

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/30/2011
Claim Number	: 911023-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Mark Erbe
Amount Requested	: \$783.35

FACTS:

1. Oil Spill Incident:

On the June 4, 2005 at 3:43 PM, a citizen reported to the National Response Center (NRC) that he observed an unknown quantity of diesel sheen and identified the source of the discharge as the recreational vessel, LADY IRMA.¹ The report gave the location of the spill at Third Street, near green marker 17, on the San Rafael Canal in Marin County, CA. The San Rafael Canal is a tributary of San Pablo Bay and a navigable waterway of the United States.²

The NRC reported that the San Rafael Fire Department responded to this spill and placed boom around the vessel until it could be raised on June 5, 2005.³

2. Claimant:

The claimant is the California Department of Fish and Game (DFG), Office of Oil Spill Prevention and Response (OSPR). OSPR has primary authority to direct removal, abatement, response, containment and cleanup efforts for any spill in State waters.

3. Claim:

The claimant requested compensation from the Oil Spill Liability Trust Fund (OSLTF) for the uncompensated removal costs associated with the monitor and assessment for this incident. The claimant submitted the NPFC OSLTF Claim Form with an invoice in the sum certain of \$783.35.⁴

Personnel Costs were \$513.30, equipment costs were \$212.40 for use of a DFG four wheel drive vehicle and admin costs of \$57.65 were presented. Support documentation included a copy of Warden Sutton's Attendance and Labor Distribution Report for June 2008, two Daily Activity Reports for labor and mileage (6-hours & 183 miles for June 4 and 5-hours, 177 miles June 5) and a copy of OSPR's Cost Recovery & Legal Review Request (PCA Code F1167) indicating that the responsible party for the oil spill could receive a demand letter for the cost of the incident. The claims manager requested DFG's 2005 labor and equipment rate sheet.

4. Responsible Party:

¹ See NRC report # 761001 in file

² See the MISLE case number 242214

³ See the OSPR Activity Report for June 5, 2005

⁴ See DFG Incident Billing, Summary of Costs (pg 1)

The Responsible Party is identified as Donald Lee Braham 206 Caledonia Street #4 Sausalito, CA 94965.⁵

5. Description of Removal Actions Performed:

On June 4, 2005, Fish & Game Warden John B. Sutton was assigned to investigate this pollution incident. He noted in his Daily Activity log that he phoned USCG before driving two hours to San Rafael en route to a sunken vessel. He arrived on scene at 550 Canal Street and met with the vessel owner, Donald Lee Braham and someone from the USCG and noted that the vessel was boomed and being salvaged. In his investigation Game Warden Sutton cited Mr. Braham with two violations.⁶ Game Warden Sutton stayed overnight in San Rafael and departed the June 5, after the vessel was salvaged and secured.⁷

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".

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 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].

DETERMINATION OF LOSS:

A. Overview:

⁵ See DFG Case Report PCA Number N300/F1167 dated 6/7/05

⁶ See OSPR Pollution Investigation Report CFV LADY IRMA 6/405 N300/F1167 dated 6/7/05

⁷ See OSPR Daily Activity Report 6/4/05 & 6/5/05

1. The 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. DFG-OSPR Game Warden Sutton was on scene acting on behalf of the State's interests and overseeing the removal of oil by the San Rafael Fire Department and met with the responsible party and USCG personnel.⁸
3. The incident involved the report of a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.⁹
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.¹⁰
5. Under OPA 1013(a)(1)(C) the state may submit its claim directly to the Fund for compensation without having to present its claim to the responsible party.
6. The claim was submitted within the statute of limitations under the Oil Pollution Act of 1990.
7. 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:

The claims manager reviewed the DFG costs as presented by the claimant and confirmed that the costs were within the rates provided by the state for 2005. While reviewing the daily activity reports and invoices provided by the claimant, the claims manager 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 eh incident).
- (2) Whether the costs were incurred as a result of these actions.
- (3) Whether the actions taken were determined by the FOSC.
- (4) Whether the costs were adequately documented and reasonable.

The claimant's invoice shows personnel cost of \$513.30 as the largest component representing 10- hours of service. Based on OSPR's 2005/ 2006 rate sheet, the daily rate for a Fish & Game Warden (RGB) is \$51.33/hr (\$51.33 x 10hrs = \$513.30). DF&G invoiced the use of a 4x4 vehicle and 360 miles traveled. The OSPR 2005/2006 rate sheet provides \$0.59 per mile (360m x \$.059 = \$212.40).¹¹ OSPR invoiced its administrative cost total \$57.65. The admin cost is within the guidelines for fiscal year '05/'06 (see memorandum dated August 9, 2005 effective July I, 2006 showing 20.08% department overhead rate).

The Claims Manager hereby determines that there are no discrepancies regarding reimbursement or cost documentation provided y the claimant and finds the invoice costs are reasonable and compensable under OPA. The Claims Manager hereby determines that the claimant did in fact incur \$783.35 of uncompensated removal costs under claim 9110023-0001.

⁸ See CA DFG OSPR Incident Report # 58391, dated 5/14/2008

⁹ See NRC Report #761001

¹⁰ See NPFC SF-1080 (#7)

¹¹ See OSPR 2005/2006 rate sheet in file mileage + use of vehicle

C. Determined Amount:

The NPFC finds that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from June 4 through June 5, 2005. The \$783.35 is properly payable by the OSLTF as full compensation of reimbursable removal costs.

AMOUNT: \$783.35

Claim Supervisor: *Donna Hellberg*

Date of Supervisor's Review: *3/31/11*

Supervisor Action: *Approved*

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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5890
3/31/2011

VIA EMAIL: kabe@ospr.dfg.ca.gov

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

Re: NPFC Claim Number 911023-0001
PCA #N300/F1167

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 \$783.35 is full compensation for OPA claim number 911023-0001.

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 202-493-6824.

Sincerely,

Mark R. Erbe
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

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Claim Number: 911023-0001	Claimant Name: State of California ATTN: Ms. Kelly Abe Department of Fish and Game P.O. Box 944209 Sacramento, CA 94233-2090
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I, the undersigned, ACCEPT the determination of \$783.35 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