CLAIM SUMMARY / RECOMMENDATION FORM

Date	:	12/03/09
Claim Number	:	E04902-001 & E04902-003
Claimant	:	Cannery Hamilton Properties, LLC
Type of Claimant	:	Corporate (US)
Type of Claim	:	Removal Costs
Claim Manager	:	Donna Hellberg
Amount Requested	:	$872,166.38

FACTS:

1. Krik Well and Its History: This incident arose from a blowout of the Krik Well, which was located near the intersection of Magnolia and Hamilton Streets in Huntington Beach, California. The well was located on a 38-acre parcel of land that was formerly used as both a landfill and a oil field waste disposal site. Various owners operated the site from approximately 1938 until 1984. Numerous surface impoundments and pits were located on the site. From 1957 until 1971, the impoundments and pits were used to dispose of oil field wastes that included chromic acid, sulfuric acid, aluminum slag, fuel oils, and styrene. From 1971 to 1984, the site became a landfill for disposal of solid wastes like concrete, asphalt, wood, metal and abandoned vehicles.

After the landfill stopped operating in 1984, several businesses purchased the property with the intention of developing it. Despite these intentions, these owners were unable to clean up the property and eventually declared bankruptcy. As the previous owners could not afford to clean up the property, the California Environmental Protection Agency ordered generators of hazardous wastes disposed of at the site to clean it up. These companies included Atlantic Richfield, Co., Chevron, U.S.A., Chevron Pipeline Co., Texaco, Inc., Conoco Inc., Phillips Petroleum Co., Dow Chemical Co., Exxon Mobil Corp., Shell Oil Co., Southern California Edison Co., and Northrop Grumman. These companies eventually formed Cannery Hamilton Properties, LLC ("Cannery Hamilton") and Cannery Hamilton purchased the property's surface estate to clean up the site.

Production records identify Krik Company as the well's last operator. The Krik Company operated the well under an assignment of an oil and gas lease that was initially executed in 1946. The lease gave the lessee the right to place an oil well and production equipment on the property. The lease also gave the lessee the right to remove these items within a reasonable time after the lease's termination. In 1950, the mineral estate covering the well's location was severed from the surface estate.

After obtaining the lease and the well in 1990, the Krik Company produced oil from the well. State production records show that oil was produced from the well until at least March 1996. In 2002, the State Oil and Gas Supervisor ordered the Krik Company to plug and abandon the well as it was the last operator of the well. Despite this order, the well was not properly plugged and abandoned.

On October 31, 1995, the Krik Company transferred to Gregory S. Miral, Sr. and James S. Miral all the company's interest in the lease along with "all appurtences situated on the premises and/or inventory owned by [Krik Company] and located thereon or used in connection with the operation thereof, including tubing, rods, casings or other equipment

used in connection with the existing oil well located on said property." Gregory S. Miral, Sr. allowed Myles Equipment to park equipment and vehicles on the property nearby the well. Representatives of Myles Equipment used a combination lock to enter the facility. Myles Equipment was using the property on the day when this incident occurred.

2. Oil Spill Incident: On the morning of March 17, 2004, a blowout occurred at the Krik Well. When it blew, the well shot up a mixture of oil, gas, and produced water approximately 40 feet into the air for several hours. An unknown quantity of crude oil was released from the well. The oil spill impacted the area around the oil lease site, Magnolia Street and the adjacent sidewalk and an estimated 360 residential properties situated around the site. The impacted area was in close proximity to the Bolsa Chica Wetlands and the Pacific Ocean, a navigable waterway of the US. All drainage from the site leads directly to the ocean. The Orange County Health Care Agency advised that there was a high probability that oil had impacted the wetlands. The oil spill resulted in the closure of Magnolia Street between Hamilton and Bermuda Streets.

Agencies that responded to the spill were Huntington Beach Fire Department, Huntington Beach Police Department, Huntington Beach Public Works, the California Department of Oil and Gas, the California Department of Toxic Substance Control, the California Department of Fish and Game, South Coast Air Quality Management District, the United States Coast Guard (USCG), Orange County Health Care Agency, and the United States Environmental Protection Agency (USEPA). Mr. Robert Wise of USEPA was the Federal On Scene Coordinator (FOSC) for this oil spill incident.

