

CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/30/2009
Claim Number	: 909088-001
Claimant	: State of California Department of Fish and Game
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$10,193.09

FACTS:

1. Oil Spill Incident: On May 12, 2005, a diesel oil spill was discovered in a creek in the Piercy area of Northern Mendocino County, California. The creek in the Piercy area is an unnamed tributary to the Eel River. The Eel River is a navigable water of the United States. The spill was discovered when two wardens of the California Department of Fish and Game Office of Spill Prevention and Response (OSPR) were investigating to determine the source of the spill that had reached the creek, as well as the local water supply, as reported by a citizen caller. The wardens detected a visible sheen and odor of diesel fuel. They discovered that the discharge of diesel fuel was from a generator, an above ground tank system, and its fuel lines used to provide power for an indoor marijuana growing operation. It was determined that fifty gallons of diesel fuel was discharged.

2. Description of removal actions: At the incident site, the OSPR wardens monitored and assisted in the clean up and response executed by Ben's Trucking, and acted as an incident commander throughout the process. The OSPR wardens gathered water samples at the site and had a lab analysis performed.

3. The Claim: On April 30, 2009, the State of California submitted a removal cost claim in the amount of \$10,193.09 to the National Pollution Funds Center (NPFC) for costs that were incurred as a result of the oil spill.

The State of California is claiming personnel expenses of \$8,815.35, operating expenses of \$110.00, vehicle usage of \$817.74, and water pollution control lab work for \$450.00.

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. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the National Contingency Plan (NCP). This determination is made in

accordance with the Delegation Authority for Determination of Consistency with NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.

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 on time.
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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. *Analysis:*

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager's review of the cost documentation reveals that timesheets were not provided for [REDACTED] with regards to the billing of \$513.30 for May 2005 and the June 2005 billing of \$102.66, as noted on the cost summary. In the Claimant's July 13, 2009 response to NPFC for additional information, [REDACTED] confirmed that the timesheets for [REDACTED] were not available and requested that the claim move forward without the charges for his time. Therefore, the total amount of costs denied is \$615.96.

Based on the NPFC's denial of \$615.96, the NPFC determines that the OSLTF will pay \$9,577.13 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909088-001.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$9,577.13 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909088-001. 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: \$9,577.13

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *10/01/09*

Supervisor Action: *Approved*