

CLAIM SUMMARY / DETERMINATION

Claim Number:	A18009-0001
Claimant:	Pelican Harbour
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$612.25

FACTS:

Oil Spill Incident: On December 16, 2017, a 45' motor vessel sank into the Richardson Bay, a shallow, ecologically rich arm of the San Francisco Bay, a navigable waterway of the United States.¹ The vessel contained over 170 gallons of diesel fuel and was actively discharging the fuel into Richardson Bay after coming in contact with a piling. The California Department of Fish and Wildlife were first on site, followed by the USCG Sector San Francisco, who responded to the incident as the Federal On Scene Coordinator (FOSC). The vessel's owner and operator, Mr. [REDACTED] is cited as the Responsible Party (RP).²

Oil Spill Cleanup's Influence on Claimant: The Claimant, Pelican Harbour, was notified of the incident by the California Department of Fish and Wildlife, in its capacity as the State on Scene Coordinator (SOSC) authorizing them to serve as first responder for the spill. Pelican Harbour arrived on site and deployed a 160' absorbent boom around the submerged vessel. The cleanup of the spill and the disposal of waste from the incident was monitored by the FOSC.³

The Claim: On January 23, 2018, Pelican Harbour submitted a claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs for equipment costs in the amount of \$612.25.

On January 23, 2018, NPFC notified Pelican Harbour that the RP would have to be invoiced for all costs claimed and provided the required 90 day time period to respond before the NPFC could properly adjudicate the claim. Pelican Harbour made presentment of their claim to the RP on January 23, 2018. On March 21, 2018, the Claimant states that she received a signed certified card for the invoice that she sent to the RP.⁴ Upon examination of the signed certified card receipt, the NPFC determined that it cannot verify that the signature on the card is that of [REDACTED], the Responsible Party, as the signature does not match the RP's signature. Additionally, the invoicing from the Claimant was mailed to a General Delivery site for the homeless. Based on the fact that the address is not the RP's residence since he is homeless but the only viable address available, the NPFC has determined presentment made to the last known address on January 23, 2018. The 90 day time period from the date of the invoicing was April 23, 2018. Based on the failure to demonstrate the RP actually signed for the certified mail, the NPFC will move forward with the adjudication of the claim.⁵

¹ See NRC Case Number 1199864 dated December 16, 2017.

² See [REDACTED] reimbursement request dated January 23, 2018.

³ See Email from MST1 [REDACTED] to Claims Manager [REDACTED] dated March 19, 2018.

⁴ See Certified green card signed by unknown party dated March 21, 2018.

⁵ See Claim 918021-0001 RP Notification Letter dated January 23, 2018.

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. MST1 [REDACTED] of USCG Sector San Francisco, as the Federal On-Scene Coordinator’s Representative (FOSCR) for this incident, determined that the actions undertaken by Pelican Harbour were consistent with the NCP 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)⁶;
2. The Claimant provided information supporting this 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 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, 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 costs incurred by the Claimant for the purchase of 4 cases of 5’x10’ sorbent booms were reasonable and necessary to mitigate the effects of the incident and in accordance with the SOSOC’s direction advising the Claimant to respond to the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were

⁶ See Email from MST1 [REDACTED] to Claim Manager [REDACTED] dated March 19, 2018.

billed in accordance with the purchase receipt provided at the time the services were rendered and the services provided were determined by the FOSCR to be consistent with the NCP.⁷

Based on the foregoing, the NPFC hereby determines that the OSLTF will pay \$612.25 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A18009-0001. 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: \$612.25

Claim Supervisor:



Date of Supervisor's review: *4/24/18*

Supervisor Action: *Approved*

Supervisor's Comments:

⁷ Id.