U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
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5890
11/14/2012

VIA EMAIL: [redacted]@ospr.dfg.ca.gov

State of California
Department of Fish and Game
Office of Spill Prevention and Response
ATTN: Kelly Abe
1700 K Street, Ste 250
Sacramento, CA 95811

RE: 913006-0001

Dear Ms. Abe:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 913006-0001 involving the dumped drilling mud and oil discovered on the Tejon Ranch on January 13, 2009. Please see the attached Claim Summary / Determination Form for an explanation regarding 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. 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, be deemed final agency action. All correspondence should include claim number 913006-0001.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Galen Wetzel
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 913006-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Galen Wetzel
Amount Requested	: $14,163.80

FACTS:

Oil Spill Incident: On January 13, 2009 a biologist working for Tejon Ranch, CA discovered a spill of drilling mud and oil in Tejon Creek. The location of the spill was within the petroleum leasehold with Longbow, LLC. The Director of Regulatory Compliance Planning and Entitlements with Tejon Ranch notified California State Officials on January 22, 2009 about the discovery.

The delay in making official notification, to California Department of Fish and Game (CDFG), concerning the spill was that Tejon Ranch was attempting to determine the cause and origin of the material as well as it chemical composition so that appropriate clean-up and disposal could be coordinated.[1]

Description of Removal Activities for this Claimant: On January 23, 2009 Tejon Ranch removed the material from the creek and placed the material in storage bins.[2] The claim package does not contain any further information on when and how the contaminated material was disposed of.

During the response and investigation into the spill the CDFG collected the following product samples and had them chemically analyzed at the CDFG Water Pollution Control Laboratory:

Sample Date	Samples taken from	Results
January 29, 2009[3]	Drilling mud and soil from bins numbered 5714, 5959, 5831, and 5730; Longbow well numbers 14, 15, 16, and 17; Two samples collected by Tejon Ranch.	Petroleum hydrocarbons were confirmed in all samples and were consistent with a common source.
March 17, 2009[4]	Eight various locations upstream of the spill location	Only one of the samples was found to contain petroleum hydrocarbons. When compared to a sample taken on 1/29/2009 it was found not to be consistent.
May 29, 2009[5]	Sherman Havens well number 42 and E&B Resources Mgmt. Corp. well number 46-2.	Petroleum hydrocarbons were confirmed in both samples. When compared to samples taken on 1/29/2009 they are not consistent with a common source.

[1] Email date January 22, 2009 from Jim Hirsh (Tejon Ranch) to Jeff Single and Julie Means (CDFG)
[2] CDFG Arrest / Investigation Report July 9, 2012.
[3] CDFG Water Pollution Control Laboratory Report Number L-060-09, dated February 19, 2009.
[4] CDFG Water Pollution Control Laboratory Report Number L-146-09, dated April 9, 2009.
[5] CDFG Water Pollution Control Laboratory Report Number L-298-09, dated June 12, 2009.

The Claim: On October 17, 2012, State of California presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of $14,163.80.

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].

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. No FOSC coordination has been provided by the United States Environmental Protection Agency (USEPA) in accordance with CFR § 136.203.
2. The Claimant has failed to demonstrate how the spill posed a substantial threat of discharge to a navigable waterway.
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 for removal costs.
5. 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 and that the costs for these actions were not 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.

The Claimant has provided documentation that a petroleum contaminated material was discharged into the Tejon Creek but has failed to demonstrate how this incident posed a substantial threat of discharge to a navigable waterway. Based on the evidence[6] provided in the claims package, the Tejon Creek is a dry creek and had no water flowing in it at the time of the spill. Additionally, there is no evidence that this dry creek is subject to the ebb and flow of the tide. The NPFC Claims Manager (CM) was unable to find a downstream tributary that the Tejon Creek flowed into and that the creek appeared to disperse at the valley floor.

The Claimant did not obtain FOSC coordination for this incident and as such, the Claimant has failed to meet their burden pursuant to the governing claims regulations found at 33 CFR 136.203 and 136.205 to demonstrate that any actions undertaken by them were determined by the FOSC to be reasonable, necessary and consistent with the National Contingency Plan (NCP).

[6] Pictures provided of the spill site and supplied Google terrain image.

C. Determined Amount:

Based upon the foregoing, the NPFC denies this claim because the Claimant has failed to demonstrate that the spill posed a substantial threat of discharge into or upon a navigable waterway and because no FOSC coordination was obtained from the Federal on Scene Coordinator (FOSC) to ensure the response was conducted in accordance with the National Contingency Plan.

AMOUNT: **$0.00**

[redacted]

Claim Supervisor: ***Donna Hellberg***

Date of Supervisor's Review: *11/14/12*

Supervisor Action: ***Denial approved***

Supervisor's Comments: