

CLAIM SUMMARY / DETERMINATION

Claim Number:	A15017-0003
Claimant:	City of Long Beach, CA
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$18,137.61

FACTS:

Oil Spill Incident: On June 3, 2015, the City of Long Beach, CA, was notified of tar balls washing up on four (4) miles of beach in Long Beach, CA, from 1st Place to 72 Place.¹ Unsure whether or not the tar balls were from the Plains Oil Pipeline spill of May 19, 2015 in Santa Barbara, CA, Coast Guard Sector LA/LB, in its capacity as the Federal On Scene Coordinator (FOSC) for this incident, responded and determined that the tar balls on the beach on Long Beach were much smaller than the tar balls associated with the Plains Oil Pipeline spill and departed scene.²

Description of Oil Removal Activities for this Claimant: The City of Long Beach responded by hiring Ocean Blue Environmental Services to pick up the tar balls from the beach. Over a period of 2 days, Ocean Blue personnel, in conjunction with or under the supervision of personnel from the City of Long Beach Public Works, Public Health and Fire Department, picked up tar balls from the beach which ended up filling town (2) fifty-five (55) gallon drums (weighting collectively 300 lbs) and properly disposed of them at Crosby & Overton Environmental Services, Long Beach, CA.³

Assuming that the tar balls were a result of the Plains Oil Pipeline spill, the City of Long Beach submitted a removal cost claim to Plains Oil Pipeline for reimbursement of their removal costs that were associated with the collection of tar balls on the beach. On February 1, 2016, Plains Pipeline denied the claim submitted by the City of Long Beach citing that “the materials and documentation submitted are insufficient to establish your claim under OPA”.⁴

The Claim to the NPFC: On February 19, 2016, the City of Long Beach presented a removal cost claim to the Coast Guard’s National Pollution Funds Center (NPFC) for reimbursement of their uncompensated personnel and contractor costs in the total amount of \$18,137.61 which is broken out as follows:

- Ocean Blue Environmental Services: \$10,526.67
- City of Long Beach Public Works: \$952.93
- City of Long Beach Health Dept: \$3,361.40

¹ See City of Long Beach Claim submitted to the NPFC dated February 11, 2016.

² See email from Mr. ██████████, NPFC, to Mr. ██████████, NPFC dated February 19, 2016.

³ See City of Long Beach Claim submitted to the NPFC dated February 11, 2016.

⁴ See City of Long Beach Claim submitted to the NPFC dated February 11, 2016.

City of Long Beach Fire Dept: \$3,296.61⁵

APPLICABLE LAW:

"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;

⁵ See City of Long Beach Claim submitted to the NPFC dated February 11, 2016.

(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].

NPFC ANALYSIS:

NPFC CA 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, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review of the claim submission, the NPFC contacted the City of Long Beach and made an official request for additional information in support of the Claimant’s request for reimbursement. Specifically, the NPFC requested the following information:

1. Name of CG personnel who responded to your spill and provided oversight of the cleanup. If CG personnel responded but didn't remain on-scene, please provide their names and explain why they didn't remain on-scene for the duration of the cleanup.
2. Tar ball sample analysis. Please provide any sample analysis of the tar balls collected specifically with comparisons to seep oil off the Long Beach coast. If sample analysis of the tar balls was not conducted, please explain why.
3. Rate schedule for Ocean Blue Environmental current as of June 3, 2015.
4. Verbal confirmation that Ocean Blue Environmental made full payment to Crosby & Overton Environmental Services for the disposal of the tar balls.
5. Rate schedules or pay records for Long Beach Health Dept, Public Works and Fire Department personnel associated with the response to the tar balls.
6. The distribution of costs for Long Beach Public Works personnel is vague and non-descriptive. Provide better detail to include names, dates and times of Public Work personnel with a description of OPA allowable pollution removal activities performed in the collection and disposal of tar balls from the beach.
7. Provide better detail to include dates and times of Public Health personnel with a description of OPA allowable pollution removal activities performed in the collection and disposal of tar balls from the beach.

8. The Fire Department billed for a community service assistant, 9 certified volunteers and 2 life guards. Provide a detailed description of OPA allowable pollution removal activities performed by these personnel in the collection and disposal of tar balls from the beach.⁶

The City of Long Beach was given 14 days to respond to the NPFC's official request for additional information⁷, which they have failed to respond or provide any information. The NPFC is therefore unable to determine if the actions taken by City of Long Beach personnel were directed by an FOSC and conducted in accordance with the National Contingency Plan (NCP); if the tar balls collected from their beach were from a mystery source or from natural seep off the coast of California; if the rates charged by Ocean Blue Environmental were in accordance with their rate schedule at the time services were provided; if Crosby & Overton Environmental Services were paid in full for properly disposing of the tar balls; and if the costs billed by the City of Long Beach for their personnel were appropriate for reimbursement under OPA.

SUMMARY

Based on the foregoing, the NPFC has determined that this incident and the actions undertaken by the Claimant are not OPA compensable because (1) the Claimant has failed to demonstrate that the pollution removal actions undertaken were directed by the FOSC; (2) the Claimant has failed demonstrate that the actions undertaken were determined by the FOSC to be conducted in accordance with the National Contingency Plan (NCP); (3) the Claimant failed to reveal the source of the tar balls by virtue of lab analysis results in order to demonstrate the tar balls were not the result of a natural seep; (4) the Claimant failed to demonstrate that Crosby & Overton Environmental Services were paid in full for their services and also whether or not the rates charged by Ocean Blue Environmental were in accordance with their rate schedule and; (5) whether the costs billed by the City of Long Beach for their personnel were OPA compensable pollution removal activities.

AMOUNT: \$0.00

<p>[REDACTED]</p> <p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor's review: <i>March 10, 2016</i></p> <p>Supervisor Action: <i>Denial Approved</i></p>
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⁶ See email from Mr. [REDACTED] to Ms. [REDACTED], City of Long Beach dated February 23, 2016.

⁷ See email from Mr. [REDACTED] to Ms. [REDACTED], City of Long Beach dated February 23, 2016.