

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 911116-0001
Claimant : State of California
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : XXXXXXXXXX
Amount Requested : \$1,363.32

FACTS:

Oil Spill Incident: On July 7, 2006, the California State Department of Fish and Game Office of Spill Prevention and Response (OSPR) responded to a gasoline leak on the T/V PROBO ELK at Port of Los Angeles, Berth 118, a navigable waterway of the United States. OSPR coordinated with the United States Coast Guard (USCG) while conducting initial response. The PROBO ELK was carrying an estimated twenty five thousand one hundred twenty-two (25,122) barrels of gasoline onboard. During the testing of the ship's inert system, a failure occurred which caused a release of approximately two (2) barrels of gasoline on its deck. A one hundred (100) yard safety zone was established around the ship. Late in the evening on July 7, 2006, the inert system leak was repaired and the ship was deemed safe by USCG Inspectors. No actual release of gasoline was found in the water.

Description of Removal Activities for this claimant: OSPR conducted initial response which included being part of a Unified Command that was established at the Los Angeles Fire Boat House and on the perimeter of the water safety zone. OSPR attended meetings with Fire, USCG and the LA City Mayor's office to discuss potential environmental concerns over the possible release of gasoline into the water. Environmentally sensitive areas were identified and contingencies for pre-booming these areas were established. Invoices include personnel and equipment (vehicle use), and agency administrative expenses.

The Claim: On August 31, 2011 OSPR submitted a "response cost" claim, which the National Pollution Fund Center (NPFC) placed under the Oil Pollution Act (OPA) category as a removal cost, for reimbursement of their uncompensated removal costs in the amount of \$1,363.32.

OSPR is claiming personnel expenses of \$1,329.67, State equipment expenses of \$27.73, and administrative expenses of \$5.92.

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(e)(8), the reasonable costs incurred by the claimant do not include administrative costs associated with preparation of 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. LT [REDACTED] provided FOSC coordination pursuant to 33 CFR § 136.203 and 205.
2. The incident involved the 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 within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. 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.

The NPFC has not sent the RP a notification letter since the address for the RP is unknown at the time the claim was received by the NPFC.

The NPFC approved the Claimant’s vehicle usage costs totaling \$27.73 (47 miles x \$0.59 per mile) as documented on their rate sheet.

In accordance with 33 CFR 136.105 (e)(8), the reasonable costs incurred by the claimant do not include costs associated with overhead or preparation of the claim. Therefore, the \$5.92 in administrative costs is denied.

Additionally, the NPFC denies the claimant’s “Federal ICRP 21.36%” markup applied to personnel in this claim, because this is an indirect cost that the Claimant has not been able to provide actual cost documentation detailing the itemized costs associated with this percentage. The NPFC created the table below to document approved and denied personnel costs. We took the claimant’s rate schedule hourly rate without the Indirect Cost Rate Proposal (ICRP) percentage and approved the hours provided in the claim with that rate. The remaining ICRP percentage costs were denied because the NPFC is unable to see adjudicate the merits of the indirect by way of actual documentation therefore they are denied as unsubstantiated costs. See the table below:

Name	Title	Hour	Claimed Rate With ICRP	Total Amount Claimed	Rate Schedule Hourly w/o ICRP	NPFC Approved	NPFC Denied
[REDACTED]	F&G Warden	6.0	53.42	320.52	44.02	264.12	56.40
	F&G Patrol LT	4.0	59.60	238.40	49.11	196.44	41.96
	Env. Scientist	5.5	61.66	339.13	50.81	279.45	59.68
	Oil Specialist	7.0	61.66	431.62	50.81	355.67	75.95
Total				\$1,329.67		\$1095.68	\$233.99

The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on July 7, 2006. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$1,123.41** (personnel costs of \$1095.68 + 27.73 vehicle mileage costs) as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911116-0001. 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: \$1,123.41

Claim Supervisor [REDACTED]

Date of Supervisor's review: **9/13/11**

Supervisor Action: **Determination approved**

Supervisor's Comments: