

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/12/2011
Claim Number : A06005-0001
Claimant : State of California
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : ██████████
Amount Requested : \$1,708.22

FACTS:

Oil Spill Incident: On November 19, 2005, the California State Department of Fish and Game Office of Spill Prevention and Response (OSPR) was notified by phone that the F/V CHARGER had grounded in Bechers Bay off Santa Rosa Island, which encompasses part of the Channel Islands National Marine Sanctuary (CINMS), a navigable waterway of the United States. The Owner of the fishing vessel fell asleep while operating the vessel, eventually grounding it. The United States Coast Guard was contacted earlier that day at approximately 1030 by Fish and Game Warden ██████████ to relay the incident. MST1 ██████████ provided FOSC coordination. The OSPR personnel stated they would meet with NRC Environmental Services the next day (November 20th) to visit the site to assess environmental impact.

On November 20, 2005, OSPR personnel ██████████ were transported via boat to the grounding site. Upon arrival, no sheen was visible in the vicinity of the F/V CHARGER wreck. However, ██████████ stated that he observed a slight sheen that could not be confirmed to have originated from the F/V CHARGER.

Description of Removal Activities for this claimant: OSPR personnel conducted initial response which included overseeing fuel removal operations. During this process, it was found that the fuel tanks integrity was compromised and was full of seawater. The invoice provided includes personnel expenses.

The Claim: On August 18, 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 personnel expenses in the amount of \$1,708.22.

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. MST1 [REDACTED] provided FOSC coordination.
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 which of the 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 approved the Claimant’s personnel costs totaling \$1,437.54 as documented on their rate sheet and time cards. However, the NPFC denies the Claimant’s “Federal ICRP 21.36%” markup applied to personnel in this claim because this is an indirect cost not substantiated by the Claimant. 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. 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	8.0	47.34	378.72	39.84	318.72	60.00
[REDACTED]	Env. Scientist	10.0	57.81	578.10	48.65	486.50	91.60
[REDACTED]	Oil Specialist	13.0	57.80	751.40	48.64	632.32	119.08
Total				\$1,708.22		\$1,437.54	\$270.68

The Claimant stated that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on November 19-20, 2005. The Claimant represented 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 **\$1,437.54** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A06005-0001. 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: \$1,437.54

Claim Supervisor:

Date of Supervisor's review: *10/12/11*

Supervisor Action: *Approved*

Supervisor's Comments: