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: 800-280-7118
E-mail: [redacted]@uscg.mil
Fax: 703-872-6113

5890
8/27/2012

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 912071-0001

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 $25,868.71 is full compensation for OPA claim number 912071-0001.

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 202-493-6839.

Sincerely

[redacted]

Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form
(1) Summary Spreadsheet of Costs

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Claim Number: 912071-0001	Claimant Name:	State of California Dept of Fish and Game Office of Spill Prevention and Response P.O. Box 944209 Sacramento, CA 94233-2090

I, the undersigned, ACCEPT this settlement offer of $25,868.71 as full and final compensation for the removal costs arising from the specific claim number identified above.

This 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.

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 for 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	: 912071-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Cynthia E Oliver
Amount Requested	: $30,282.73

FACTS:

Oil Spill Incident: On July 22, 2008, shoreline dredging operations in the vicinity of 2700 Shelter Drive, San Diego, CA disturbed contaminated sediment which caused a sheen to appear in the San Diego Bay.[1] The property on which the shoreline dredging was performed was owned by the Port of San Diego and leased to Driscoll's Boat Works. The lessee commenced shoreline dredging as a preparatory effort for commercialization in the area adjacent to the San Diego Bay.[2]

The incident was reported to the National Response Center (NRC) via report # 878109.[3]

Description of Removal Actions: On the initial day of the incident, the USCG reported a 200x100 rainbow –hued sheen appearing in the vicinity of the shoreline dredging operation.[4] USCG, Port of San Diego, and CA OSPR personnel assessed the pollution impact subsequent to the initial sheen event. Water and soil samples were taken for testing by OSPR as well as other environmental companies contracted by Driscoll's and the Port of San Diego.[5] Diesel fuel was determined to be the contaminate, as evidenced by the lab results submitted with the claim.

The Claim: California Department of Fish & Game, Office of Prevention and Response (OSPR) presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of $30,282.73.

The claim consists of OSPR Incident Summary Sheet, OSPR payroll time sheet records, OSPR incident report, OSLTF Claim Form, and OSPR Investigation Report, witness lists, evidence sample log, contractor invoicing, some detailed daily information, miscellaneous receipts, and copies of disposal manifests.

Upon further investigation, the NPFC was able to obtain the state chemistry lab rate schedule and confirmation of payment made to them for their invoices, a complete copy of the MISLE Case created by the Coast Guard, all Pollution Reports, and witness statements.

APPLICABLE LAW:

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[1] *See,* State of CA DFG Investigation Report dated July 22, 2008.
[2] *See,* State of CA DFG Investigation Report dated July 22, 2008.
[3] *See,* NRC Report 878109 dated July 22, 2008.
[4] *See,* NRC Report 878109 dated July 22, 2008.
[5] *See,* State of CA DFG Investigation Report dated July 22, 2008.

"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:

Overview:

1. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012 (a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
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)(2)
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.

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 some of the removal costs presented and incurred were billed appropriately at the time services were rendered. The NPFC performed independent research into the incident and obtained copies of the Coast Guard Pollution Reports and a copy of all evidence in the Coast Guard MISLE system.

The Claimant billed personnel time in the amount of $5,301.17 from July 19, 2008 through August 8, 2008, Operating Expenses for OSPR in the amount of $1,578.53 which includes contractor billing to OSPR, DFG-Owned Petroleum Chemistry Lab costs in the amount of $19,172.00, and OSPR also billed $4,231.03 in indirect/admin costs. The NPFC confirmed the presence of the Claimant throughout the incident response and activities.

The NPFC denies the $4,231.03 in OSPR indirect/admin costs as unsubstantiated and therefore not a proper use of the OSLTF.

The NPFC has also denied $109.74 in OSPR personnel costs. Two hours for Ben Thompson claimed which predates the incident response as presented in the claim by two days is unsubstantiated.

The NPFC has also denied $73.25 in fees and interest levied against lab service fees charged by the DFG-owned Petroleum Chemistry Lab. The original invoice amount was $1,505.28 and was issued on net-30 terms. The delay in payment of the lab fees which resulted in the interest being charged is not allocable to the Fund for remuneration.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur $25,868.71 of uncompensated removal costs and that that 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 912071-0001.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident. The Claimant represents that all 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 $25,868.71 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 912071-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Claim Supervisor: *N*[redacted]

Date of Supervisor's review: *8/27/12*

Supervisor Action: ***Approved***

Supervisor's Comments:

[redacted]