

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 703-872-6113

5890
6/5/2012

Via e-mail: [REDACTED]@ospr.dfg.ca.gov
State of California
Dept of Fish & Game OSPR
Attn: Ms Sandi Potstada
Sacramento, CA 94233-2090

Re: Claim Number E07902-0001

Dear Ma. Potstada:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$11,759.14 is full compensation for OPA claim number E07902-0001.

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

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 [REDACTED]

Sincerely,



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

NPFC CA MS 7100
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4200 Wilson Blvd. Suite 1000
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Fax: 202-493-6937

Claim Number: E07902-0001	Claimant Name: State of California Dept of Fish & Game OSPR Attn: Ms Sandi Potstada Sacramento, CA 94233-2090
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I, the undersigned, ACCEPT this settlement offer of \$11,759.14 as full compensation for (removal costs/damages arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

The settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. 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 amounts paid for which I have been compensated under this claim. 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 and associated with those amounts paid for which I am compensated for with this settlement offer. 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 amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund)

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts in the determination for which I received no compensation.

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 those amounts paid for which the Fund has provided compensation by 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

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : E07902-0001
Claimant : State of California
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : Gina Strange
Amount Requested : \$13,038.67

FACTS:

1. Oil Spill Incident

On or about 13 December 2006, the Claimant, State of California, Fish & Game, Office of Spill Prevention & Response (OSPR) received a report of a discharge of fuel oil that was the result of the failure of a fuel oil transfer system that initially discharged into a storm drainage system and ultimately into the Guadalupe River and Alviso Slough, both navigable waters of the US.

The Claimant responded with personnel who made a determination regarding the source of the discharge and to monitor the response actions. It was determined that the source of the discharge was a facility owned and operated by Savvis Communications located at 2055 Lafayette Road, Santa Clara, California and approximately 2,000 gallons of oil was discharged.

The NPFC issued a RP Notification letter to the responsible party, Savvis Communications, Inc. on May 8, 2012.

2. Description of Removal Actions

The Claimant arrived on scene on 13 December 2006 and provided joint oversight with the United States EPA, USCG, and the Santa Clara Fire Department. The Claimant notified the National Response Center of the incident (NRC Report #820797)

A Federal Project Number (FPN) was opened by the Federal On Scene Coordinator (FOSC), United States Environmental Protection Agency (EPA). EPA then hired Clean Harbors Services (Clean Harbors) to perform removal actions under the FPN and to mitigate the effects of the spill into navigable waters.

The Claimant initially dispatched Wardens, Oil Spill Prevention Specialists, and Scientists to the scene. They observed the oil in the River at the outfall, gauged the liquid recovery tanks, conducted a root cause analysis and quantification, determined the amount of oil spilled, prepared the Incident Report, Biological Injury Report which included photographs of the incident scene. The Wardens were present in December 2006 and then they along with Scientists returned to monitor the scene in March 2007.

CLAIM & CLAIMANT:

This claim was presented by the State of California, Fish & Game, Office of Spill Prevention and Response (OSPR) for reimbursement of uncompensated removal costs in the amount of \$13,038.67 on or about 19 March 2012. The Claimant provided the following with the initial submission:

1. A Cover letter;
2. Oil Spill Liability Trust Fund (OSLTF) Optional Claim Form;
3. An SF1081, "Voucher & Schedule of Withdrawal & Credits" documenting total claimed costs;
4. An OSPR Incident Billing Form;
5. An Attendance & Labor Distribution Reports for Personnel Costs;
6. A Response Cost Transmittal Form;
7. A Travel Expense Claim Form;
8. An Investigation Report & Narrative Supplemental dated October 2007 & July 2011 respectively;
9. A Hazardous Materials Spill Report, including "Liquid Product Disposal Tracking Forms";
10. A Santa Clara Fire Department Investigation Report, Case Number 06-8263, 18 January 2007 and signed by Angela Giuliani;
11. A Santa Clara Fire Department, Property & Evidence Report, 13 December 2006;
12. A DFG Request for Analysis & Chain of Custody Record. 15 December 2006, and
13. A Supplemental Report: Biological Injury Report (OES # 06-7355)

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].

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. FOSC coordination was made by U.S. EPA via Federal Project Number E07902.
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. 33 U.S.C. 2712 (h)(1)
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of 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.

Upon review of the claim submission, the NPFC has determined that a majority of the removal costs presented and incurred were billed appropriately at the time services were rendered. The Claimant billed for personnel costs in the amount of \$12,612.10 from December 2006 through June 2007, travel expenses in the amount of \$248.24, and per diem costs in the amount of \$103.25. OSPR also billed \$75.08 in administrative costs.

The NPFC confirmed the presence of the Claimant from the time of the incident in December 2006 until March of 2007 through reports submitted in support of the claim. The NPFC has determined that Personnel costs claimed from 4 May 2007 – 22 June 2007 are not properly supported by documentation and are therefore denied in the amount of \$1,279.53.

The NPFC also denies the \$75.08 in indirect/administration costs as unsubstantiated and therefore not a proper use of the OSLTF.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$11,759.14 of uncompensated removal costs and that this amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number E07902-0001.

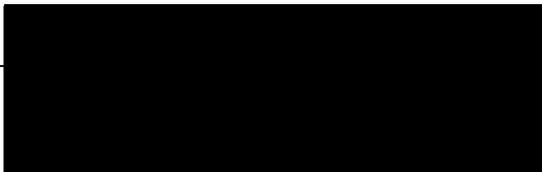
The Claimant states that all costs in the amount of \$11,759.14 are for uncompensated removal costs incurred by the Claimant for this incident. The Claimant represents that these costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

DETERMINED AMOUNT:

The NPFC hereby determines that the OSLTF will pay \$11,759.14 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number E07902-0001.

AMOUNT: \$11,759.14

Claim Supervisor:



Date of Supervisor's Review: *6/5/12*

Supervisor Action: *Approved*

Supervisor's Comments: