

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/25/2010
Claim Number	: 910067-001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$3,397.61

FACTS:

- 1. Oil Spill Incident:** On April 21, 2009, the State On-Scene Coordinator (SOSC), Warden [REDACTED], of the California Department of Fish and Game Office of Spill Prevention and Response (California DFG), responded to a report of a pick up truck that drove off of Highway 96 over an embankment and fell 300 feet into the Klamath River in Orleans, California. The Klamath River is a navigable waterway of the United States. The incident caused approximately thirty gallons of petroleum to leak from the engine and the fuel tank of the truck. The driver, the responsible party (RP), died at the scene and his two passengers were seriously injured. The United States Environmental Protection Agency (USEPA) Region 9 FOSC was notified of the incident and informed of the clean up being done, as well as the hiring of Buddy's Auto Center, Incorporated (Buddy's) to remove the vehicle from the river.
- 2. Description of Removal Activities for this claimant:** Buddy's removed the vehicle from the Klamath River to prevent further discharge of fuel from the engine and the fuel tank of the truck.
- 3. The Claim:** On February 2, 2010, the State of California submitted a removal cost claim in the amount of \$3,397.61 to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated State response costs. The claim consists of a billing summary, invoices, personnel time record and State investigation reports.

The State of California is claiming \$276.50 in State personnel expenses, \$2,592.50 in operating expenses and \$528.61 in administrative costs.

As noted above, the RP died at the scene of the accident.

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 FOOSC coordination was provided by the United States Environmental Protection Agency (USEPA) Region 9 via e-mail protocol on April 22, 2009.
2. The incident involved a 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 FOOSC, and (4) whether the costs were adequately documented and reasonable.

The claimant is requesting \$528.61 for administrative costs regarding uncompensated removal costs incurred by the claimant for this incident on April 21, 2009. In her March 30, 2010 e-mail response, [REDACTED] explained that the administrative costs were for California DFG's federal rate indirect costs. The NPFC will not reimburse for administrative costs with regards to the Federal Indirect Cost Rate as the costs are unsubstantiated. Therefore, the administrative costs of \$528.61 are denied.

Based on the NPFC's denial of \$528.61, the NPFC determines that the OSLTF will pay \$2,869.00 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 910067-001.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$2,869.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 910067-001. 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: \$2,869.00

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *4/5/10*

Supervisor Action: *Approved*