The FOSC, Mr. Robert Wise, was notified of the oil spill incident by the Emergency and Rapid Removal Service contractor. At approximately 1230 hours PST, the Department of Oil and Gas's (DOG) contractor arrived on site and initiated closure of the well and cleanup of the area around the well. After the FOSC advised the landowner, Cannery Hamilton of their potential liability, the Unified Command requested a commitment to cleanup the release including all of the impacted properties with a deadline of 1700 hours that day. Cannery Hamilton stated that they were unwilling to meet the deadline so FOSC Wise issued a Notice of Federal Interest (NOFI) to Cannery Hamilton.

Subsequently, Gregory S. Miral, Sr. arrived on scene and was also issued a NOFI. Gregory S. Miral, Sr. committed to conduct cleanup at that time. However, he later denied responsibility for the incident under the theory that ownership of the well and equipment had passed to the landowner after the lease terminated due to non-production.

3. Description of removal actions performed: The claimant provided 3 binders of invoices and supporting documentation to support the $872,166.38 in response costs claimed. The NPFC claims manager reviewed each and every submitted invoice as well as every "daily" sheet submitted to substantiate the invoices. The review of the actual costs, invoices and dailies focused on (1) whether the actions were taken to prevent, minimize or 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. The claims manager reviewed the payment record against the claimed costs for each contractor/subcontractor. See Enclosure (1) for the summary spreadsheet of vendors that make up this determination and amount allowed for each invoice submitted.

On March 18, 2004 in response to the Notice of Federal Interest (NOFI), Cannery Hamilton retained Advanced Cleanup Technologies (ACTI) and decontaminated the contaminated portion of Magnolia Street and its adjacent sidewalks. Cannery Hamilton responded to the NOFI promptly and agreed to fund all mitigation costs for both the well site and the nearby neighborhood that was directly impacted by the oil spill.

Additional air samples were collected and submitted for volatile organic analysis. The tank farm associated with the well was also sampled. Several local residents and one local oil lease operator informed the Unified Command that substances other than oil may have been stored in the tanks. DOG completed the removal of pooled crude oil from the soil around the well.

On March 19, 2004, Cannery Hamilton initiated a public assistance line in order to provide claim assistance to the community. Cannery Hamilton had the phone lines manned by claims adjusters. They also deployed claims adjusters to the field in order to evaluate the damage to the individual homes in order to determine the site cleanup that was necessary. Cannery Hamilton provided the FOSC with two interim work plans to address removal of contaminated soil from the well site and to allow for well abandonment equipment to be moved into place and to implement a program to wash the residents' cars. The FOSC approved both plans. Cannery Hamilton prepared the well site so that it could accept the well abandonment rig including: scraping the site, stockpiling contaminated soil on site and covering the site with clean fill.

Sample analysis indicated no contaminants above the detection limit and the samples for the tanks indicated that the tanks did not contain pure crude oil. The analysis revealed that the tanks contained diesel, gasoline, and motor oil, chlorinated and non-chlorinated solvents. Additional sampling was scheduled to further define the contents in the tanks. On March 20, 2004, Cannery Hamilton began to deploy their claims adjusters to the impacted neighborhood. An automobile decontamination program was instituted at a local carwash.

On March 22, 2004, Cannery Hamilton completed the gross decontamination of the neighborhood. Claims adjusters continued to assess individual homeowner damage claims. Removal of contaminated vegetation at the well site continued. On March 24, 2004, the Unified Command at the Edison Community Center was demobilized. A project office for cleanup and management of the residential claims was setup at the Pacific Pipeline facility. DOG continued the process of abandoning the well and on March 29, 2004 the plugging and abandonment of the well was completed. By April 9, 2004, the profiling of contaminated soil and vegetation was completed. On April 12, 2004, traffic control equipment that had been provided by the City was replaced with equipment from Cannery Hamilton.

On April 15, 2004, crude oil impacted soil and vegetation from the site area was loaded into rolloff bins and end-dump semi trailers for hauling and disposal as non-hazardous waste. 31 loads were shipped off site for disposal. The shipment of all oil impacted soil and vegetation was completed on April 19, 2004. A sample of the carbon from a drum used on the exhaust of a vacuum truck was submitted for analysis profiling and off site disposal. Air monitoring continued and the results of total VOC monitoring along the fence indicated that the total VOC levels were similar to background concentrations. Cleanup of impacted residences continued.

On April 27, 2004, the FOSC issued a Notice of Completion to Cannery Hamilton advising them that the scope of work that USEPA required through the Unilateral Administrative Order that he issued has been determined complete.

4. The Claim: Cannery Hamilton submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of $872,166.38 for the services provided as ordered by the FOSC. This claim is for removal costs based on the rate schedule in place at the time services were provided.

This claim consists of copies of the invoicing and associated dailies, disposal manifests; NRC report, EPA Pollution Reports, internal email correspondence and proof of payment. The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

Cannery Hamilton's original claim included a request for compensation of both removal costs and property damages. After NPFC's initial review of the claim, the removal costs were separated from the costs incurred to decontaminate property belonging to third-parties living near the site. After Cannery Hamilton was advised that most of its property damage claim was not compensable as "up-stream" damage, it withdrew that portion of its claim. Despite its withdrawal of property damages, Cannery Hamilton resubmitted its proof underlying the property damage claim and requested that its sum certain for removal costs be adjusted to reflect its claim for these costs. As a result of this history, the claimant's property damage claim was adjudicated separately from its removal cost claim even though both claims have been included in this determination.

5. The USEPA Administrative Order: The FOSC, Mr. Robert Wise, issued an Order for removal mitigation or prevention of a substantial threat of oil discharge on March 18, 2004. In summary, all interested parties were ordered to perform the following removal actions: ensure that oil from the site does not enter into navigable waters; all necessary steps were to be taken in order to remove the discharge or threat of discharge of oil into waters or adjacent shorelines to the site, including the removal of soils contaminated with petroleum hydrocarbons; remove and properly dispose of all oil discharged from the Krik Well ; decontaminate Magnolia Street adjacent to the site and properly dispose of any and all wash water; survey all contaminated real and/or personal property, both public and private, that is impacted or contaminated by the release of oil from the Krik Well, and appropriately clean the oil contaminated properties; and decontaminate all public vehicles

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”. 33 USC § 2701 (31).

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. The FOSC coordination has been established under the Federal Project by way of EPA Pollution Reports and the Administrative Order issued by USEPA.
2. The incident involved the discharge and continuing substantial threat of 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 on time.
5. Presentment of costs to the RP, Gregory S. Miral, Sr., was made by the claimant, prior to the submission of the claim.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of all 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 with the exception of denied costs itemized in the attached Summary of Vendors spreadsheet: (See, Enclosure 1 – Summary of Vendors).

B. ***Analysis:***

1. Cannery Hamilton's Status As a Claimant.

Under the OPA, an owner of an onshore facility is liable as a responsible party for any actual discharge of oil or any substantial threat of oil discharge onto navigable waters. 33 U.S.C. §§ 2701 (32) and 2702. Even though they are initially liable, responsible parties may seek reimbursement from the OSLTF for their uncompensated removal costs and damages upon establishing a third-party defense under 33 U.S.C. § 2703 (a)(3). As explained below, the NPFC has determined that Cannery Hamilton is not a responsible party because it did not own or operate the Krik Well. Moreover, even if ownership of the well reverted to the surface estate, Cannery Hamilton would still be entitled to recover its uncompensated removal costs and damages because it has a third-party defense in this case.

In an effort to avoid liability for this incident, Gregory S. Miral, Sr. argued that ownership of the well transferred to the landowner after the oil and gas lease expired in 1997. The NPFC agrees that the Krik Well was a trade fixture. McGreevy v. Constitution Life Ins. Co., 238 Cal.App.2d 364, 369 (Fifth Dist. 1965). The NPFC further agrees that if trade fixtures are not removed during a lease's term or within a reasonable time thereafter, the trade fixtures remain part of the land. U.S. v. Certain Parcels of Land, 131 F.Supp. 65, 70 (S.D. Ca. 1955)(quoting, Trabue Pittman Corp. v. Los Angeles County, 29 Cal.2d 385, 175 P.2d 512, 518 (1946)). Consistent with this rule, California law holds that when a person affixes a fixture to the property of another without an agreement to remove it, the landowner owns the fixture unless the landowner elects to require the fixture's removal or the person who affixed the fixture elects to remove it. Ca. Civil Code § 1013.

