

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 703-872-6113

5890
9/27/2012

VIA EMAIL: [REDACTED]@ospr.dfg.ca.gov

State of California
ATTN: Kelly Abe
Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, CA 94233-2090

Re: Claim Number: 912086-0001

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 \$1,643.70 is full compensation for OPA claim number 912086-0001.

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.

All costs that are not determined as compensable are considered denied. 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 claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration 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 corresponding claim number.

Mail reconsideration request to:

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

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

Sincerely,



Garen Wetzel
Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

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Claim Number: 912086-0001	Claimant Name: State of California Department of Fish and Game Office of Spill Prevention and Response P.O. Box 944209 Sacramento, CA 94233-2090
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I, the undersigned, ACCEPT this settlement offer of \$1,643.70 as full and final compensation for the removal costs arising from the specific claim number identified above.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. 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 amounts paid for which I have been compensated under this claim. 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 and associated with those amounts paid for which I am compensated for with this settlement offer. 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 amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

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 for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by 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

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912086-0001
Claimant	: State of California
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Galen Wetzel
Amount Requested	: \$2,130.12

FACTS:

Oil Spill Incident: On April 2, 2008 a California Department of Fish and Game Warden received a report of oil floating on the water in the Lazy M Marina originating from a dredge located downstream, the Italian Slough. The Warden followed rainbow sheen to the bow of the dredge Edythe (O.N. 538926). Once on board, he observed a ruptured 55 gallon plastic drum on deck that was leaking and a hydraulic line that was ruptured and leaking a petroleum product on the deck and into the water. The warden then contacted Office of Emergency Services and reported the spill, spill number 08-2496.

Description of Removal Activities for this Claimant: Contra County Health Services responded to the scene. The ruptured drum was placed inside a containment drum and the dredge was then boomed off. An attempt was made to place duct tape around the ruptured hydraulic line.

The dredge owner (Responsible Party), Ms Tamara Scott, was contacted by the Warden and directed to remove waste oil barrels from the dredge to prevent any further pollution incidents. The RP was later instructed to repair the hydraulic line and clean all oil off the deck of the dredge.

Oil samples were taken from the liquid inside the ruptured drum and another from the Italian Slough. Analysis of both samples was positively identified as petroleum hydrocarbon.

The Claim: On August 16, 2012, State of California Department of Fish and Game, Office of Spill Prevention and Response (DFG OSPR), presented a removal cost claim to the National Pollution Funds Center (NDFC) for reimbursement of their uncompensated removal costs in the amount of \$2,130.12.

DFG OSPR is claiming personnel expenses of \$640.44, operating expenses of \$110.00, laboratory expenses of \$1,000.00, vehicle expenses of \$166.50 and administrative expenses of \$213.18.

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. 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. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 U.S.C. § 2712(h)(2), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were 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 FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

It is noted that the vast majority of the determinations were only being supported by the Warden's Daily Activity Reports. The copies provided were of very poor quality and did little to assist in supporting the claim. A request was made by the Claims Manager for new copies that were more legible but the new copies supplied by the Claimant were of no better quality than the originals.

The Claimant is requesting \$640.44 for personnel costs regarding uncompensated removal costs incurred by the claimant for this incident. The Claimant contends that on April 4, 2008 the DFG Warden expended three hours to this incident. During the review of the supporting documentation, the Warden's Daily Activity Report, the Warden was 10-98 (assignment complete) at 1740. After that entry, the Warden went to the dredge to collect oil samples. At some time during the 1800 hour the Warden recorded he was 10-98. This is interpreted that he completed his oil sampling mission. Due to the poor copy quality of the Daily Activity Report, the Claims Manager is unable to determine the exact time spent on oil sampling. Therefore, the personnel costs for this day are determined to be \$53.37 (one hour) and total personnel costs for this incident are approved in the amount of \$533.70.

The Claimant is requesting \$166.50 for vehicle costs regarding uncompensated removal costs incurred by the claimant for this incident. The Claimant contends that on April 2, 2008, the Warden drove a total of 53 miles; on April 4, 2008 the Warden drove a total of 161 miles; and on May 15, 2008 the Warden drove a total of six miles in support of this incident. During the review of the supporting documentation, the Warden's Daily Activity Reports, the Warden was also dispatched to other assignments on April 2 and 4, 2008. NPFC requested on August 23, 2012, an itemized break down of the Warden's daily mileage to calculate which miles supported the response to this incident as opposed to other assignments as identified in the daily reports. As of this date, no further information has been provided. On May 15, 2008, the Warden's only activity associated with this incident was recorded as administrative time in the office therefore no miles are permitted on this date for this incident. Based on the foregoing lack of detailed documentation, the vehicle costs for the referenced dates are denied.

The Claimant is requesting \$213.18 for administrative costs regarding uncompensated removal costs incurred by the claimant for this incident. The NPFC will not reimburse for administrative costs with regards to the Federal Indirect Cost Rate as the costs are unsubstantiated. Therefore, the administrative costs of \$213.18 are denied.

All other costs were validated and the NPFC has determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$1,643.70 of uncompensated removal costs and that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912086-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on April 2, 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 \$1,643.70 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912086-0001. 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 Claimants.

AMOUNT: \$1,643.70

Claim Supervisor:

Date of Supervisor's review: *9/27/12*

Supervisor Action: *Approved*

Supervisor's Comments: