

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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5890
10/13/2011

VIA EMAIL: [REDACTED]

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: 911119-0001

Dear Ms. Abe:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 911119-0001 involving a tanker truck spill into the Los Angeles River. Compensation is denied because the claimant failed to present the claim within the statute of limitations allowed under OPA law for removal cost claims. See the Claim Summary Determination for details.

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 911119-0001.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/13/2011
Claim Number : 911119-0001
Claimant : State of California
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : Robert Rioux
Amount Requested : \$2,352.20

FACTS:

Oil Spill Incident: On August 8, 2005, the California State Department of Fish and Game Office of Spill Prevention and Response (OSPR) was notified by the California State Office of Emergency Services that a diesel tank truck overturned while transitioning from the NB 710 to the SB 405 roadway. The tanker truck contained 3,600 gallons of fuel, which was gushing out on to the roadway down to a Cal-Trans right-of-way where it was contained. A small amount entered the Los Angeles River, a navigable waterway of the United States, which created a sheen that was unrecoverable.

Description of Removal Activities for this claimant: OSPR personnel conducted initial and follow up response from August 8-12, 2005 which included oversight of clean up operations. The invoice provided includes personnel, vehicle and administrative expenses.

The Claim: On August 17, 2011 OSPR submitted a "response cost" claim, which the National Pollution Fund Center (NPFC) placed under the Oil Pollution Act (OPA) category as a removal cost, for reimbursement of their uncompensated personnel expenses in the amount of \$2,286.30, Vehicle expenses totaling \$55.46 and Overhead at 18.83% totaling \$10.44.

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(e)(8), the reasonable costs incurred by the claimant do not include administrative costs associated with preparation of 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].

Under 33 CFR 136.101(a)(2) the Fund will consider a claim only if presented in writing to the Director, NPFC, within the following time limits “For removal costs, within six years after the date of completion of all removal actions for the incident.”

DETERMINATION OF LOSS:

A. Overview:

1. Sector Long Beach provided FOSC coordination.
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 no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was not submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)

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 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 year 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: *Donna Hellberg*

Date of Supervisor's review: *10/13/11*

Supervisor Action: *Denial approved*

Supervisor's Comments: