U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-6694
E-mail [redacted]
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5890
9/6/2011

SENT VIA E-MAIL [redacted]

State of California
Dept of Fish & Game (OSPR)
Attn: [redacted]
PO Box 944209
Sacramento, CA 94233-2090

Re: Claim Number 911009-0001

Dear Ms. [redacted]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $155,748.23 is full compensation for OPA claim number 911009-0001.

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.

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 202-493-6694.

[redacted]

ENCL: Claim Summary/Determination Form
Acceptance/Release Form
Excel spreadsheet of costs

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Claim Number: 911009-0001	Claimant Name: State of California Dept of Fish & Game (OSPR) Attn: [redacted] PO Box 944209 Sacramento, CA 94233-2090

I, the undersigned, ACCEPT the determination of $155,748.23 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), 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 which 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).

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	: 911009-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [redacted]
Amount Requested	: $201,308.46

FACTS:

1. ***Oil Spill Incident***: On December 17, 2008, a petroleum sheen was discovered in the Loma Alta Creek in Oceanside, California by an Oceanside work crew. The spill was first reported to the National Response Center (NRC) by the San Diego Gas & Electric Company (SDG&E) at 6:22 pm, and then again at 7:30 pm by the United States Coast Guard Sector San Diego.[1] SDG&E reported that they discovered a mixture of diesel fuel and gasoline spilling into a storm drain from some contaminated soil and that the original source of the contamination was from old, leaking underground storage tanks (UST) that had previously been removed. City workers reported the incident to the Oceanside Fire Department (OFD). The OFD responded to the incident.

   The California Department of Fish & Game (California DFG), State on-Scene Coordinator (SOSC) Warden [redacted] California DFG Senior Environmental Scientist [redacted] and [redacted] of the San Diego City Hazmat team met with OFD Captain [redacted] at the incident site. The OFD and city workers tracked the petroleum from Loma Alta Creek and determined that the discharge came from an unknown underground source located at 2002 Oceanside Boulevard, in the Agri Chemical & Supply Incorporated (ACSI) parking lot. They also determined that the discharge was a mixture of gasoline and motor oil. SOSC Moe discovered a three inch deep trench on the side of the ACSI building full of oil and water.

   Captain [redacted] informed SOSC Moe that approximately 100 gallons of oil had already discharged into the storm drain before the OFD was able to block the storm drain with sand bags. And, that due to the heavy rain, a small amount of oil continued to discharge over the sand bags. Captain [redacted] also stated that oil was detected in the Loma Alta Creek. The Oceanside City Lifeguards reported that they saw oil and oil sheen entering the Pacific Ocean via the mouth of the Loma Alta Creek, approximately 1.5 miles away from the incident site.

   The OFD called HCI Environmental & Engineering Service (HCI) to perform clean-up response. They arrived on scene with a vacuum truck and work crew to remove the oil from the ground and the storm drain. California DFG took oil samples from the trench and the storm drain. [redacted], ACSI owner, informed the SOSC that SDG&E hired PAR Electrical Contractors, Incorporated (PAR) to dig trenches in the center of Oceanside Boulevard, as well as dig up to each business on that street in order to move utility lines underground, up to the ACSI building. According to Mr. [redacted] the new power line installation was completed and the trench was filled with a mixture of sand

[1] See NRC Report #892790 and NRC Report #892796.

and concrete, and that no oil was detected during the trenching project.[2] He also informed the SOSC that he was not aware of an UST on his property and did not want to take responsibility for the clean-up until he was given proof that the oil came from his property. The SOSC received authorization to use funds from the California Office of Spill Prevention and Response (OSPR) because he was unable to prove that Mr. [redacted] was the responsible party (RP) for the oil spill.

2. ***Description of Removal Activities for this claimant:*** HCI was called out for the clean-up by the state. Their scope of work was to remove the oil from the ground surface and the storm drain. HCI completed the ground surface clean-up and then removed oil from the affected portions of the Loma Alta Creek. They deployed over twenty personnel that included project managers and supervisors, certified hazwoper field technicians and drivers, vacuum trucks, enclosed vans, utility vehicles, and several support vehicles. HCI handled all disposal activities, as well. Removal actions were completed on December 21, 2008.

3. ***The Claim:*** On November 5, 2010, the State of California submitted a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of $201,308.46 for reimbursement of their uncompensated removal costs[3]. The claim consists of a billing summary, invoices, personnel time records, State investigation reports, Incident Action Plan, HCI dailies, rate schedule, and Health and Safety Plan.

   The State of California is claiming $2,179.50 in State personnel expenses, $165,403.24 in operating expenses for work by HCI and $33,725.72 in administrative costs.

   In 2009, the San Diego Regional Water Board informed Warden [redacted] that the decision had been made not to investigate the source of the spill any further due to the spill no longer posing an immediate threat to surface water and lack of funds to remove the "suspected" underground storage tank[4]. Therefore, the responsible party (RP) remains unknown.

APPLICABLE LAW:

"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."

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 such an incident." 33 USC § 2701(31).

The President shall publish proposed regulations detailing the manner in which the authority to obligate the Fund. The regulations are found at 33 CFR Part 136.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC § 2712(a)(4) and 2713 of OPA and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal

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[2] See California DFG Arrest/Investigation Report dated February 11, 2009, page 2.
[3] See California DFG claim submission cover letter dated October 27, 2010.
[4] See California DFG Arrest/Investigation Report dated February 11, 2009, page 3.

costs that are determined to be consistent with the National Contingency Plan (NCP) and uncompensated damages.

Claims for removal costs may be presented first to the Fund by the Governor of a State for removal costs incurred by that State. 33 U.S.C. § 2713(b)(1)(C).

Claims for uncompensated removal costs must be presented to the Fund within six years after the date of completion of all removal actions for that incident. 33 USC § 2712(h).

The Claims Regulations at 33 CFR § 136.105(b) provide that each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. Claimant bears the burden of providing all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim. 33 CFR 136.105(a). In addition, 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 [Federal On-Scene Coordinator] 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. 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 that no suit has been filed in court for the 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 some 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 as set forth below.

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 a complete review and adjudication of the costs presented by the Claimant in this case, the NPFC has identified some discrepancies within the cost documentation.

PERSONNEL COSTS:

HCI (contractor) billed $330.00 for Hazwoper Technician [redacted]. The billing was for six standard time hours at the rate of $55.00 per hour. However, the Claimant, California DFG, did not provide any dailies or other cost documentation for Mr. Esquivel. Reimbursement of the $330.00 for Mr. [redacted]'s work is therefore denied because it has not been properly substantiated.

HCI also billed $440.00 for Hazwoper Technician [redacted] at the rate of $55.00 per hour for eight hours. Again, no dailies or cost documentation were provided for Mr. [redacted]s work therefore the $440.00 is also denied.

MATERIALS AND EQUIPMENT:

The Claimant requested reimbursement for materials and equipment used by HCI (contractor) during the clean-up. Reimbursement was requested for fourteen rain suits at the rate of $24.95 each for a total of $349.30. However, the rain suits were not listed on the HCI rate schedule and $349.30 will not be reimbursed.

Nine tri-wall boxes with pallet, liner and hardware were billed at $125.00 each for a total of $1,125.00, but were also not listed on the rate schedule therefore the $1,125.00 will not be reimbursed.

One gallon of Simple Green was billed at $25.00 per gallon, and was also not listed on the rate schedule therefore the $25.00 will not be reimbursed.

Hudson spray bottle was billed at $45.00 each, and was not listed on the rate schedule therefore the $45.00 will not be reimbursed.

Three pairs of waders were billed at the rate of $125.00 each for a total of $375.00, but were not listed on the rate schedule therefore the $375.00 will not be reimbursed.

The Gold Crew 5-gallon pail was billed at $325.00 each, but again, was not listed on the rate schedule therefore the $325.00 will not be reimbursed.

Three portable toilets were billed at the rate of $125.00 each for a total of $375.00, but were not listed on the rate schedule therefore the $375.00 for the three portable toilets will not be reimbursed. Additionally, the $250.00 billed for the mobilization and demobilization of the portable toilets at $125.00 each trip is also denied.

The Claimant requests reimbursement in the amount of $1,750.00 for the use of the stake bed trucks with lift gates, operated by Mr. [redacted] and Mr. [redacted]. The NPFC did not allow the time associated with either Mr. [redacted] or Mr. [redacted] because there were no dailies or proper documentation for each of these two men (HCI billed $750.00 total at the rate of $125.00 per hour for Mr. [redacted]'s vehicle operation of the stake bed truck for six hours which is denied since the NPFC denied the time for Mr. [redacted] and HCI billed $1,000.00 total at the rate of $125.00 per hour for Mr. [redacted]s vehicle operation of the stake bed truck for eight hours which is denied since the NPFC denied the time for Mr. [redacted] as discussed above).

The invoice charge for the "transportation of drums and tri-wall boxes to TSDF, $125.00 per hour" on page eleven of Invoice #12095, for a total of $1,000.00 is denied. That same amount was previously billed as Mr. [redacted]s vehicle operation of the stake bed truck, as noted above.

HCI billed $10,500.00 for lodging and per diem, per day, per person "to include Environmental Technicians, Drivers, Project Managers and Project Supervisors" for three days, for a total of twenty personnel at the rate of $175.00 per day.[5]

According to the documents submitted with the claim, there were not twenty personnel who worked three days. The NPFC requested additional information on March 23, 2011 regarding the exact names of the twenty workers who worked for the three days indicated on the invoice. The Claimant responded by providing the IQ Personnel Environmental Staffing (IQ) invoice and dailies that was also submitted with the claim.[6] The invoice is for fifteen IQ Field Technicians who worked two days, Friday, December 19, 2008 and Saturday, December 20, 2008. The NPFC will allow per diem for the fifteen Field Technicians, for two days, at the rate of $175.00 per day, for a total of $5,250.00. Based on the HCI dailies and HCI Invoice #35178, the HCI personnel who worked three days under the $175.00 per day per diem rate were [redacted], [redacted], [redacted], [redacted], and [redacted].[7] The Claimant will be reimbursed $2,625.00 for the five HCI personnel and $5,250.00 for the IQ field technicians for a total of $7,875.00 in per diem costs. Therefore, $2,625.00 of the $10,500.00 per diem costs is denied as not properly supported by the record.

The Claimant requested $33,725.72 in administrative costs regarding uncompensated removal costs incurred by the Claimant for this incident on December 17, 2008. However, no cost documentation was provided with the original claim submittal. On March 7, 2011, the NPFC requested additional information with respect to these costs. In her March 9, 2011 e-mail response, [redacted] of OSPR explained that the administrative costs were for California DFG's costs for overhead.[8] The NPFC will not reimburse for administrative costs with regards to the Federal Indirect Cost Rate as the costs are unsubstantiated. Therefore, the administrative costs of $33,725.72 are denied.

Finally, the Claimant requested $2,820.21 for a late payment penalty fee under operating expenses. This cost was incurred by not paying HCI invoice # 12095 in the amount of $162,583.03 in the allotted time frame. Therefore, at the time when payment was made,

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[5] See HCI Invoice #12095 dated December 31, 2008, page 4.
[6] Abe, Kelly. "NPFC Claim Number 911009-0001." E-mail to [redacted]. March 23, 2011.
[7] See HCI Invoice #35178 dated December 17, 2008.
[8] Abe, Kelly. "NPFC Claim Number 911009-0001/Oceanside Petroleum Spill." E-mail to [redacted] March 9, 2011.

the Claimant paid HCI $162,583.03 for their services, plus $2,820.21 in late fees, for a total of $165,403.24. The NPFC will not reimburse $2,820.21 of operating expenses for the HCI late payment penalty, as late penalty fees are not an OPA compensable removal costs.

Based on the NPFC's denial of $45,560.23, the NPFC determines that the OSLTF will pay $155,748.23 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911009-0001.

C. ***Determined Amount:***

The NPFC determines that the OSLTF will pay $155,748.23 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 911009-0001. 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.

AMOUNT: $155,748.23

Claim Supervisor: [redacted]

Date of Supervisor's review: **9/6/11**

Supervisor Action: ***Determination approved***

Supervisor's Comments: