

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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5890
January 7, 2013

VIA EMAIL: [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: 913009-0001

Dear Ms. Abe:

The National Pollution Funds Center (NPFCC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$4,976.82 is compensable for OPA claim number 913009-0001. 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.

Sincerely,

[REDACTED]
Thomas S. Morrison
Chief, Claims Adjudication Division
United States Coast Guard

CLAIM SUMMARY / DETERMINATION

Claim Number:	913009-0001
Claimant:	State of California
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	Galen Wetzel
Amount Requested:	\$4,976.82

FACTS:

On June 10, 2010, the vessel HEADWAY, Official Number 518806, was reported to have sunk at a pier located at 307 Fulton Street Shipyard, Antioch, California. Responders found the vessel partially submerged and leaking a combination of hydraulic fluid and diesel mixture creating a visible sludge and sheen on the San Joaquin River, a navigable waterway of the US.

The Responsible Party (RP) contracted National Response Corporation (NRC) to deploy boom around the barge, remove and dispose of all product within the cargo tanks of the vessel.¹ The RP also contracted 24-7 MER LLC to dive and plug all vents on the vessel.

On June 15, 2010, after the vessel was refloated and cargo removed, the FOSC and OSPR declared the vessel to be clean and that no additional FOSC action is required.²

CLAIM AND CLAIMANT:

On July 12, 2012, State of California Department of Fish and Game, Office of Spill Prevention and Response (DFG OSPR), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,894.99 seeking reimbursement of their alleged uncompensated removal costs. The costs are for OSPR personnel costs, vehicle costs and administrative costs.

The NPFC made an initial offer on the original claim submission in the amount of \$4,579.11 on November 27, 2012. The remaining costs were denied because:

- Claimant failed to provide the additional information that was requested by NPFC, or
- Costs were not reasonable response costs, or
- Costs were unsubstantiated.

REQUEST FOR RECONSIDERATION:

On January 3, 2013, the Claimant sent an email request for reconsideration to the NPFC along with supplemental supporting documentation. The Claimant provided Daily Activity Reports to support the personnel cost associated with Mr. David Price who was involved in the response that were previously denied by NPFC. This documentation was not included in original submission.

The Claimant asserts in their first submission they did not have access, within the specified time frame, to all the documentation requested by the NPFC.

NPFC Determination on Reconsideration

¹ DFG Narrative/Supplemental Report (prepared by MURTHA #526) & USCG MISLE Case Report 504572

² DFG Narrative/Supplemental Report (prepared by MURTHA #526) & USCG MISLE Case Report 504572

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 § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. 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 consideration of all information and arguments made by the Claimant on reconsideration, the NPFC offers the following:

- The Daily Activity Reports submitted to support the personnel costs for Mr. Price adequately shows his involvement in the spill response. The NPFC has determined OPA compensable personnel costs for Mr. Price is approved in the amount of \$397.71.

Based on the foregoing and in light of the new documentation provided, the NPFC has determined that \$4,976.82 is OPA compensable. The NPFC has denied \$918.17 for which the Claimant has not requested reconsideration or produced new information to overturn the original denial of said costs.

DETERMINED AMOUNT ON RECONSIDERATION: \$4,976.82

Claim Supervisor:



Date of Supervisor's Review: 1/07/13

Supervisor Action: *Approved on reconsideration as stated above*

Supervisor's Comments:

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 913009-0001	Claimant Name: State of California
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I, the undersigned, ACCEPT this settlement offer of \$4,976.82 as full and final compensation for the removal costs arising 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