

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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9/1/2011

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: Claim Number: A05024-0001

Dear Ms. Abe:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number A05024-0001 involving the F/V JEWEL. Please see the enclosed Claim Summary/Determination Form for further explanation.

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 A05024-0001.

Mail reconsideration requests to:

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

████████████████████  
Lead Claims Manager  
U.S. Coast Guard

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/1/2011
Claim Number	: A05024-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Donna Hellberg
Amount Requested	: \$3,952.68

### **FACTS:**

On Sunday, July 10, 2005, the commercial fishing vessel JEWEL came aground on Venice Beach, Half Moon Bay as a result of engine failure. The USCG opened a Federal Project and contracted with Parker Diving to remove petroleum products from the vessel. Parker Diving pumped off approximately 565 gallons of diesel fuel from four fuel tanks aboard the vessel and secured the fuel in 55-gallon drums prior to removal from the beach. The vessel owner, Elda Henry, contracted with Parker Diving for the salvage of the vessel. The vessel was demolished and removed from the beach. The beach cleanup was completed with all debris being hauled to a San Mateo landfill.

### **CLAIM:**

On August 25, 2011, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$3,952.68 for the services provided from July 10, 2005 through July 13, 2005.

This claim consists of copies of: the Optional OSLTF Claim Form; State of California Department of Fish and Game Office of Spill Prevention and Response cover letter dated August 16, 2011, Standard Form 1081, Summary of Costs sheet, Itemization of personnel and equipment used, timesheets, OSPR Daily Activity Report, and OES Hazardous Materials Spill Report.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

### **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. FOSC coordination was established via Federal Project Number A05024. 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a substantial threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was not submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
4. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the uncompensated removal costs claimed.

**B. Analysis:**

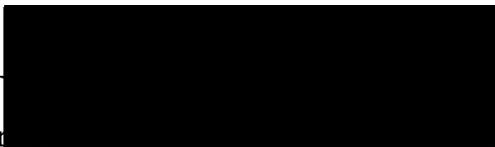
NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the 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 Claims Manager validated the costs incurred and determined what was reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

Upon review of the claim submission, the NPFC notes that the Claimant has failed to present their claim for removal costs to the NPFC within the six statute of limitations pursuant to 33 U.S.C. § 2712(h)(2) and 33 CFR 136.101(a)(2).

**C. Determined Amount:**

The NPFC hereby determines this claim is denied because the Claimant failed to present their claim to the NPFC within the six year statute of limitations for removal costs claims pursuant to 33 U.S.C. § 2712(h)(2) and 33 CFR 136.101(a)(2).

**AMOUNT: \$0.00**


Claim Supervisor
Date of Supervisor's review: 9/1/11
Supervisor Action: <i>Denial approved</i>
Supervisor's Comments: