

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
Staff Symbol: (CA)
Phone: 202-493-6694
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
3/26/2012

SENT VIA E-MAIL: [REDACTED]@ospr.dfg.ca.gov

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 A06011-

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 \$9,880.85 is full compensation for OPA claim number A06011-0001.

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.

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. If, however, 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 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 claim number A06011-0001.

Mail reconsideration request to:

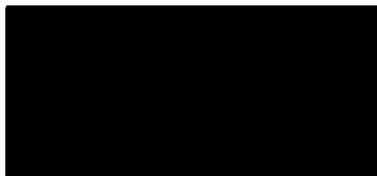
DIRECTOR
NATIONAL POLLUTION FUNDS CENTER
US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100

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 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 202-493-6694.



Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

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Claim Number: A06011-0001	Claimant Name: 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
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I, the undersigned, ACCEPT the determination of \$9,880.85 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

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : A06011-0001
Claimant : State of California
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : Felita Jackson
Amount Requested : \$10,670.25

FACTS:

- 1. Oil Spill Incident:** On January 26, 2006, the *F/V Miss Kelley* ran aground 1 NM south of Fort Bragg, California, with a reported estimate of 2,000 gallons of diesel fuel and 20 gallons lube oil on board. United States Coast Guard Sector Humboldt Bay first reported the incident to the National Response Center (NRC).¹ The Coast Guard detected a strong diesel odor and observed the fuel discharging from the vessel, as well as a red discoloration directly surrounding the vessel, when over flights of the incident site were performed. The discharge occurred in the Hare Creek, a navigable waterway of the United States that flows into the Pacific Ocean.

Sector San Francisco contacted the owner of the vessel regarding the clean-up of the incident. The Federal On- Scene Coordinator Representative (FOSCR) MST2 Patrick Tkacz responded to the incident and coordinated with the State On-Scene Coordinator (SOSC), Warden Todd Ajari. They set up a unified incident command with the owner, Gene Kelley, and the owner's response contractor, Parker Diving Service (Parker Diving). They also reported the incident to the NRC.² Parker Diving determined that approximately 500 gallons of diesel fuel and 250 gallons of lube oil remained on board the vessel.

- 2. Description of Removal Activities for this Claimant:** Parker Diving was hired to respond to the incident. The Claimant, OSPR Northern Field Response Team (OSPR) assisted and monitored the response actions and ensured the clean-up was consistent with the National Contingency Plan. The clean up continued through January 29, 2006. Invoices include OSPR personnel and equipment expenses (vehicle use) for mitigation of the spill.
- 3. The Claim:** On September 28, 2011, OSPR submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$10,670.25.

OSPR is claiming personnel costs of \$9,577.23, travel expenses (per diem) of \$696.80 for two employees, State equipment expenses (vehicle usage) of \$223.02, and \$173.20 for overhead costs at 18.83%.

¹ See NRC Report #786326.

² See NRC Report #786421.

This claim consists of copies of OSPR employees' Attendance and Labor Distribution Reports and associated dailies, OSPR Narrative Supplemental report, press releases, and Hazardous Materials Spill Reports.

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 FOSC, and (4) whether the costs were adequately documented.

Federal Project Number A06011 was opened for this matter for Coast Guard costs only.

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 FOSCR coordination was provided by MST2 Patrick Tkacz of the United States Coast Guard Sector San Francisco.
2. The incident involved 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 within the limitation for claims.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

Upon review, the Claims Manager hereby determines that there are discrepancies regarding the total hours worked by Warden Todd Ajari for the incident. Claimant billed

Warden Ajari for 45 hours at \$47.40 per hour, for a total amount of \$2,133.00. However, based on his Attendance and Labor Distribution Report, Warden Ajari worked a total of 32 hours for the incident. The Claimant will be reimbursed for 32 hours at the rate of \$47.40 per hour for a total of \$1,516.80, denying \$616.20.

As listed on the Claimant's Incident Billing, they requested reimbursement of \$173.20 in Administration Costs regarding uncompensated removal costs incurred for this incident. Their submitted Voucher and Schedule of Withdrawal and Credits notes that the cost is actually the Claimant's overhead costs at 18.83%. 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 \$173.20 are denied.

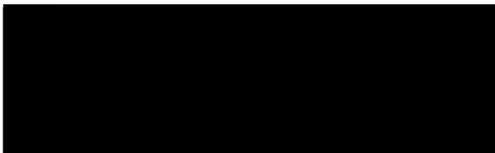
Based on the NPFC's denial of \$789.40 the NPFC determines that the OSLTF will pay \$9,880.85 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # A06011-0001.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$9,880.85 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A06011-0001. 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 Claimant.

AMOUNT: \$9,880.85

Claim Supervisor:



Date of Supervisor's review: 3/26/12

Supervisor Action: *Approved*

Supervisor's Comments: