

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

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Arlington VA 20598-7100  
Staff Symbol: Ca  
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Email: ARL-PF-  
NPFCCCLAIMSINFO@uscg.mil

5890  
December 04, 2012

Sent Via Email:

██████████@ospr.dfg.ca.gov

RE: E10903-0001

State of California  
ATTN: S. Potstada  
PO Box 944209  
Sacramento, CA 94233-2090

Dear Ms. Potstada:

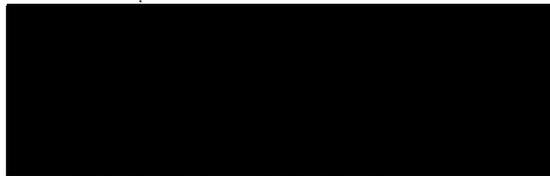
The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$82,331.06 is compensable for OPA claim number E10903-0001. This reconsideration determination is based on an analysis of information submitted. All costs that are not determined as compensable are considered denied. Disposition of this reconsideration constitutes final agency action.

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to:

Director  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Boulevard, Suite 1000  
Arlington, VA 20598-7100

If we do not receive the signed original Acceptance / Release Agreement 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 Contractor Registration record prior to payment. If you do not, you may register free of charge at [www.SAM.gov](http://www.SAM.gov). If the determination is accepted, your payment will be mailed within 30 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.



Chief, Claims Adjudication  
U.S. Coast Guard

Enclosures: Claim Summary / Determination  
Acceptance / Release Agreement  
Summary of Costs.xlsx

## CLAIM SUMMARY / DETERMINATION

**Claim Number:** E10903-0001  
**Claimant:** State of California  
**Type of Claimant:** State  
**Type of Claim:** Removal Costs  
**Claim Manager:** Dawn Unglesbee  
**Amount Requested:** \$94,335.64

### Facts:

On January 2010, the County of Orange reported an oil release into the Huntington Beach Channel. The first report of sheen in the channel was at 1300 on 21 January 2010, and personnel from the County of Orange were on scene to investigate by 1400 that day. The following morning, County of Orange personnel noticed that there was more petroleum in the channel and personnel from the Dept. of Fish and Game Office of Spill Prevention and Response (CDFG-OSPR) were dispatched to the spill. The growing spill volume prompted the County of Orange to hire a cleanup contractor and a spill response team with the Unified Command.

### Responsible Party:

An investigation revealed that the release originated from a facility owned by Angus Petroleum.<sup>1</sup> Angus Petroleum has filed bankruptcy. On August 9, 2012, the NPFC sent the RP's Legal Counsel, Mr. Phillip Hunsucker an RP notification Letter.<sup>2</sup> On August 13, 2012, Mr. Phillip Hunsucker contacted the NPFC via email and stated that he received the RP notification letter. He also stated that "his client agrees to consider the claim" and requested a copy of the claim.<sup>3</sup> On August 14, 2012, the NPFC prepared a disk with a copy of the claim and the NPFC sent it to Mr. Phillip Hunsucker's office via FedEx.<sup>4</sup> To date, the NPFC has not received word from Mr. Hunsucker's office as to whether his client is going to pay the invoices or not.

### Claim and Claimant:

On 02 August 2012, the State of California presented a removal cost claim in the amount of \$94,335.64 to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated State response costs. The claim consists of a voucher and schedule of withdrawal and credits, Incident Cost Billing Summary, Attendance and Labor Distribution Report, Invoices, Response Cost Transmittal, Posting Tags as proof of payment, Invoice for Services and Equipment Supplies, Warden Christian Corbo OSPR Report, Pictures, and Hourly Rates by Classification.

<sup>1</sup> POLREPS 1 - 7.

<sup>2</sup> RP notification letter dated August 9, 2012.

<sup>3</sup> Email traffic between NPFC and Mr. Phillip Hunsucker.

<sup>4</sup> FedEx TRK # 7987 3581 1652

**Request for Reconsideration:**

On November 15, 2012, the State of California requested reconsideration of their claim via email.<sup>5</sup> Claimant provided the Daily Activity Reports for Carlos Fonseca, Laird Henkel, and Carol Singleton. Claimant provided a brief explanation regarding the charges for Peter Newman as the NPFC misinterpreted these costs to be duplicative. Also, Claimant provided an Activity log for Mr. Prescott and respectfully requested that the NPFC reconsider these line items.

**NPFC Removal Costs Determination on Reconsideration:**

Under 33 CFR 136.105(a) and 136.105(e)(6), Claimant bears the burden of providing the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Further, a 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). As noted above a claimant must establish the criteria provided in 33 CFR § 136.203 for removal cost claims.

The NPFC's analysis on reconsideration was a *de novo* review of the Claimant's entire claim submission.

**Determination of Removal Costs on Reconsideration:**

***A. Findings of Fact:***

1. The FOSC coordination was provided by the United States Environment Protection Agency (USEPA) region 9.<sup>6</sup>
2. The incident involved a discharge of "oil" as defined in OPA 90, 33 U.S.C. §2701 (23), to navigable waters.
3. A Responsible Party was identified. 33 U.S.C. § 2701(32). The NPFC notified the RP that a claim was filed with the NPFC for the removal costs. The RP has not made payment of costs to date.
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.
5. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2).
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the removal costs presented were for actions in accordance with the NCP and that cost for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 with the exception denied costs.

***B. Analysis:***

The NPFC Claims Manager has reviewed the actual cost documentation to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken

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<sup>5</sup> Reconsideration email dated November 15, 2012.

<sup>6</sup> See POLREPS 1 – 7.

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 directed by or determined by the FOOSC to be consistent with the NCP; (4) whether the costs were adequately documented and reasonable.

Under reconsideration status claimant requested reconsideration of the following line items:

1/29 – 1/30	Carlos Fonseca	\$785.00
1/22 – 1/28	Laird Henkel	\$940.03
4/26	Jack Prescott	\$251.20
1/22 – 1/29	Carol Singleton	\$205.91
1/24 – 1/28	Peter Newman	\$6,800.00

**Itemization of Denied Costs under Reconsideration:**

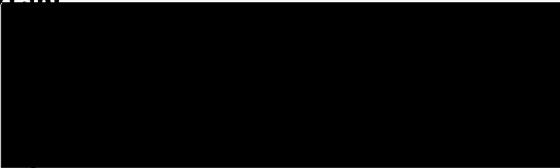
It is important to note that all previously denied line items that were denied during the initial adjudication remain denied as the claimant did not request Reconsideration of their costs and are hereby considered uncontested.

While the claim was under Reconsideration Status the following line item was denied:

1/22 & 1/29 Carol Singleton \$205.91 Under Reconsideration the claimant provided OSPR Daily Activity Reports. On 1/22, this person was on Furlough therefore OPA will not pay for the claimed .5 hours because the claimant has not incurred this cost. Also, the 3 hours that Claimant is claiming for answering media calls are considered unsubstantiated costs and therefore is denied.

<b>Total Amount Denied under Reconsideration =</b>	<b>\$205.91</b>
<b>Total Amount that Remains Denied =</b>	<b>\$11798.68</b>
<b>Total Amount Denied =</b>	<b>\$12004.59</b>

**AMOUNT:** \$82,331.06

Claim Supervisor: 

Date of Supervisor's review: 12/4/2012

Supervisor Action: *Approved*

Supervisor's Comments:

## ACCEPTANCE / RELEASE AGREEMENT

Claim Number: E10903-0001	Claimant Name: State of California
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I, the undersigned, ACCEPT this settlement offer of \$82,331.06 as full and final compensation for removal costs from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

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.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

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
_____ Printed Name of Claimant or Authorized Representative	_____ Signature

_____ Title of Witness	_____ Date of Signature
_____ Printed Name of Witness	_____ Signature

_____ *DUNS/EIN/SSN *Required for Payment	_____ Bank Routing Number	_____ Bank Account Number
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