

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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5890
November 27, 2012

VIA EMAIL: @ospr.dfg.ca.gov

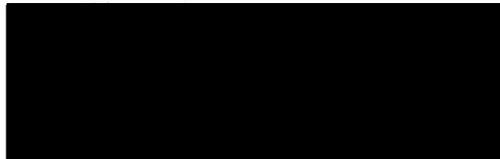
State of California
ATTN: Kelly Abe
Dept of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, CA 94233-2090

RE: 912084-0001

Dear Ms. Abe:

The National Pollution Funds Center (NPFCC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$7,876.86 is compensable for OPA claim number 912084-0001. This reconsideration determination is based on an analysis of information submitted. All costs that are not determined as compensable are considered denied.

Disposition of this reconsideration constitutes final agency action.



Chief, Claims Adjudication Division
United States Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION

Claim Number:	912084-0001
Claimant:	State of California
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	Galen Wetzel
Amount Requested:	\$14,022.45

FACTS:

On April 26, 2007, a vessel owner reported that oil was pouring into Long Beach Harbor from a storm drain outfall in the vicinity of berth 55. The spill was traced to a failed pipeline that leaked into the storm drain. The pipeline is owned by Chemoil Corporation and was being leased by Paramount Corporation, the Responsible Party (RP).¹ An uncertain amount of crude oil was released from the pipeline, but a total of approximately 142 gallons were collected from the marine waters.² The oil spill was reported to have contaminated the seawalls, riprap, pilings, vessels, and marine species in the area.

A Unified Command (UC) was established between USCG, DFG-OSPR, and Paramount Petroleum. The National Response Corporation was contracted for the on-water containment, recovery, and cleanup. Patriot Environmental was contracted for shore-side containment, recovery, and cleanup.³

Control and containment of oil from the storm drain was completed by constructing a sandbag dike at the outflow of the pipe. Oil was contained on the water by booming off the basin around berth 55. Oil was collected on the water with skimmers and absorbent materials. Seawalls were all steam cleaned and contaminated coble surfaces were replaced with new. Exposed vessel waterlines were cleaned with hand cleaner and rags.⁴

CLAIM AND CLAIMANT:

On July 25, 2012, State of California, Department of Fish and Game, Office of Spill Prevention and Response (DFG OSPR), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$14,022.45 seeking reimbursement of their alleged uncompensated removal costs. The costs are for OSPR personnel costs, travel costs, vehicle costs and administrative costs.

The NPFC made an initial offer on the original claim submission in the amount of \$6,368.87 on October 18, 2012. The remaining costs were denied because:

- Claimant failed to provide the additional information that was requested by NPFC, or
- Costs were not reasonable response costs, or
- Costs were unsubstantiated.

¹ USCG Documentation to include MISLE Case #347619 and POLREP.

² DFG-OSPR Environmental Incident Report (drafted by McDermott), page 1.

³ DFG-OSPR Environmental Incident Report, (drafted by McDermott), page 2.

⁴ DFG-OSPR Environmental Incident Report, (drafted by McDermott), page 3.

REQUEST FOR RECONSIDERATION:

On November 8, 2012, the Claimant sent an email request for reconsideration to the NPFC along with supplemental supporting documentation. The Claimant provided Daily Activity Reports to support the personnel cost associated with two people involved in the response that were previously denied by NPFC. This documentation was not included in original submission.

The Claimant asserts in their first submission they did not have access, within the specified time frame, to all the documentation requested by the NPFC.

NPFC Determination on Reconsideration

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 § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR § 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon consideration of all information and arguments made by the Claimant on reconsideration, the NPFC offers the following:

1. The Daily Activity Reports submitted to support the personnel costs for Mr. Moe for April 29, 2007 adequately shows his involvement in the spill response. The NPFC has determined OPA compensable personnel costs for Mr. Moe is approved in the amount of \$213.24.
2. The Daily Activity Reports submitted to support the personnel costs for Mr. Connell for April 26-27, 2007 adequately shows his involvement in the spill response. The NPFC has determined OPA compensable personnel costs for Mr. Connell is approved in the amount of \$984.64.
3. Vehicle usage costs were originally denied for Mr. Connell because his personal time was denied due to inadequate documentation to support his response activities. Now that Mr. Connell's response time has been approved for April 26-27, 2012, the affiliated vehicle usage costs in the amount of \$146.91 are also approved.
4. Travel costs were originally denied for Mr. Connell because his personal time was denied due to inadequate documentation to support his response activities. Now that Mr. Connell's response time has been approved for April 26-27, 2012, the affiliated travel costs in the amount of \$163.20 are also approved.
5. On May 7, 2007, the Unified Command determined the spill site was satisfactorily decontaminated⁵. Personnel costs for Mr. Connell are denied for August 1, 2, 20, 27

⁵ DFG-OSPR Environmental Incident Report (drafted by McDermott), page 3.

and September 17, 2007 because the documented activity, working on Supplemental Environmental Report, was not in direct support of the spill response.

Based on the foregoing and in light of the new documentation provided, the NPFC has determined that \$7,876.86 is OPA compensable. The NPFC has denied \$6,145.59 for which the Claimant has not requested reconsideration or produced new information to overturn the original denial of said costs.

DETERMINED AMOUNT ON RECONSIDERATION: \$7,876.86

Claim Supervisor



Date of Supervisor's Review: *11/27/12*

Supervisor Action: *Approved on reconsideration as stated above*

Supervisor's Comments:

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 912084-0001	Claimant Name: State of California
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I, the undersigned, ACCEPT this settlement offer of \$7,876.86 as full and final compensation for removal costs 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.

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.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied 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 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
_____ Printed Name of Claimant or Authorized Representative	_____ Signature

_____ Title of Witness	_____ Date of Signature
_____ Printed Name of Witness	_____ Signature

*DUNS/EIN/SSN	Bank Routing Number	Bank Account Number
*Required for Payment		