR personnel responded again the following morning, locating the suspected source of the oil sheening, a cabin cruiser named “OUR OUTLET.”²

Description of Removal Activities for this Claimant: On April 30, 2017, OSPR personnel responded to the marina and began “a systematic assessment of vessels as potential sources.”³ During OSPR’s response, personnel noticed that the “OUR OUTLET” produced strong diesel fuel odors and found staining on the “hull below an overboard discharge outlet.” Also, OSPR personnel reported cobwebs present that were “stained with a red liquid, and smelling of diesel fuel.”⁴ Upon inspection of the engine, OSPR personnel “observed approximately 5-10 gallons of free-standing red dyed diesel fuel in the bilge space on the starboard side.”⁵ In response to the oil discovery, personnel placed absorbent pads near the bilge pump. Marina staff responded by cutting the shore power, preventing additional activation of the bilge pump. OSPR was notified on May 1, 2017, that the “OUR OUTLET” had been towed from its slip and that “absorbents and free fuel had been removed from the bilge prior to the towing.”⁶

Presentment to the Responsible Party: OSPR reported that USCG Sector San Francisco made contact with the owners of “OUR OUTLET”, [REDACTED] and [REDACTED], and notified them of the discharge of oil from their vessel. The State of California invoiced the potential responsible parties on June 22, 2017. To date, [REDACTED] have not responded to the invoice.⁷

¹ See, OSPR Daily Activity Report dated June 13, 2017.

² *Id.*

³ See, OSPR investigation report dated May 2, 2017.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See, OSLTF Claim Form dated December 18, 2017.

Upon receipt of the State's claim, the National Pollution Funds Center (NPFC) issued an RP Notification letter to [REDACTED] dated January 8, 2018 and has received no response to date.⁸

The Claim: On January 4, 2018, OSPR submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs for state personnel and equipment costs in the amount of \$1,415.38.⁹

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."

⁸ See, RP Notification letter dated January 8, 2018.

⁹ See, OSPR letter dated December 12, 2017.

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. MSTC [REDACTED] of Coast Guard Sector San Francisco provided FOSC coordination¹⁰ 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 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.

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,

¹⁰ See, email from MSTC [REDACTED], USCG Sector San Francisco, to Mr. [REDACTED], USCG NPFC, dated January 18, 2018.

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.

The NPFC has confirmed that the rates charged by the Claimant are in accordance with the published rates at the time services were rendered. Based on the Federal On Scene Coordinator's direction and oversight, the response has been determined to be reasonable, necessary and performed in accordance with the NCP and as such, is approved.

The NPFC hereby determines that the OSLTF will pay \$1,415.38 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 918018-0001. 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.

AMOUNT: \$1,415.38

Claim Supervisor:

[REDACTED]

[REDACTED]

Date of Supervisor's review: *1/24/18*

Supervisor Action: *Approved*

Supervisor's Comments: