

CLAIM SUMMARY / DETERMINATION

Claim Number:	A15018-0002
Claimant:	City of Hermosa Beach
Type of Claimant:	Government
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$3,354.79

FACTS:

Oil Spill Incident: On 27 May 2015, life guards notified Los Angeles County Fire Department that an unusually higher number of crude oil, tar balls and patties washed up on the beaches along South Bay that includes Hermosa Beach, CA. The Hermosa Beach Fire Department (HBFD) was notified of the pollution incident and personnel were at the scene to assess the situation and work with County authorities to close the beach to the public. Waters along Hermosa Beach are part of the Pacific Ocean; a navigable waterway of the United States.

The Claim: On July 20, 2015, the City of Hermosa Beach Fire Department (HBFD), Office of Emergency Management (OEM) (Claimant) presented its claim for uncompensated removal costs to the NPFC totaling \$3,354.79. Claimant submitted a copy of its payroll schedule for three employees that provide the employee's name and number and job classification and their hourly rate with benefits for the pay period ending May 31, 2015.¹

Responsible Party: Upon receipt of the claim, the NPFC advised the Claimant that they needed to present their uncompensated removal cost claim to Plains All American Pipeline (PAAP), as the Potential Responsible Party (PRP) for this incident. On July 28, 2015, Claimant properly presented its claim to the PRP, by email to the RP's claims administrator, Worley Catastrophe.²

Federal On-Scene Coordinator: Sector Los Angeles-Long Beach, Incident Management [REDACTED] (Sector LA-LB IMD) received notice from the National Response Center and sent pollution responders to the beaches along the South Bay of Los Angeles County. Captain [REDACTED] US Coast Guard, Sector LA-LB is the acting Federal On-Scene Coordinator Representative (FOSCR). Pollution incident has been classified as the South Bay Tar Ball incident (Federal Project Number A13018) by FOSCR.³

Description of Removal Activities for this Claimant: The Claimant submitted daily Activity Logs (USCG form ICS-214) from May 27, 2015 to June 2, 2015.⁴ The activity logs show OEM's Social Media Team attended Incident Command briefings, monitored social media, generated email communications with other city officials and city representatives and notified the public about beach closures and performed public relations duties.

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

¹ See Claimant's submission package

² See email from [REDACTED], Worley Catastrophe to NPFC dated July 28, 2015 confirming presentment.

³ See USCG Sit Pol Rep 1-6

⁴ See Claimant's submission package

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 **not** provided by the United States Coast Guard Sector Los Angeles-Long Beach, Incident Management Division (IMD) in accordance with CFR § 136.203.
2. The incident involved the discharge or substantial threat of a discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 within the six year statute of limitations for removal cost claims. 33 U.S.C. §2712(h)(1).
5. The NPFC Claims Manager (CM) thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were **not** in accordance with the NCP because Claimant’s activities appear to be administrative and public relations activities that are not activities to remove the oil. Therefore, these costs for these activities are **not** allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC reviewed the invoice to confirm whether or not 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.

Removal Costs: Claimant’s activity logs from May 27 through June 2, 2015 reflect that OEM personnel monitored social media, communicated and coordinated with its municipal representatives and with the City Manager and attended Unified Command public and agency briefings and press conferences. The NPFC finds that the above activities were **not** coordinated with the Federal on Scene Coordinator (FOSC) or directed by the FOSC consistent with the governing claims regulations at 33 CFR §136.203 & 205. 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.” [33 USC § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136]

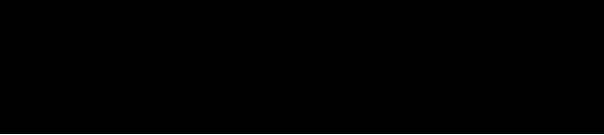

FOSC Coordination: Claimant’s daily activity logs do **not** appear to be signed by the FOSC or someone within Sector LA-LB Incident Management Division. Because the signature on the activity logs (form ICS-214) are not identified as the FOSC or someone with IMD, the NPFC finds Claimant has **not** met its burden pursuant to the claims regulations found at 33 CFR 136.203 and 205 demonstrating that its actions were determined by the FOSC to be reasonable, necessary and consistent with the National Contingency Plan (NCP). Without evidence that the activities undertaken by them were approved by the FOSC, the NPFC must deny the claim.

It is also important to note that upon adjudication of this claim, the Claims Manager spoke with an NPFC Case Officer who was present within the Unified Command (UC) who was able to affirm the existence of a Joint Information Command (JIC) that had been established by the FOSC for the purpose of providing public service information and social media updates to the public therefore the services provided by this Claimant aside from not having been coordinated with the FOSC, appear to be excessive since the JIC handled all public and social media needs for this incident.

Should the Claimant decide to request reconsideration, the Claimant must show that its activities from May 27, 2015 through June 2, 2015 were coordinated (approved) by the FOSC and as such, would need to provide a written statement stating that it was directed by the FOSC to perform the duties to which it is requesting reimbursement.

Based on the foregoing, this claim is denied as the Claimant has failed to obtain FOSC coordination pursuant to 33 CFR §136.203 & 205.

AMOUNT: \$ 0.00


Claim Supervisor: 
Date of Supervisor's review: <i>11/03/2015</i>
Supervisor Action: <i>Denial approved</i>