Notwithstanding the above, a lessee may retain its ownership of a trade-fixture if the lessee continues to possess the property after the lease's termination with the lessor's consent to the continued possession. If a tenant remains on the property after the lease terminates with the consent of the lessor, then the tenant's right to remove its trade fixtures is extended until the lessor withdraws its consent. In such a case, the tenant has until the expiration of a reasonable amount of time after the lessor's withdrawal of consent to remove the trade fixtures. Restatement (Second) of Property, Landlord & Tenant § 12.3 cmt. K (1977)("If the

tenant remains on the lease property after termination of the lease with the consent of the landlord, the lease is not terminated for purposes of this section [time to remove annexation] until the consent is withdrawn.”).

In this case, Gregory S. Miral, Sr. at a minimum exercised constructive possession of the well and his rights under the Lease by allowing Myles Equipment to use the area surrounding the well. Although it’s not clear whether they expressly consented to this use, the lessors appear to have at least acquiesced to the lessees’ continued use of the property. Based on the rule established by comment k to Restatement (Second) of Property § 12.3, the NPFC finds that the time period for removing the Krik Well from the premises had not yet begun to run because the lessors apparently consented to lessees’ continued use of the property. Because the deadline for removing the well from the property had not yet expired, ownership of the well could not have reverted to the landowner.

Consistent with the above, the lease expressly gave the lessee the right to remove the well provided that “such removal shall be completed within a reasonable time after the termination of the lease”. Paragraph 19 of the Lease. In Stevens v. Iverson, 179 Okla. 401, 66 P.2d 12 (1937) the court concluded that the facts of each case should control how much time should be considered a reasonable amount of time for a lessee to remove its fixtures. In Stevens, the court held that it was proper to consider whether the fixture had been abandoned by the lessee when determining if the lessee had lost its right to remove the wells. Because the lessee in that case had continued to exercise dominion and control over the fixtures without objection from the lessors, the court held that the lessee’s right to remove the casing had not lapsed even though one of the leases had terminated nine years before the casing was sold by the lessee to a third-party.

Based upon the above, the NPFC finds that, even if the lease terminated in 1997 and the lessees’ right to remove its trade fixtures was not extended by comment k to Restatement (Second) Property § 12.3, the lessee’s right to remove the well under the terms of the lease had not lapsed when the well blew in 2004. That’s true even though a substantial amount of time may have passed between cessation of production and the incident. The Lease gave the lessee a reasonable amount of time after its termination to remove the well. Just like the lessee in Stevens, Gregory S. Miral, Sr. exercised dominion and control over the property long after the well apparently stopped producing oil. Mr. Miral’s actions show that he did not intend to abandon his interest in the property or the well and the lessors’ failure to object show that they at least acquiesced in his continued possession of the property. Based on the unique circumstances presented in this case, the NPFC finds that a reasonable amount of time for removing the well in this case had yet to expire when the incident occurred. Because his right to remove the well under the lease had not yet lapsed when the incident occurred, ownership of the well had not reverted to Cannery Hamilton.

Notwithstanding the above, even if ownership of the well had passed to Cannery Hamilton before the incident, Cannery Hamilton would still be entitled to compensation from the OSLTF because it would have a third-party defense to liability under 33 U.S.C. § 2703 (a)(3) based on the lessees’ failure to properly plug and abandon the well. First, because the area’s mineral estate had been severed from the surface estate, Cannery Hamilton was not a party to the lease and had no contractual relationship with any of the lessees operating the well. Second, the evidence in this case shows that the well blew as a result of equipment failure and pressure. If the well had been properly plugged and abandoned as required by the California Department of Conservation, then the well would not have ruptured and this incident would not have occurred. As a result of the unique facts presented in this case, the

NPFC finds that the failure to properly and timely plug and abandon the well was the sole cause of this incident.

Lastly, the NPFC finds that Cannery Hamilton's actions establish that it exercised due care towards the oil and took precautions against the foreseeable acts or omissions of the lessees. These findings are established only as a result of the unique facts of this case. Because Cannery Hamilton owned the surface estate that had been severed from the mineral estate, it had no reason to know whether the lease had terminated for lack of production or payment of royalties. Cannery Hamilton's lack of knowledge regarding the status of the lease was further complicated by the fact that Gregory S. Miral, Sr. continued to use the property by allowing Myles Equipment to store equipment on the property. From Cannery Hamilton's perspective, it had no reason to be put on notice that ownership of the well may have reverted to the surface owner after the lease's termination. For all Cannery Hamilton knew, plugging and abandoning the well could have exposed it to liability for conversion or trespass. Moreover, even if it had a reason to know that the lease had terminated, under California law the mineral estate owners should have been held responsible for plugging and abandoning the well. Wells Fargo Bank v. Goldzband, 53 Cal.App.4th 596 (1997).[1] Given the unique facts of this case, there was no reason for Cannery Hamilton to believe that it had an obligation to address the well. As a result, Cannery Hamilton's failure to plug and abandon the well was reasonable and satisfies the last two elements of the third-party defense.

2. Cannery Hamilton's Claim for Removal Damages:

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

---

[1] Cannery Hamilton relied on Wells Fargo to argue that it was not the owner of the well. However, when establishing liability under the OPA, the NPFC uses the applicable state's property law to determine the issue of ownership. Wells Fargo analyzes whether a surface estate has an obligation to plug and abandon a well under the California Public Resources Code. Because the analysis in Wells Fargo focuses on whether a surface estate owner can be an owner of a well under the Public Resources Code instead of California's property law, its precedent is not controlling here. Nevertheless, the discussion in Wells Fargo is still helpful. The court in Wells Fargo held that under California oil and gas law, when the mineral estate has been severed the owner of the surface estate does not have an obligation to plug and abandon a well that was abandoned by a lessee. The court explained:

> Finally, plaintiff claims that it should not be considered the owner of the wells because the surface owner, not plaintiff, now owns the wells. Plaintiff reasons that since [the lessee] did not remove the well casings, fixtures and other equipment on the leasehold within a reasonable time, the ownership of this property passed to the surface estate owners, the Haupts. Thus, argues plaintiff, the surface estate owners also became owners of the wells. Plaintiff's argument fails because it confuses the right to claim personal property that has been abandoned on a leasehold with the right to claim the leasehold when it has been abandoned or released.
>
> As previously discussed, the ownership of mineral rights in California is considered an interest in real property in the nature of an "incorporeal hereditament." [citation omitted]. This interest involves the exclusive right to drill and produce oil. [citation omitted]. Therefore, when [the lessee] released the leasehold back to plaintiff, it once again became the holder in interest. The fact the law permits the owner of the surface estate to claim any personal property or fixtures left behind by [the lessee] does not equate to ownership of the wells. In other words, while the surface estate owner could claim the fixtures and equipment left by [the lessee], it could not use them to operate the wells already in place. That right remained with plaintiff, along with the right to enter the property to operate the wells. [citation omitted]. The severance of the surface estate, therefore, had no effect on plaintiff's liability for plugging and abandoning the wells.

Wells Fargo Bank v. Goldzband, 53 Cal.App.4th 596, 626-27 (1997).

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 Claims Manager confirmed that response activities performed by the claimant were ordered by the FOSC in accordance with the Administrative Order issued on or about March 18, 2004.

The NPFC has determined $246,780.61 of costs is denied. The itemized breakdown of denied costs is addressed in the attached Cannery Hamilton Summary of Removal Costs excel spreadsheet identified as Enclosure 1. Enclosure 1 is incorporated into this determination as if fully set forth herein. The overall denial summary is as follows:

Aqua Wright Pool Service –	denied $3,458.15
Crawford and Company –	denied $55,114.76
Crawford and Company –	denied $2,352.50
Geosyntec Consultants –	denied $7,204.66
Geosyntec Consultants –	denied $6,960.67
Marine Spill Response –	denied $29,410.94
McDaniel Lambert –	denied $8,350.00
McDaniel Lambert-	denied $239.25
McKittrick Waste-	denied $5,893.78
PNL – Project Navigator-	denied $605.00
PNL – Project Navigator-	denied $40.45
Surface Specialties-	denied $266.53
Surface Specialties-	denied $87.61
Surface Specialties-	denied $255.20
Surface Specialties-	denied $440.00
Surface Specialties-	denied $1,044.82
Surface Specialties-	denied $1,130.74
Surface Specialties-	denied $411.53
United Rentals-	denied $9,401.19
Urashima & Associates-	denied $13,500.00
Urashima & Associates-	denied $5,005.00
Urashima & Asscoiates-	denied $2,200.00
Urashima & Associates-	denied $1,100.00
Urashima & Associates-	denied $220.00
Western Oilfields Supply-	denied $1,877.93
Steve's Detailing-	denied $260.00
Wright Auto Detailing-	denied $260.00
D. Hensley-	denied $82.50
J. Nelson-	denied $822.11
J. Nelson-	denied $536.51
J. Nelson-	denied $9.08
Serv. Eng & Tech-	denied $12,970.00
J. Wogan-	denied $1,140.33
J. Wogan-	denied $316.78
J. Wogan-	denied $89.75
Serv. Eng & Tech-	denied $6,670.00
NDGL Anderson-	denied $21,070.00
C. Ybarra-	denied $89.26
K. Norris-	denied $1,046.75

C. Ybarra-	denied $18.53
K. Norris-	denied $93.83
C. Ybarra-	denied $434.57
C. Ybarra-	denied $55.00
R. Holten-	denied $1,094.80
E. Browning-	denied $82.14
S. Barnes-	denied $647.96
S. Barnes-	denied $49.40
S. Barnes-	denied $37.04
Payroll Chg 0 CPL Lee-	denied $3,361.81
Env Taxes & Licenses-	denied $5,760.00
G. Anderson-	denied $2,725.58
G. Anderson-	denied $1,404.57
M. Malone-	denied $104.11
S. Barnes-	denied $90.00
Serv. Eng & Tech-	denied $10,364.36
C. Lambert-	denied $696.48
C. Lambert-	denied $50.00
NDGL Anderson-	denied $1,182.50
NDGL Anderson-	denied $6,450.00
R. Burstedt-	denied $690.37
R. Burstedt-	denied $30.00
Serv: ALL Other-	denied $6,740.78
Serv. Eng & Tech-	denied $78.00
NDGL Anderson-	denied $1,075.00
NDGL Anderson-	denied $430.00
Undocumented costs-	denied $1,100.00

With respect to the above, all costs denied are for no supporting documentation, missing invoices, illegible copies, no itemization or receipts provided or costs determined as non-OPA compensable removal costs; see the spreadsheet for line by line explanations. It is important to note that the NPFC has communicated with the claimant and provided them an advance copy of the intended denied costs thereby allowing the claimant to provide sufficient evidence in order to meet their burden for compensation. Because the claimant has not produced sufficient evidence or even replied to the NPFC's request, these costs must be denied. Lastly, the NPFC spoke with Mr. Robert Wise, FOSC, who confirmed verbally on March 6, 2008 that are activities performed by Cannery Hamilton were performed and monitored in accordance with his Administrative Order and therefore deemed consistent with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur $625,385.77 of uncompensated removal costs and that that amount is properly payable by the OSLTF. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

3. Cannery Hamilton's Property Damage Claim.

Cannery Hamilton's claim originally included a request for reimbursement for all its costs incurred when decontaminating the personal property that belonged to third-parties living nearby the site. After the NPFC initially reviewed the claim, these decontamination costs were separated out from the other removal costs and categorized as a claim for property damages. After analyzing the issue further, the NPFC advised the claimant that these costs

could not be paid as a property damage claim because they represented "up stream damage". In order to be reimbursable from the OSLTF, damages must have been caused by either an actual discharge onto a navigable waterway or a substantial threat of discharge onto a navigable waterway. The claimed damages must have a nexus to a navigable waterway or they must be denied. It's NPFC's policy that property damaged by oil before it enters the waterway is not compensable because it's an "upstream damage". In order to compensate for a substantial threat of discharge to a navigable waterway, the claimed damage must have been caused by the substantial threat of discharge. Property damage that results from something other than a substantial threat of discharge must be denied.

Cannery Hamilton responded to the NPFC's withdrew its property damage claim. However, when submitting additional information relating to its removal cost claim, Cannery Hamilton resubmitted its proof underlying the property damage claim and requested that its sum certain claimed be adjusted to reflect the resubmitted proof of damages. As a result of this history, the claimant's property damage claim was adjudicated separately from its removal cost claim even though both claims are included in this determination.

