

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/12/2011
Claim Number	: A07011-0003
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$3,166.03

FACTS:

Oil Spill Incident: On or about May 31, 2007 at about 11:30am PST, a report was made to the National Response Center (NRC) via report # 837122, which states a caller is reporting an unknown sheen sighting. The exact source of the spill is unknown at this time. The sheen was discovered by a private citizen on a boat in the Pacific Ocean, a navigable waterway of the US, off the shore of Lacavia Beach.

USCG Sector San Diego responded to the scene. Sample analysis was taken from several vessels although no responsible party was identified. The USCG opened a Federal Project in order to respond to the incident and hired NRC to handle response actions. The spill is reported to be approximately 8800 yds long and 1800 yds wide.

Descriptions of actions performed: The Claimant, State of California Office of Spill Prevention and Response (OSPR), was present on scene throughout the response associated with the Federal Project in the role of State On Scene Coordinator (SOSC). The Claimant is billing strictly for personnel time associated with their oversight during the response.

The Claim: On May 9, 2011, the NPFC received a removal cost claim from the State of California requesting reimbursement of their uncompensated removal costs associated with the joint response in overseeing response actions for this incident. The claimant has provided time cards and daily accountings of personnel labor charged. The claimant has included the State's salary schedule for confirmation of rates charged.

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;
- (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. A Federal project was opened for this incident and identified as A07011.
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 USC § 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 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.

B. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$3,166.03 as full compensation for the reimbursable costs incurred by the claimant and submitted to the NPFC under claim# A07011-0003. All costs deemed compensable are for charges incurred while being retained by the USCG and, are compensable removal costs, payable by the OSLTF as presented by the claimant.

AMOUNT: \$3,166.03

Claim Supervisor: 

Date of Supervisor's review: *5/12/11*

Supervisor Action: *Approved*

Supervisor's Comments: