

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
6/19/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1570 0001 4803 7551

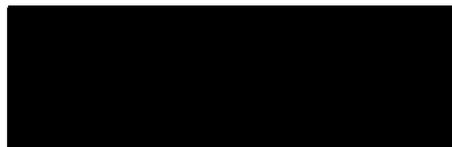
Kens Marine Service Inc
P.O. Box 4001
117 E. 22nd Street
Bayonne, NJ 07002

RE: Claim Number: 909110-001

Dear Ms. Lubach:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number 909110-001 at Lincoln Harbor Yacht Club. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.



Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 909110-001
Claimant	: Kens Marine Service Inc
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: Donna Hellberg
Amount Requested	: \$271,522.60

FACTS:

On December 9, 2008, a fire/explosion occurred at the Lincoln Harbor Yacht Club located in Weehawken, Hudson County in New Jersey. The New Jersey Department of Environmental Protection (NJDEP) as the State on Scene Coordinator (SOSC), reported that according to Mr. Carlos Rodriguez of Hudson Regional Health Commission (HRHC) that a 60-foot yacht, ANXIOLYTIC, and a smaller 25-foot vessel, 4-DUZIE, were consumed in a fire at the Marina. The larger vessel had 1200 gallons of diesel fuel onboard and the smaller vessel had approximately 300 gallons of diesel fuel onboard. The water surface had a small amount of oil sheen and fire fighting foam although it was believed that the bulk of the diesel fuel was still within the vessels' fuel tanks. Neither the owner of the yacht nor the owner of the smaller vessel was present at the time of the fire.

CLAIM AND CLAIMANT:

The Claimant, Ken's Marine Service, Inc. (KMS or Claimant), provided response action support to the Marina for the fire and discharge of oil because it had a standing contract with the Marina. On August 17, 2009, the Claimant presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs in the amount of \$271,522.60.

Information in the claim package indicated the two vessels were salvaged from the waterway. In a letter dated September 18, 2009, the NPFC requested additional information; including evidence that the response actions were coordinated with the federal onscene coordinator (FOSC) and confirming that the costs for which Claimant sought reimbursement were solely for oil removal actions and were not salvage activities. The claims manager noted that in some instances the Claimant submitted daily invoices, many of which contained deficiencies and miscalculations, but did not provide summary sheets containing hourly rates and, in other instances, submitted summary sheets but no invoices.

The claims manager also requested that the Claimant confirm the amount of oil that was discharged into the water. The Claimant responded in a two-page letter dated September 24, 2009, but did not provide the requested documentation or information and did not address the issue of why the vessels were raised and removed from the water vice de-fueling the vessels in place. Nor did the Claimant provide an itemization of all costs associated with the removal of the vessels to include personnel, materials and equipment and an itemization of costs solely associated with oil pollution removal activities.

The NPFC made a second request for additional information on December 13, 2011 via email and advised the Claimant that it had 14 days with which to respond to the request. The NPFC

requested the Claimant provide a copy of the New Jersey State Police report and associated investigative findings, any and all Fire Department reports since the Weehawken Fire Department and North Hudson Regional Fire Department responded to the incident. The NPFC further requested information associated with the subcontractor costs since the Claimant invoiced \$39,950.56 as a 15% markup associated with miscellaneous subcontractor costs. The NPFC also requested a copy of all subcontractor invoices, daily field logs, proof of payment for each subcontractor invoice, a description of the work performed on a daily basis by each subcontractor, and a copy of all contracts or agreements and rate schedules for each subcontractor involved in the Claimant's invoicing.

The NPFC independently obtained additional information through USCG Sector New York Case Report # 435469, NJDEP Case Number 08-12-09-1007-10 and NRC Report # 892010 to aid in adjudication of this claim.

The NPFC Claims Manager reviewed the Claimant's actual cost invoicing and dailies to ensure that the Claimant had incurred all costs claimed and that the costs were adequately documented and reasonable. The NPFC's review of the actual cost invoice and related documents focused on: (1) whether the actions taken were compensable removal actions under OPA and the claims regulations at 33 CFR Part 136 (e.g. whether the actions were taken to prevent, minimize, and mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken are determined to be consistent with the National Contingency Plan (NCP) or directed by the FOSC; (4) whether the costs were adequately documented and reasonable, and (5) whether the Claimant's submitted costs were uncompensated.

The NPFC denied the claim on January 6, 2012 on the grounds that Claimant (1) did not provide evidence that it had coordinated the response actions with the FOSC and (2) did not provide adequate information and documentation as requested by the claims manager and the Claims Regulations at 33 CFR Part 136.105(a) and 136.105(e)(6) to establish that the incurred costs were adequately documented, were OPA-compensable oil removal costs and were reasonable and appropriate. In the denial the NPFC noted that the Claimant could request reconsideration of the denial within 60 days of January 6, 2012. The NPFC also listed in detail the information that Claimant needed to provide if it decided to request reconsideration.

REQUEST FOR RECONSIDERATION:

On May 8, 2012, more than the 60-day time frame for requesting reconsideration, the Claimant sent a request for reconsideration via express mail to the NPFC stating they would like the NPFC to reconsider this claim. The Claimant contends that it never received the email that had the NPFC's initial determination package attached. The Claimant provided a one-page letter requesting reconsideration and 103 pages of miscellaneous documentation.

RECONSIDERATION CLAIM ANALYSIS:

The Claimant had until March 6, 2012 to respond to the NPFC's initial denial determination. The NPFC sent the initial determination via email as provided by the Claimant to the NPFC. The package was emailed to both AMPD@kensmarine.net and kensmarine@aol.com. Both of these addresses were provided to the NPFC by the Claimant and are listed on Claimant's letterhead. The Claimant's rationale was that they never received the package or opened the package compounded by the statement that they expected a hard copy package is questionable.

Additionally, the Claimant's request for reconsideration again displays the same email address the NPFC originally used. On May 17, 2012, the NPFC notified the Claimant via email that the reconsideration package was received and the Claimant replied to the NPFC's May 17, 2012 email which reaffirms the email address the NPFC used is operational and that Claimant uses this e-mail address for communications and is an acceptable method of delivery for this Claimant.¹

Even if the request for reconsideration had been timely, the Claimant did not cure the deficiencies listed in the original denial nor did the Claimant provide any of the detailed information that the NPFC noted would be required upon a request for reconsideration. Notably, the Claimant did not provide evidence that its response actions were coordinated with the FOSC, the Claimant did not explain why the vessels were raised and removed from the water rather than removing the oil from their tanks, and did not itemize the costs associated with the oil removal actions for the vessels and itemize the costs associated with actions to raise the vessels. Finally, there were discharges of oil from both the ANXIOLYTIC and the 4-DUZIE and the Claimants did not distinguish the costs associated with the removal actions and raising/salvaging actions for each of the vessels.

Based on the foregoing, this claim is denied on reconsideration because (1) the Claimant failed to request reconsideration timely pursuant to 33 CFR §136.115(d), and (2) the Claimant failed to obtain FOSC coordination pursuant to 33 CFR §§136.203 & 205.

Claim Supervisor: 

Date of Supervisor's review: *6/19/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

¹ See, NPFC claim determinations # 910037-001 and 909079-001.