U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Toll-Free: 1-800-280-7118
Fax: 703-872-6113
Email: ARL-PF-NPFCCLAIMSINFO@uscg.mil

5890
April 17, 2013

Sent Via E-mail: [redacted]@dpw.lacounty.gov

Los Angeles County Flood Control District
525 E. Imperial Highway
South Gate, CA 90280

Re: Claim Number E11908-0002

Dear Mr. Bordas:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $248,697.18 is full compensation for OPA claim number E11908-0002.

This reconsideration determination is based on an analysis of the 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 Form where indicated and return to:

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

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, your payment will be mailed within 30 days of receipt of the Release Form.

[redacted]
Thomas S. Morrison
Chief, Claims Adjudication Division

ENCL: Claim Summary/Determination
Acceptance/Release Form
Spreadsheet of costs

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 [redacted]
E-mail: [redacted]@uscg.mil
Fax: 703-872-6113

Claim Number: E11908-0002	Claimant Name: Los Angeles County Flood Control District

I, the undersigned, ACCEPT this settlement offer of $248,697.18 as full and final compensation for the removal costs arising from the specific claim number identified above and associated with the invoices presented in this claim only. 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 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 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

DUNS #	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E11908-0002
Claimant	: Los Angeles County Department of Public Works, Flood Maintenance Division
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: Dawn Unglesbee
Amount Requested	: $331,457.57

Facts:

On or about January 9, 2011, the Claimant, Los Angeles County Department of Public Works, Flood Maintenance Division (LACDPW), discovered a sheen in the Dominguez Channel, a riprap lined, earthen bottom flood control channel. Investigations reflected that the sheen was originating from an area approximately 100 meters south of the intersection of Carson Boulevard and the Channel. The Channel is tidally influenced from the Pacific Ocean and drains into the Port of Los Angeles, which is contiguous with the ocean.

A series of investigations and sampling of the sheen was directed by Robert Wise, the EPA FOSC, the LACDPW[1] and the Regional Water Quality Control Board (RWQCB)[2]. The LACDPW and RWQCB performed file and database searches in an effort to identify potential sources of the sheen. LACDPW investigated county sewer lines, channel berm sub-surface drain lines, and local facilities that were not currently in the databases. RWQCB facilitated access to local assessment and remediation sites for further investigation, coordinated with California State Fire Marshal, Health Hazardous Materials Division (SFM) in identifying the universe of pipelines in the vicinity of the site.

On January 25, 2011, the EPA FOSC, Robert Wise[3] issued a Notice of Federal Interest (NOFI) to Los Angeles County Department of Public Works and directed the Claimant to continue oil collection operations. EPA START sampled two remediation sites with known light non-aqueous phase liquids (LNAPL) for fingerprint analysis. Laboratory results were inconclusive. EPA excavated across the pipeline corridor to the north of the release on the Active RV property. No evidence of petroleum release was noted.

LACDPW and RWQCB identified two potential sources with known LNAPL contamination of ground water. On February 10, 2011, EPA START sampled monitoring well #1 at the Carson Air Harbor site (CAH-MW#1). On February 14, 2011, EPA START sampled a monitoring well at the 76 Station. These samples were sent to the USCG Marine Safety Lab for fingerprint analysis. The laboratory results were received on February 23, 2011, and were inconclusive.

Claimant's investigation of the sub-surface drain lines on the east bank of the channel indicated gasoline infiltration. Speculation was that the gasoline contamination is from an off-site source to the north of the site, and migrating along the backfill of the Plains pipeline #93 or one of the abandoned Shell lines. During the week of April 18, 2011, EPA directed ERRS to excavate across the pipeline corridor that

[1] The LA County Department of Public Works, Watershed Management Division, is the planning and policy arm of the Flood Control District.
[2] The Regional Water Quality Control Board for LA County regulates ground and surface waters under its jurisdiction, protects water quality and establishes requirements for discharges into LA County waters.
[3] On January 26, 2011, the FOSC role was transferred to FOSC Martin Powell.

includes Plains #93. The excavation located the pipelines in question and stopped at a depth of approximately 13.5 feet. No evidence of petroleum release was noted.

On April 26, 2011, the RWQCB issued California Water Code 13267 Investigative Orders to the following parties:[4] LACDPW, Chevron Pipeline, Conoco Phillips, Crimson Pipeline, Shell Oil Products, Tesoro Corp, Prowell Family Trust, Chevron Environmental Management, and BP Pipelines. These orders were issued individually, and require the parties to assess their properties/infrastructure, and to determine, if possible, the source of the release.

Pursuant to the latest EPA information, POLREP #5, dated May 26, 2011, the source of the discharge remains unknown.

Description of Removal Activities for this Claim:

On January 10, 2009, the Claimant hired Ocean Blue Environmental Services (Ocean Blue) for response and clean-up of the oil. Ocean Blue arrived on scene at 1630 and immediately deployed sorbent boom and sorbent pads on the Dominguez Channel at Carson Street. Ocean Blue removed oil as it accumulated at the boom, stood boom watch around the clock, and continuously changed out the sorbent pads. These activities were continuous as the officials could not locate the source of the oil and therefore could not mitigate the oil from seeping into the channel. It is important to note that maintaining boom on the Channel is labor intensive due to it being tidally influenced to the point of reversing direction of flow.[5]

Claim and Claimant:

On March 23, 2011, Claimant, Los Angeles County Dept. of Public Works, Flood Maintenance Division, Imperial Yard presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of $331,457.57. The costs encompass Ocean Blue invoices in the amount of $313,526.08 and LA County employee costs in the amount of $17,931.49. These costs are for the time period of March 01, 2011 through April 28, 2011. This claim has been identified as E11908-0002.

On June 30, 2011, the NPFC denied this claim on the bases that Los Angeles County Department of Public Works, Flood Maintenance Division, was a Responsible Party (RP) because it owns the infrastructure of the Dominguez Channel. The NPFC required that if the Claimant decided to request reconsideration, it must present its defense in accordance with the law and produce all associated documentation demonstrating it is in fact not the Responsible Party.

Request for Reconsideration:

On June 30, 2011, the Claimant requested reconsideration via email; however, it requested 160 calendar days from June 30, 2011 to prepare their Reconsideration Request.[6] On July 14, 2011, the NPFC sent the Claimant a letter stating that we would hold their claim in abeyance until the investigation surrounding the spill on the Channel was complete. The NPFC also advised that as the Claimant, it is their responsibility to keep the NPFC up to date on the process of the investigation and whether or not a different Responsible Party has been identified. The letter also stated that the Claimant must provide an update every six weeks or the NPFC will have no alternative but to move forward with the adjudication.[7]

In support of the mandatory up-date to the NPFC, the Claimant provided information proving that they remain diligent on the response and cleanup of the oil. Claimant provided updates to the Fund to support the fact that they were continuously cleaning up oil on the Dominguez Channel.

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[4] See POLREPS #1 through #5
[5] POLREP #5
[6] 2011 06 30 EM FR Claimant to NPFC requesting Reconsideration.
[7] 2011 07 14 Letter to Claimant FR NPFC RE Claims in Abeyance.

Claimant provided the evidence to prove that they do not own or operate oil or oil related facilities on the Channel and that they are mitigating the oil spill incident as well as preventing future incidents from occurring.[8]

Applicable Law:

Each responsible party for a vessel or facility from which oil is discharged, or poses a substantial threat of a discharge of oil, into or upon the navigable waters is liable for removal costs and damages thar result from such incident. 33 USC 2702(a).

"Facility" means "any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. 33 USC 2701(9).

In the case of an onshore facility (other than a pipeline) any person owning or operating the facility is the "responsible party." 33 USC 2701(32)(B).

"Removal" means "containment and removal of oil or a hazardous substance from water and the shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines and beaches." 33 USC 2701(30).

"Removal costs" means "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 such incident." 33 USC 2701(31).

Determination of Loss:

A. Findings of Fact:

1. Federal On-Scene Coordination was provided by OSC Martin Powell, U.S. EPA, Region IX.
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. Evidence in the administrative record establishes that the Claimant is not the responsible party for this incident.
5. The claim was submitted within the six-year statute of limitations for claims. 33 U.S.C. § 2712 (h)(1).
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that some removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR§ 136.205 as set forth below.
7. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as "Compensation Allowable" under 33 CFR§ 136.205.

B. Reconsideration Analysis and Determined Amount:

The NPFC performed a ***de novo*** review of the entire claim submission upon reconsideration.

The Responsible Party.

[8] Information was provided on August 27, 2011, October 5, 2011, December 14, 2011, and January 9, 2012.

The EPA FOSC issued a Notice of Federal Interest (NOFI) to the Department of Public Works, identifying it as the responsible party for this incident and ordering it to conduct investigation and removal activities. Claimant complied with the NOFI, hiring Ocean Blue to deploy boom and sorbent pads and changing the sorbent pads as needed. Claimant also utilized its own employees to support the removal actions.

EPA provided no evidence to support its identification of the Claimant as the responsible party. Presumably, the EPA identified the Claimant on the grounds that it owned and or operated the property, i.e., the Channel, evidencing the sheening. The Claimant does not own or operate the property. The Flood Control District, a component of the LACDPW, has the responsibility to maintain the earth-bottom of the Channel. Maintenance includes removing sediment, vegetation, debris and other obstructions that would reduce the hydraulic capacity and to ensure unrestricted flow in the channel. In this case these activities do not equal ownership or operatorship.

