

CLAIM SUMMARY / DETERMINATION

Claim Number:	A14010-0001
Claimant:	State of California Dept. Fish & Wildlife, OSPR
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$8,319.55

FACTS:

Oil Spill Incident

On February 10, 2014, CG Sector San Francisco personnel were notified of an oil sheen 180' x 30' stretching throughout Richmond Inner Harbor, Richmond, CA, in the vicinity of the M/V WUCHOW. An inspection of the vessel by CG personnel revealed the vessel not to be the source of the discharge.¹ CA Fish and Wildlife was notified and responded with CG Sector San Francisco Incident Management Division (IMD) personnel. The oil was traced back to an outfall that drained directly into the inner harbor. The sewer system draining into the affected outfall was traced back to SIMs Metal Management, a metal recycling company located in Richmond, CA.² As the source of the discharge couldn't immediately be identified, CG Sector San Francisco assumed responsibility for the spill and opened FPN A14010 to conduct cleanup operations.³ National Response Corporation (NRC) was hired by CG Sector San Francisco and recovered approximately 656 gallons of waste oil from the inner harbor.⁴

A joint investigation conducted by CA Fish & Wildlife and CG Sector San Francisco IMD of the SIMs Metal Management facility revealed that the facility was prohibited to discharge rainwater through their sewer system and as such, had installed a pneumatic bladder plug to stop any rain water from leaving their facility through their sewer lines. The bladder plug was installed to block the sewer line, forcing a sump pump to energize when the water level rose to a certain level, pumping any rainwater into above ground holding tanks located on SIMs property. When the manhole cover located directly over the bladder plug system was lifted, CA Fish & Wildlife and CG personnel detected a slight odor of oil and observed a rainbow sheen on the surface of a thin stream of water flowing underneath the inflated bladder plug. A sample of oily water was obtained from the sewer line located directly beneath the bladder plug system and from the affected outfall discharging oil into Richmond Inner Harbor. Sample analysis was conducted by CA Fish & Wildlife and revealed that the source sample from the sewer line and spill sample from the affected outfall were of a common source.⁵

CG Sector San Francisco submitted a civil penalty case against SIMs Metal Management in the amount of \$3,500.00.⁶ A decision by the CG Hearing Officer was issued on November 28, 2014, dismissing the case. Specifically, the Hearing Officer stated the CG failed to identify the RP's source oil as the small sheen as observed in the 220 gallon SIMs Metal Management sump couldn't have accounted for the 725 gallons of oil discharged into the Richmond Inner Harbor. In addition, there would have been more oil staining in and around the area of the sump. The hearing officer also identified issues with the chain of

¹ See CG MISLE Case #671111.

² See CA Dept of Fish & Wildlife Narrative Supplemental prepared by [REDACTED] dated July 8, 2014.

³ See CG Sector San Francisco POLREP 1 dated February 12, 2014.

⁴ See CG Sector San Francisco POLREP 3 (F) dated April 25, 2014.

⁵ See CA Dept of Fish & Wildlife Narrative Supplemental prepared by [REDACTED] dated July 8, 2014.

⁶ See CG Sector San Francisco POLREP 3 (F) dated April 25, 2014.

custody surrounding the samples as the samples were obtained by the Richmond Fire Department but analyzed by CA Fish & Wildlife.⁷

CA Fish & Wildlife attempted to recover their personnel costs associated with the response and investigation of this spill from SIMs Metal Management but their request for reimbursement was denied as SIMs maintains they were not the source of the discharged oil as supported by the findings of the CG Hearing Officer.⁸

Claim

On February 26, 2015, CA Fish & Wildlife submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$8,319.55.⁹

Responsible Party

On March 10, 2015, the NPFC issued an RP Notification letter to SIMs Metal Management.

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

⁷ See CG Hearing Officer Letter to Pillsbury, Winthrop, Shaw and Pittman LLP (representing SIMs Metal Management) dated November 28, 2014.

⁸ See letter from Ms. [REDACTED] SIMS Metal Management to CA Fish & Wildlife dated January 27, 2015.

⁹ See NPFC Standard Claim Form submitted by CA Fish & Wildlife dated February 26, 2015.

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. Findings of Facts

1. MST2 [REDACTED] of Coast Guard Sector San Francisco provided FOSC coordination, ensuring all removal activities were conducted in accordance with 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. The claim was properly presented to the responsible party, who denied the claim;
4. 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;
5. The claim was submitted within the six year statute of limitations for removal cost claims;
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of 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 costs were adequately documented and reasonable.

After a review of the documentation¹⁰, the State of California was able to demonstrate that due to this oil spill incident, the State incurred \$5,811.71 in personnel costs. The NPFC determines that these costs are reasonable and necessary in order to mitigate the threat to the environment and are payable by the OSLTF. All rates were charged in accordance with the state's salary and equipment schedule.

As detailed on the NPFC Cost Summary Spreadsheet, CA Fish & Wildlife billed a total of 32 overtime hours for Fish & Game Warden [REDACTED] for services provided on July 1, July 2, July 7 and July 8, 2014. However, it's unclear how these costs are related to the removal activities conducted by CA Fish & Wildlife during the response and investigation of the oil spill originating from SIMs Metal Management facility on February 10, 2014 (five months earlier). Therefore, the overtime costs incurred by Fish and Game Warden [REDACTED] in the amount of \$2,507.84 are denied as unsubstantiated that the work billed five months after the end date of the response are in fact OPA compensable response activities.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$5,811.71 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #A14010-0001. All costs claimed are for charges incurred 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 Claimant.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 3/11/2015

Supervisor Action: *Approved*

Supervisor's Comments:

¹⁰See NPFC Standard Claim Form submitted by CA Fish & Wildlife dated February 26, 2015.