

CLAIM SUMMARY / DETERMINATION FORM

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| Date | : 3/18/2010 |
| Claim Number | : E09902-001 |
| Claimant | : State of California |
| Type of Claimant | : State |
| Type of Claim | : Removal Costs |
| Claim Manager | : Mark Erbe |
| Amount Requested | : \$24,862.48 |

I. FACTS:

1. Oil Spill Incident:

On 30 January 2009, at 5:24 AM the 911 operator routed a call to the Ventura County Fire Department (VCFD), California. The caller reported that a truck went down an embankment off Highway 33, near the intersection of Cherry Creek Road. The accident site was at milepost 40.9 on a steep downhill gradient, in a remote area of the Los Padre National Forest, which operated and maintained by the US Forest Service (USFS).

VCFD arrived at the accident site and found an abandoned, overturned truck with an estimated 7,100 gallons of one-gallon plastic containers, which had discharged approximately 1,700 gallons what smelled like diesel oil that was on its way to Adobe Creek. Adobe Creek had water flow at the time of this incident. VCFD HAZMAT preliminary tests showed that the liquid was a petroleum-based product and contacted. VCFD contacted the California Department of Fish and Game (DFG), Office of Oil Spill Prevention and Response (OSPR) to respond to the scene.

OSPR personnel arrived on scene and tracked an estimated, 1,000 gallons of petroleum product (diesel oil) that had traveled about one and a quarter miles downstream, at which point, there was no longer water on the surface. Adobe Creek flows toward Sespa Creek, which flows into the Santa Clara River then on to the Pacific Ocean. Adobe Creek is a navigable waterway of the US. The discharge occurred on land owned by the US Department of Agriculture Forest Service (USFS). USFS set up the Unified Command and acted as the on-scene coordinator. A contractor was hired to remove the oil from the creek bed and to set up an underflow dam. The steep embankment, brush and difficulty accessing the spill area created additional costs for time. There was a question about how much oil to remediate because of a Steelhead Salmon spawning area downstream from the spill site.

2. Claimant:

The claimant is the California Department of Fish and Game (DFG), Office of Oil Spill Prevention and Response (OSPR), which has primary authority to direct removal, abatement, response, containment and cleanup efforts for any spill in State waters. Three OSPR personnel were on scene during the initial response. OSPR personnel collected oil samples from the containers, the truck, and soils down to the creek, then to the furthest point that the oil reached downstream. Additional, OSPR personnel observed cleanup activities by the contractor and represented the state's interests at the Unified Command near the spill site.

3. Claim:

On February 24, 2010, the NPFC received the State of California DFG claim for a sum certain of \$24,862.48 for its response and removal costs incurred during this incident. DFG cooperated with the FOSSC as specified in the National Contingency Plan. The claimant submitted daily reports by its OSPR

officers and cost accounting of its travel time and vehicles. The US Environmental Protection Agency (EPA) Federal on Scene Coordinator directed DFG to apply for reimbursement of its costs through the NPFC.

4. Vehicle Investigation:

EPA, USFS and DFG personnel coordinated their investigation with the California State Highway Patrol on the ownership of the vehicle. California Highway Patrol Officer Chris Terry questioned the last registered owner, on February 4, 2009, a Mr. Jesus Lozano of 4945 Burson Way, Oxnard, California 93036. Mr. Lozano bought the vehicle June 7, 2006 but failed pay registration fees on the vehicle and told investigators that he sold the vehicle to Manuel Guerrero on January 17, 2009. There is no record of this sale on the Vehicle Registration History and no release of liability filed by Mr. Lozano. Investigators conducted surveillance then closed the investigation, after concluding that they would find a responsible party. The vehicle, a red dump truck with California license 7P40258 was placed in an impound lot.

II. 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 because 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].

III. DETERMINATION OF LOSS:

A. Overview:

1. The Federal on Scene Coordinator, Jason Musante of the EPA Region IX took over the response and cleanup activities from USFS, on March 3, 2009. The incident was federalized because the scope of work and cleanup cost issues.
2. DFG Office of Spill Prevention and Response were initially on scene acting on behalf of the State's interests until federal coordination took over.
3. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990 (OPA 90).
4. 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.
5. The claim was submitted within the time limit for removal claims under OPA 90.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The Claims Manager reviewed the costs presented by the claimant and confirmed the reasonableness of these costs with the FOSC, Jason Musante on March 1, 2010. The review focused on the following issues:

- (1) Whether the actions taken were compensable "removal actions" under OPA and its governing 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, and
- (4) Whether the costs were adequately documented and reasonable.

Having reviewed this claim, the Claims Manager determines that there are no discrepancies regarding reimbursement or cost documentation provided by the claimant. The claims manager contacted the FOSC to ask why DFG's could not have been placed on a PRFA and was told that DFG's OPPR team had been overlooked largely because when EPA federalized the incident on March 3, 2009 the state response was overlooked. Mr. Musante explained that due to the remoteness of the spill site and difficulty accessing the creek bed that costs may appear high but are within reason for the travel time to and from the scene and the work by the OSPR team in assisting on scene.

Personnel costs were the largest component at \$20,479.08 with 353.75 hour invoiced for eight employees from February 9, 2009 through July 7, 2009. One employee's travel expenses came to \$48.00. DFG vehicle usage costs for 4-wheel vehicles came to \$3,602.40. State's administrative costs for fiscal year '09/'10 (see memorandum dated August 9, 2009 effective July 1, 2009 20.08% department overhead rate) came to \$733.00 (with Fish & Game Patrol Lieutenant had most hours and admin rate of \$61.40).
Administrative Costs:

IV. AMOUNT: \$24,862.48

V. RECOMMENDATION:

The NPFC determines that the Oil Spill Liability Trust Fund will compensate the claimant for the full amount of the sum certain.

Claim Supervisor: Thomas Morrison

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

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: 2 [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
3/8/2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number:

State of California
Dept of Fish & Game (OSPR)
Attn: Becky Mack
PO Box 944209
Sacramento, CA 94244-2090

Re: Claim Number E09902-001

Dear Ms: Mack:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$24,862.48 is full compensation for OPA claim number E09902-001.

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,

Mark Erbe
Claims Manager

ENCL: 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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Fax: 202-493-6937

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| Claim Number: E09902-001 | Claimant Name: State of California Dept of Fish & Game (OSPR) Attn: Becky Mack PO Box 944209 Sacramento, CA 94244-2090 |
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I, the undersigned, ACCEPT the determination of \$24,862.48 as full compensation for the claim listed above.

This determination represents full and final release and satisfaction of all claims under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a) (4)0, associated with the above referenced claim. This determination is not an admission of liability by any party. 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 loss. 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 the incident. 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 costs that are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

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 the same claim, 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).

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| _____ | _____ |
| Title of Person Signing | Date of Signature |
| _____ | _____ |
| Typed or Printed Name of Claimant or Name of Authorized Representative | Signature |

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|----------------------------------|-------------------|
| Title of Witness | Date of Signature |
| _____ | _____ |
| Typed or Printed Name of Witness | Signature |

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| TIN Required for Payment | Bank Routing Number | Bank Account Number |