Further, and more importantly, OPA provides that the owner or operator of the source of the discharge, a facility or vessel, is the responsible party. The EPA states in its latest POLREP that as of May 26, 2011 the source of the discharge is a mystery; therefore, it is unclear how the EPA identified Claimant as a responsible party liable for removal costs when EPA has not identified the source of the discharge. The NPFC requested specific information from EPA in support of its identification. The EPA has not responded to this request, has not provided evidence that Claimant is in fact the responsible party, or withdrawn the NOFI identifying Claimant as the responsible party. Additionally, the LACDPW ordered various owners and/or operators of facilities in the area to continue investigations in efforts to identify the source of the sheening; therefore, it is clear from the administrative record that the source of the discharge is unknown and was unknown at the time of Claimant's removal actions.

Thus, based on the evidence in the administrative record the NPFC determines that the Claimant is not the responsible party and is entitled to present a claim for removal costs to the Fund.

The Removal Costs.

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 to be consistent with the National Contingency Plan, and (4) whether the costs were adequately documented and reasonable.

The Claimant seeks reimbursement of their uncompensated removal costs associated with LA County response costs as well as Ocean Blue personnel and equipment costs. The uncompensated County costs in the amount of $17,931.49 and Ocean Blue response costs in the amount of $313,526.08.

Upon adjudication of the underlying removal costs, the NPFC has determined the following:

In support of the County costs, the Claimant provided supporting back up documentation for the following employees[9]; Sena, Gregory, Goodman, Gerald, Ly, Eddie, and Husted, Alan. The same documentation supported the County costs for equipment.

Based on the County cost documentation provided by Claimant, the NPFC finds that **$17,914.67** in County response costs are compensable under OPA.[10]

[9] SemiMonthly Time Reports, County of Los Angeles Expenditure Details Report, and Los Angeles County Class and Salary Listing.
[10] See NPFC adjudication (spreadsheet)

Claimant provided five Ocean Blue invoices[11] that came to the amount of $313,526.08. Claimant provided proof of payment,[12] Ocean Blue 2008 Published Rate Schedule, and Personnel Work Tickets documenting the field activity. However it is important to note that the Claimant failed to provide all the necessary back-up documentation to support invoice PER6003E. Claimant provided daily work tickets to cover three days of that invoice, April 1, 2011 through April 3, 2011. On April 3, 2013, the Claims Manager made a request to the Claimant to provide the daily work tickets. The Claims Manager received two "Read Receipts" that provided evidence that the Claimant received the email however the Claims Manager did not receive a response nor the supporting documentation.[13]

The NPFC finds that **$248,697.18** is compensable under OPA[14]. Ocean Blue costs in the amount of $82,760.39 were denied due to the claimed costs not coinciding with the Ocean Blue Published Rate Schedule and there was no supporting documentation for the majority of invoice PER6003E. Further, the NPFC denied invoice PER6014 in its entirety as the Claimant did not provide support documentation that proves those invoices were related to the Carson Street oil spill as opposed to a separate unrelated incident involving thick yellow paint, which is not considered OPA compensable and would therefore not be eligible for consideration by the NPFC.[15]

The unsubstantiated/denied costs are as follows:

PER6003C	Labor and Equip denied in the amount of	$597.43
PER6003D	Labor and Equip denied in the amount of	$554.08
PER6003E	Labor and Equip denied in the amount of	$76,207.43
PER6003F	Labor and Equip denied in the amount of	$473.12
PER6014	Labor and Equip denied in the amount of	$4,911.07
LACounty	Labor costs denied in the amount of	$17.26
Total denied amount for E11908-0002		**$82,760.39**

In summary, the NPFC has determined that **$248,697.18** is OPA compensable for the actions presented to the NPFC in this claim submission. All costs determined compensable have been coordinated with the FOSC and determined to be consistent with the NCP. On this basis, the NPFC Claims Manager hereby determines that the Claimant did incur $248,697.18 in uncompensated removal costs that are supported by the record and that this 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# E11908-0002.

Determined Amount:

The NPFC hereby determines that the OSLTF will pay **$248,697.18** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E11908-0002. 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 claimant.

[redacted]

Claim Supervisor: *Thomas S. Morrison*

Date of Supervisor's review: *4/16/13*

Supervisor Action: ***Offer on reconsideration approved***

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[11] PER6003C, PER6003D, PER6003E, PER6003F, and PER6014

[12] County of Los Angeles check numbers TS 0013863477, TS 0013900661, TS 0013988690, TS 0014049471, TS 0013841036.

[13] Email to Claimant dtd April 13, 2013 to Mr. Robert Gresham and Mr. Hector Bordas FR Dawn Unglesbee.

[14] See NPFC adjudication (spreadsheet)

[15] See Daily Field Tickets for PER6014, March 3, 2011 and March 08, 2011.