

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

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5890  
November 07, 2013

via e-mail: [REDACTED]

State of California Department of Fish and Wildlife  
ATTN: [REDACTED]  
P.O. Box 944209  
Sacramento, CA 94233-2090

NPFC Claim No.: E12901-0001

Dear Ms. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number E12901-0001 involving RUNNING BEAR TOWING oil spill.

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.

Disposition of this reconsideration constitute final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[REDACTED]  
U.S. Coast Guard

Enclosures: Claim Summary / Determination

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	E12901-0001
<b>Claimant:</b>	State of California Department of Fish and Wildlif
<b>Type of Claimant:</b>	US State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████ ██████████
<b>Amount Requested:</b>	\$18,498.25 ██████████

### **FACTS:**

On or about 7 February 2012, Running Bear Towing dispatched a tow truck and driver (██████████) to service a vehicle in Portula, Placer County, California. The vehicle to be serviced was owned by Loram Maintenance of Way (Loram), and operated at the time by ██████████. At the time of the incident, the vehicle was located at Dollard's Sierra gas station on highway 70 at 349 East Sierra Avenue in Portula, California.<sup>1</sup> Under the Oil Pollution Act of 1990 (OPA 90), that vehicle would be the source of the discharge, and therefore the Responsible Party (RP). 33 USC 2701.

The submission package stated that as a result of the incident, the oil spilled into the storm drain system in Portula, California, Mr. ██████████ attempted to dispose of the remaining product by placing it in garbage bags and a "rubbermaid-type" garbage can and transporting it to the Running Bear facility.<sup>2</sup> This facility was not licensed to store or dispose of such product. The claimant has asserted in their documentation that the discharge posed a substantial threat of a discharge of oil into a navigable waterway. However, nothing in the submission indicates that the discharge ever reached the waters of the Feather River or the Truckee River. In addition, the documentation in the files of the NPFC's database support the contention that the spill did not pose a substantial threat of a discharge into navigable waters.<sup>3</sup>

### **CLAIM AND CLAIMANT:**

The claim is now presented to the Oil Spill Liability Trust Fund (OSLTF) via the National Pollution Funds Center (NPFC) for reimbursement of uncompensated removal costs in the amount of \$18,498.25.<sup>4</sup> The claims submission alleges that the costs incurred are for State personnel costs and those of a contractor who responded to the incident. The Claimant provided all detailed investigation reports to explain all the actions taken by its personnel to investigate the incident and to ensure that the oil was removed from the storm drain. See, above "Facts of the Incident".

On July 17, 2013, the NPFC denied this claim for failure to provide evidence of FOSC coordination as provided by 33 CFR 136.203 & 205.<sup>5</sup>

<sup>1</sup> Investigateion Report, page 5

<sup>2</sup> Investigation Report, page 11

<sup>3</sup> NPFC's Case Assessment & Decision fom, dated March 2012

<sup>4</sup> NPFC's Optional Claim Form, dated 6/4/2013

<sup>5</sup> See NPFC letter dated & signed on 17 July 2013

### **REQUEST FOR RECONSIDERATION:**

The claimant requested reconsideration of this denial via e-mail on August 22, 2013.<sup>6</sup> The initial determination memo is hereby incorporated by reference. On reconsideration, the Claimant stated in an email to the NPFC that they reached out and spoke with USEPA, Mr. [REDACTED] and requested coordination. Mr. [REDACTED] sent an email to the Claimant dated August 9, 2013 that stated EPA was notified of the spill and he attached a copy of their system entry notification. He further stated in the email that he certifies the efforts undertaken by the Claimant were consistent with the National Contingency Plan (NCP).

### **NPFC Determination on Reconsideration**

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].

The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon review of the Claimant’s argument on reconsideration, the NPFC determines that the Claimant has again failed to demonstrate that this claim was properly coordinated with the FOSC. 33 CFR 136. 203 & 205. In making this determination, the NPFC Claims Manager has relied on an email from the NPFC Case Officer who managed the Federal Project for this incident. In an email from NPFC Case Officer Mr. [REDACTED] dated November 5, 2013, the NPFC Case management Division charged with managing the Federal Project stated that he spoke with the actual FOSC, Mr. [REDACTED], who advised that the incident did not in fact pose a substantial threat of discharge into navigable waters and as such, the Federal Project was closed accordingly<sup>7</sup>. Furthermore the NPFC has determined that [REDACTED] was not the proper FOSC for this incident but rather a representative of USEPA that responded generically to

<sup>6</sup> See E-Mail between the NPFC and the Claimant

<sup>7</sup> See E-Mail from Richard Boes to Gina Strange dated November 5, 2013.

the Claimant's request for assistance after receiving a denial of its claim from the NPFC. The proper FOSC for this incident was Mr. [REDACTED].<sup>8</sup>

Based on the foregoing and based on the evidence the NPFC Claims Manager was able to obtain regarding the actual FOSC's determination that the incident did not pose a substantial threat of discharge, this claim is denied upon reconsideration.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *11/7/2013*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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<sup>8</sup> See, documentation from NPFC/CM database dated March 12 and January 13