

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/08/2010
Claim Number	: 910066-001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$18,332.13

### **FACTS:**

- 1. Oil Spill Incident:*** The State of California (CA) Department of Fish and Game (DFG) Office of Spill Prevention and Response (OSPR),<sup>1</sup> reports that on May 14, 2008, approximately 600-1000 gallons of red-dye diesel fuel were released onto the ground due to a generator failure at a rural indoor marijuana grow operation. The fuel released from the grow site, migrating downhill and into a tributary of upper Hacker Creek, which is a tributary of South Fork Salmon Creek, which leads into Salmon Creek, leading to South Fork Eel River, which becomes Eel River, all navigable waterways of the US.

On May 14, 2008, at approximately 17:45 hours, Fish and Game Warden A. Bolton was notified by the Eureka DFG that an unknown caller reported a diesel spill into Hacker Creek. Because daylight was ending, the location was remote and the area was known for its illicit marijuana potential, Warden Bolton made the decision to investigate on-scene the following day.<sup>2</sup>

On May 15, 2008, Warden Bolton, along with Wardens Ramos, Wells and Wilcox found and inspected the grounds of the spill site. It was determined that a generator running inside a makeshift enclosure attached to one of the three buildings on the property was the cause of the fuel spill. The building was on the bank of Hacker Creek, and the soil appeared to be soaked with diesel. On closer inspection, it was discovered that the same red-dye diesel was found in the waters of Hacker Creek.

Because of the possibility of this location being used as an illegal marijuana grow, the Wardens left the spill site and returned the next day, May 16, 2008, along with members from Humboldt County Drug Task Force and Humboldt Sheriff's Department. The address of the spill site was determined to be 1480 Road B, Upper Thomas Road, Miranda, CA, with the owner (now deceased<sup>3</sup>) being named as Mr. Albert Elie Tordjman. Mr. Tordjman denied that he was responsible for the diesel spill, as he lived in Thailand and stated to Warden Matt Well that he rented out his property to Mr. Mark Gore and Mr. Wayne Netihold (He stated to Warden Bolton, however, that he rented out the property to an "Andrew," and that he had a notarized rental contract, which he never produced). Mr. Tordjman also stated that he did not know what was going on at his property in his absence; however, several CA 215 Prescription Documentation sheets were posted around the property (allowing him to spoke marijuana for medicinal purposes). When asked if he was illegally cultivating marijuana on his property, he stated that he liked

<sup>1</sup> See CA DFG OSPR Incident Report # 58391, dated 5/14/2008

<sup>2</sup> See CA DFG Arrest/Investigation Report, completed by Warden A.J. Bolton, submitted to the NPFC by the claimant on 2/01/2010

<sup>3</sup> See email from Ms. Kelly Abe, CA DFG, to ms. Alyssa Lombardi, NPFC, dated 2/03/2010

“outdoor stuff, not indoor weed,” and that he had just recently returned from Thailand, his place of residence.

Mr. Tordjman told CA DFG OSPR that he had been in contact with Mr. Jim Crook, owner of North Coast Environmental Construction (North Coast), and would pay for the clean-up and removal of the diesel and contaminated soil/debris. North Coast retained SHN Engineering to assist them in the cleanup and removal activities.

In June of 2008, Mr. Crook spoke with Warden Bolton and informed him they were no longer working with Mr. Tordjman, as he had fled the country and was in Thailand. Mr. Tordjman was not planning on returning to the United States. On September 16, 2009, Mr. Tordjman was reported dead in Thailand, from a brain hemorrhage. North Coast was not paid by Mr. Tordjman before he fled the United States. However, in civil court, they received Mr. Tordjman’s property in lieu of payment.<sup>4</sup>

***Description of removal actions performed:*** The claimant, CA DFG OSPR, performed the initial response to the spill site. After locating the owner of the property, Mr. Albert Tordjman, and speaking with the contractor hired for cleanup and removal of the red-dye diesel from the property and affected waterway, CA DFG OSPR maintained a presence as monitoring the work being performed. The use of personnel and vehicles to perform this assessment, monitoring and response were uncompensated by the property owner, Mr. Tordjman, before he fled the United States.

- The Claim:*** On February 1, 2010, CA DFG OSPR submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$18,332.13 for the services provided from May 14 through August 15, 2008. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

This claim consists of copies of the invoicing and associated dailies, a copy of CA DFG Investigation reports written by Warden AJ Bolton and Warden Matthew Wells, a copy of CA Regional Water Quality Control Board North Coast Region Cleanup and Abatement Order, a copy of the Humboldt County Biological Injury Report, a copy of North Coast Laboratories, Ltd Case narrative for Lab Order # 0805450, photographs and internal email correspondence.

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 FOOSC, 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

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<sup>4</sup> See email from Ms. Kelly Abe, CA DFG, to ms. Alyssa Lombardi, NPFC, dated 2/03/2010

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. The State OSC coordination has been established via CA DFG OSPR Incident Report # 58391.<sup>5</sup>
2. The incident involved the report of a 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 on time.
5. As Mr. Albert Tordjman is deceased, the NPFC has determined that there is no Responsible Party.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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.

### **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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$18,332.13 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #910066-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from May 14 through August 15, 2008. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

### **C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$18,332.13 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 910066-001. 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: \$18,332.13**

Claim Supervisor: *Donna Hellberg*

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<sup>5</sup> See CA DFG OSPR Incident Report # 58391, dated 5/14/2008

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

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4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100  
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Fax: 202-493-6937

5890  
2/08/2010

Via email: [REDACTED].dfg.ca.gov

State of California  
Department of Fish and Game  
Attn: Ms. Kelly Abe  
P.O. Box 944209  
Sacramento, CA 94233-2090

Re: Claim Number 910066-001

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 \$18,332.13 is full compensation for OPA claim number 910066-001.

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.

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](http://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,

Alyssa Lombardi  
Claims Manager

ENCL: Claim Summary / Determination Form  
Acceptance/Release Form

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

Claim Number: 910066-001	Claimant Name: State of California Department of Fish and Game Attn: Ms. Kelly Abe P.O. Box 944209 Sacramento, CA 94233-2090

I, the undersigned, ACCEPT the determination of \$18,332.13 as full compensation for the claim listed above.

This determination represents full and final release and satisfaction of all removal cost claims 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

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number