

## 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	: Donna Hellberg
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: *Thomas Morrison*

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

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

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State of California  
ATTN: Ms. Abe  
PO Box 944209  
Sacramento, CA 94233-2090

5890  
5/12/11

Re: Claim Number A07011-0003

Dear Ms. Abe:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$3,166.03 is full compensation for OPA claim number A07011-0003.

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.

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](http://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 202-493-6694.

Sincerely,

Donna Hellberg  
Claims Manager

ENCL: Claim Summary / Determination Form  
Acceptance/Release Form

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
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E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

Claim Number: A07011-0003	Claimant Name: State of California PO Box 944209 Sacramento, CA 94233-2090
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I, the undersigned, ACCEPT the determination of \$3,166.03 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. 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

_____	_____	_____
TIN Required for Payment	Bank Routing Number	Bank Account Number