

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/23/2010
Claim Number	: 910042-001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$67,407.28

### **FACTS:**

- 1. Oil Spill Incident:** On February 20, 2008 a Renner Petroleum truck trailer, carrying 3,953 gallons of red dye diesel fuel, overturned downstream of the 11.38 mile marker of Highway 199 in Del Norte County, California. The accident caused the fuel tank on the trailer to rupture, discharging the fuel on the north shoulder of the road. The discharge of the fuel reached the Smith River. The Smith River is a navigable waterway of the United States. The State on Scene Coordinator (SOSC), ██████████, arrived at the site and noted that as a result of the accident, he could smell a strong odor of diesel and could see small pools of the fuel in the ditch on the north side of the road. The California Department of Fish and Game (California DFG) acted as the trustee agency for the resources in the Smith River. The California Highway Patrol (CHP) was the lead responder due to the incident involving a discharge on the highway. See NRC Report number 862913.

██████████, the responsible party (RP), hired NRC of Eureka, California for the clean up, as well as the clean up consulting firm, Winsler & Kelly. The NPFC issued a RP Notification Letter to the potential responsible party on February 22, 2010 and to date, no response has been received.

- 2. The Claim:** On December 29 2009, the Claimant submitted a removal cost claim in the amount of \$67,407.28 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated State response costs. The claim consists of a billing summary, invoices, State investigation reports, personnel time records, receipts, photographs, and USCG MISLE Case Report.

According to the claimant, even after multiple written and verbal requests for payment, the RP refuses to pay the claim.

### **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. FOSC coordination was made with MSD Humboldt Bay and USCG MISLE case # 393197 was generated by Sector San Francisco. PO [REDACTED] was present at the Unified Command and received regular updates as response to the incident occurred.
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 majority of 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.

Based upon the review of the Incident Action Plans provided by the claimant which were generated in the Unified Command and based on the affirmation of activities performed as noted in the United States Coast Guard’s MISLE Case, the actions taken were deemed consistent with the NCP and determined reasonable. USCG reported that the claimant was the lead agency for this incident.

Upon review of the claim, the Claims Manager hereby determines that there are discrepancies with regards to the reimbursement requested and the cost documentation provided by the claimant. Under the Personnel Costs billing portion, Staff Environmental Scientist, [REDACTED], billed for seven hours on March 4, 2008. However, the corresponding time record notes that she worked 6.5 hours that day. Claimant billed a total of 94 hours at \$70.20 per hour for the work of Ms. [REDACTED] for a total of \$6,598.80. However, the claimant will be compensated for 93.5 hours at the same rate for a total of \$6,563.70, for a total denied amount of \$35.10. With regards to reimbursement for Travel Expenses, claimant requests a total of \$4,777.52. However, per the claimant’s e-mail correspondence of February 17, 2010, Industrial Hygienists, [REDACTED] and [REDACTED] did not “code” their work hours on their monthly time reports, and therefore there is no official financial record that documents their hours worked. Based on that information, the reimbursement for travel expenses of \$166.40 for Mr. [REDACTED] and \$462.44 for Mr. [REDACTED] are denied, for a total of denied amount of \$628.84. Claimant will be reimbursed \$4,148.68 for travel expenses.

Therefore, the NPFC has adjusted the amount payable to \$66,743.34, for a total denied amount of \$663.94.

Based on the NPFC's denial of \$663.94, the NPFC determines that the OSLTF will pay \$66,743.34 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 910042-001.

**C. *Determined Amount:***

The NPFC has determined that the OSLTF will pay \$66,743.34 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 910042-001.

**AMOUNT: \$66,743.34**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *3/8/10*

Supervisor Action: *Approved*

Supervisor's Comments: