

CLAIM SUMMARY / DETERMINATION FORM

Date	: 7/15/2009
Claim Number	: 909093-001
Claimant	: State of California Department of Fish and Game
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$1,700.00

FACTS:

- 1. Oil Spill Incident:** On February 17, 2009 an oil spill was discovered in Robinson Pond, located on the east side of the Feather River, near Lake Oroville in Butte County, California. The discharge of waste oil reached a tributary to Lake Oroville. Lake Oroville is a navigable water of the United States. The State on Scene Coordinator (SOSC), [REDACTED], responded and discovered two 55 gallon drums of waste oil in a drainage ditch located along Pacific Heights Road in Oroville, California. The two 55 gallon drums, based on the photographs provided by the Claimant (see attached), were submerged in the water at the incident site. The structural integrity of each drum is questionable due to the dents; rust and corrosion illustrated in the photographs and as such posed a substantial threat of discharge. The SOSC contacted the California Fire Hazmat Unit to the scene to determine the contents of the drums and to remove them from the waterway. It was determined that the heavy rains washed them downstream to Robinson Pond.

The State Inland Pollution Coordinator, Captain [REDACTED], contracted Hanover Environmental Services Incorporated (Hanover) to remove and dispose of the drums and their contents. Hanover was hired by the use of a California Urgency Response Contract.

To date, the responsible party remains unknown.

- 2. The Claim:** On May 22 2009, the Claimant submitted a removal cost claim in the amount of \$1,700.00 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated State response costs. The claim consists of the Urgency Response Contract, billing summary, invoices, State investigation report, proof of payment, and photographs.

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 substantial threat of 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 FOOSC, and (4) whether the costs were adequately documented and reasonable.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$1,700.00 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909093-001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on February 17, 2009. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount:

The NPFC has determined that the OSLTF will pay \$1,700.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909093-001 and in accordance with 33 CFR 136.203 & 205.

AMOUNT: \$1,700.00

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *8/5/09*

Supervisor Action: *Approved*