The NPFC has carefully reviewed these costs in an effort to determine if they can be paid as either removal costs or property damages. Consistent with NPFC's previous advice to the claimant, any claim for reimbursement of the property damages must be denied because these damages occurred prior to oil reaching a protected waterway and they were not caused by a substantial threat of discharge. As such, these damages are "up-stream" damages that NPFC does not reimburse. Despite this issue, NPFC carefully analyzed the costs submitted by the claimant and determined that at least some of them could be paid as removal costs. The NPFC's rationale for denying or reimbursing each specific cost is detailed in the attached Summary of Property Damages, which is identified as Enclosure 2. Enclosure 2 is hereby incorporated into this determination as if it were fully set forth herein.

Moreover, even if the "up-stream" damages issue did not preclude reimbursement of most of the claimed property damages, the claimant's failure to meet its burden of proof would still require the denial of most of the claimed costs. Several deficiencies in Cannery Hamilton's proof kept reoccurring throughout the adjudication. In particular, the NPFC was frequently unable to determine why repair or replacement was required instead of simply cleaning the item. The field adjuster notes for each individual file were lacking in specificity with respect to the extent of the costs claimed and the circumstances justifying why payment should be made. There was frequently no basis to determine how some of the replacement costs were calculated. Additionally, in most cases there was no proof of the item's age. Without that proof, the NPFC was unable to determine the appropriate depreciation of any item that was being replaced. The photos provided by the claimant were not legible and provided no direct support for the amounts claimed. Receipts were provided in some claim files, but not in others. As a result of these and other problems of proof, most of the property damages would have been denied for lack of proof even if they had not been denied as "up-stream" damages.

Even though most of the claimed property damages were denied, the NPFC found that $21,731.81 of the claimed damages could be reimbursed by the OSLTF as removal costs because they were incurred in order to remove oil as opposed to repairing or replacing property. The claimant represents that all these damages were payable by the OSLTF.

C. ***Determined Amount:***

The NPFC hereby determines that the OSLTF will pay $647,117.58 ($625,385.77 from the removal cost claim + 21,731.81 from the property damage claim) as full compensation for the reimbursable removal costs and damages incurred by the claimant as a result of this incident. All costs claimed are for charges paid for by the claimant for removal actions or damages under the OPA and, are compensable by the OSLTF as presented by the claimant.

AMOUNT: $647,117.58

Claim Supervisor: ***Thomas Morrison***

Date of Supervisor's review: ***2/18/10***

Supervisor Action: ***Approved***

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd. Suite 1000
Arlington, VA 22203-1804
Staff Symbol: (CA)
Phone: 2[redacted]
E-mail:
D[redacted]@uscg.mil
Fax: 202-493-6937

5890
12/3/09

VIA EMAIL [redacted]@projectnavigator.com
[redacted]@dagiannotti.com

Cannery Hamilton Properties, LLC
c/o Mr. Mark Landress
10497 Town & Country Way, Suite 830
Houston, Texas 77024

Re: Claim Number E04902-001 & 003

Dear Messrs. Landress and Giannotti:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $647,117.58 is full compensation for all the removal costs and damages resulting from the incident.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

Director (ca)
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 22203-1804

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.**ccr**.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6839.

Sincerely,

Donna Hellberg
Program Analyst

ENCL: Claim Summary / Determination Form
Acceptance/Release Form
(1) Summary of Vendors Spreadsheet of costs for removal
(2) Summary of Vendors Spreadsheet of costs for damages

U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd. Suite 1000
Arlington, VA 22203-1804
Staff Symbol: (CA)
Phone: 202-493-6839
E-mail: Donna.M.Hellberg@uscg.mil
Fax: 202-493-6937

Claim Number: E04902-001 & 003	Claimant Name: Cannery Hamilton Properties, LLC Attn: Mr. Landress & Mr. Giannotti 10497 Town & Country Way, Suite 830 Houston, Texas 77024

I, the undersigned, ACCEPT the determination of $647,117.58 as full compensation for the removal costs and damages paid or incurred by Claimant for the incident described below. These removal costs and damages resulted from the below-described incident.

Date: 17 March 2004
Location: 21641 Magnolia Street, Huntington Beach, CA
Subject: Krik Well oil spill incident

This determination represents full and final release and satisfaction of all removal costs and damages paid or incurred by Claimant for incident identified above. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

Title of Person Signing	Date of Signature
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

Title of Witness	Date of Signature
Typed or Printed Name of Witness	Signature

DUNS #	Bank Routing Number	Bank Account Number