

U.S. Department  
of Homeland  
Security

United States  
Coast Guard



Director  
National Pollution  
Funds Center  
United States Coast  
Guard

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5890  
November 21, 2011

**VIA EMAIL WITH ATTACHMENTS:**

Beaufort Marine Rescue Inc  
ATTN: Lee Sykes  
424 Old Causeway Road  
Beaufort, NC 28516

RE: NPFC Claim Number: 911097-0001

Dear Captain Sykes:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 911097-0001 involving Dolphin One. Compensation is denied because you failed to present documentation to prove your claim. Please read the determination for details.

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. However, if 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 that reconsideration in writing 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 911097-0001.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

Sincerely,

[REDACTED]  
Mark R. Erbe  
Claims Manager  
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 911097-0001
Claimant	: Beaufort Marine Rescue Inc
Type of Claimant	: Oil Spill Response Organization
Type of Claim	: Removal Costs
Claim Manager	: Mark Erbe
Amount Requested	: \$9,338.00

**FACTS:**

On September 24, 2009 a vessel sank in its slip at the Morehead City waterfront near 905 Shepherd Street in North Carolina. The waterfront is a tributary of the Intercoastal Waterway and a navigable waterway of the United States.

The incident was reported on September 24, 2009 to the National Response Center (NRC Incident Report #918764)<sup>1</sup> by an unknown person.

**CLAIM & CLAIMANT:**

The Claimant is Beaufort Marine Rescue, Incorporated (Claimant or BMR) of Beaufort, NC. Claimant asserts that on September 24, 2009 BMR responded to assist the DOLPHIN ONE, a 41-foot wooden vessel that sank in its slip at the Morehead City waterfront and discharged an unknown quantity of diesel into the water.<sup>2</sup>

On July 8, 2011, Claimant submitted a claim to the Oil Spill Liability Trust Fund (OSLTF or Fund) for a sum certain of \$9,338.00 in uncompensated removal costs arising from the sinking of the DOLPHIN ONE that is purported to be the vessel that sank in its slip at the Morehead City waterfront on September 24, 2009.

**RESPONSIBLE PARTY:**

Claimant alleges that the Responsible Party is Buddy Mezelle of 407 Roberts Road in Hampstead, NC (28443).

**APPLICABLE LAW:**

"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".

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

<sup>1</sup> See copy of NRC Report # 918764 in admin record

<sup>2</sup> See claimant's letter of July 8, 2011 to the NPFC with attachments

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].

Under 33 CFR 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. 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. The request for reconsideration must be received by the NPFC within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

### **DETERMINATION OF LOSS:**

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

1. No FOSC coordination was established for this incident therefore the FOSC did not determine that the actions undertaken by the Claimant were deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The Claimant asserted that the incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. A Responsible Party was identified by the Claimant. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(2).
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim. The NPFC was unable to determine that the costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

#### ***B. Analysis:***

The NPFC Claims Manager has reviewed the actual cost documents 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.

The NPFC notified the Claimant on August 1, 2011 of receipt of the claim and that the Claimant needed to provide the following information:

- Confirmation of who called the Claimant out to the site;
- A copy of an incident call report if applicable;
- A copy of a signed contract between the Claimant and the alleged RP;
- A copy of the Claimant's ORIGINAL invoice that was sent to the RP;
- An itemization of employees, itemization of hours worked and a brief description of what duties were performed and by whom;
- Confirmation of whether there were any subcontractors and if so, proof they have been paid;
- Proof of hazwoper training for employees.

On October 6, 2011, the NPFC contacted the Claimant again in writing reiterating the requested information.

It is important to note that the Claimant has failed to respond to the NPFC's official request for information in order to further evaluate the claim. As such, the NPFC adjudicated the claim based on the information presented and has determined that the Claimant has failed to provide sufficient support for uncompensated removal costs sought. The Claimant has failed to properly demonstrate that presentment of costs were made to the RP pursuant to 33 CFR 136.103(a), the Claimant has failed to properly document the claim based on his failure to respond to the NPFC's request for information dated August 1, 2011 and October 6, 2011 pursuant to 33 CFR 136.105(a) and 136.105(e)(6).

To date, the Claimant has not provided FOSC coordination pursuant to 33 CFR 136.203 & 205 nor has the Claimant provided disposal manifest(s) in order to demonstrate that proper disposal was performed in accordance with the National Contingency Plan (NCP).

Based on the foregoing, this claim is denied.

Claim Supervisor: *Do* 

Date of Supervisor's review: *11/21/11*

Supervisor Action: *Denial approved*

Supervisor's Comments: