

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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5890
4/26/2012

VIA EMAIL [REDACTED]@ospr.dfg.ca.gov

State of California
ATTN: Kelly Abe
Dept of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, CA 94233-2090

RE: Claim Number: 912018-0001

Dear Ms. Abe:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 912018-0001 involving the Commander Oil Company incident. See the attached Claim Summary / Determination Form for details associated with this denial.

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 claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request along with a written justification of why and the NPFC will consider the request for extension and contact you on whether the request is granted. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing 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, may be deemed final agency action. All correspondence should include claim number 912018-0001.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/26/2012
Claim Number	: 912018-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Donna Hellberg
Amount Requested	: \$2,482.17

FACTS:

On July 31, 2007 at about 1630 hours, California Department of Fish & Game, Office of Spill Prevention and Response (OSPR), states that they arrived at Tapia Canyon Road, south of the town of Castaic in Los Angeles County, adjacent to the west side of Castaic Creek to investigate the report of an oil spill. The spill was reported as damage due to vandalism. At 1730 hours, the Claimant met with Justin Lysle Snow who represented Commander Oil Company. Mr. Snow advised the Claimant that there was a release of oil from a production water tank which overflowed a containment area and flowed into Castaic Creek, a dry creekbed. Mr. Snow described that during the early morning hours on July 28, 2007; an unknown subject gained access to a tank valve and opened a transfer line. This permitted an unknown amount of oil to spill into and overflow a containment tank. The spill allegedly traveled from their facility eastward and flowed over the bank of the dry creekbed and pooled at the bottom of the bank. The Claimant reports that Commander Oil had started clean up actions.

THE CLAIM AND CLAIMANT:

On December 7, 2011, the State of California, Department of Fish and Game, Office of Spill Prevention and Response (OSPR), presented a claim for costs they incurred associated with the July 31, 2007 Commander Oil Company incident. OSPR is seeking reimbursement of \$2,482.17.

OSPR submitted copies of the following: cover letter, dated 11/23/11; an OSLTF Optional Claim Form, a California Summary Voucher Form 1081 that indicates the enclosed costs are for \$2,482.17, a OSPR Summary of Costs Incurred Sheet, OSPR Investigation Report, OSPR Hazardous Materials Spill Report,

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".

"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".

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.

Claims for removal costs or damages may be presented first to the Fund by the Governor of a State for removal costs incurred by that State. 33 USC § 2713(b)(C).

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. No FOSC coordination has been provided for the Claimant responding to an OPA event.
2. The National Response Center (NRC) was not notified of this incident pursuant to the National Contingency Plan (NCP).
3. No evidence has been provided to indicate the spilled product was oil or that it discharged or threatened to discharge into a navigable waterway.
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
5. A Responsible Party was identified by the Claimant for this incident. 33 U.S.C. § 2701(32).
6. 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.
7. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were not for actions in accordance with the NCP, or whether the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

The NPFC made an initial request for additional information to the Claimant on March 7, 2012 via email. To date, the Claimant has not responded to the NPFC's request for additional information.

The NPFC requested proof that the actions taken were determined by the FOSC to be consistent with the NCP.

The NPFC performed independent research relating to the spill location and was not able to confirm a nexus to a navigable waterway and as such, the Claimant has failed to meet its burden to demonstrate that this is an OPA event.

The NPFC reviewed the actual cost invoices and dailies to determine that the claimant incurred all costs claimed. The focus was 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 and reasonable.

After a comprehensive review of all documents submitted by the Claimant and independently-obtained documentation and information, the NPFC determines that the work performed by the Claimant and presented to the NPFC as costs associated with removal actions are not OPA-compensable and were not costs associated with actions approved by the FOSC or consistent with the NCP.

Based on the information provided by the Claimant, the NPFC has determined this claim is denied because (1) the Claimant failed to provide all information pursuant to 136.105(a)...which states the Claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to establish that the submitted costs were associated with removal actions approved by the FOSC and consistent with the NCP.

Should the Claimant desire to request reconsideration of this claim, the Claimant will need to provide documentary evidence from the FOSC that the actions undertaken by the Claimant were in response to oil pollution event that actually threatened a navigable waterway of the US vice a dry creekbed that does not appear to be subject to the ebb and flow of the tide and the FOSC will need to provide a written statement documenting such coordination.

Based on the foregoing, this claim is denied.

Claim Supervisor 

Date of Supervisor's review: 4/20/12

Supervisor Action: *Denial approved*

Supervisor's Comments: