

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 202-493-6843  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
12/6/2011

Sent via email:

[REDACTED]@iisgllc  
[REDACTED]@teaminland.com

Inland Waters of Ohio  
Attn: Mr. Richard Shircliff  
2195 Drydock Ave  
Cleveland, OH 44113

RE: Claim Number: 912012-0001

Dear Mr. Shircliff:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 912012-0001 involving an outdoor home heating fuel tank. Please see the enclosed Summary/Determination Form for further explanation.

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 912012-0001.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]  
Dawn Unglesbee  
Claims Manager  
U.S. Coast Guard

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/5/2011
Claim Number	: 912012-0001
Claimant	: Inland Waters of Ohio
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: Dawn Unglesbee
Amount Requested	: \$2,993.77

### **Facts:**

On March 10, 2009, a cracked outdoor home heating oil tank released 350-400 gallons of heating oil into a nearby pond. The location of the home is 6151 Taylor Road, Clinton, Ohio 44216.

Claimant, Inland Waters of Ohio, (IWO or Claimant), responded to the residence on March 10, 2009 and cleaned up the pond that was covered in red heating oil. IWO deployed sorbents, sorbent boom, ditch boom, and vacuumed the oil into vacuum trucks.<sup>1</sup> Claimant also vacuumed and cleaned the basement sump. Work continued on March 13, 2009 and the boom was removed from the pond on March 24, 2009.

### **Claim Description:**

The claim was presented to the Oil Spill Liability Trust Fund (OSLTF or Fund) on November 2, 2011. IWO submitted a claim to the NPFC for reimbursement of their uncompensated equipment and labor costs.<sup>2</sup>

It is important to note that the total cost of the clean-up was \$4,993.77 however the home-owner paid \$2,000.00 of the bill on 3/10/2009 via check # 6788. (See IWO invoice).

The claim consists of the Optional OSLTF Claim Form, IWO invoice # 17606, Emergency Response Data Collection Log, Waste Manifest # 93131, and pictures of the pond with boom deployed.

### **Applicable Law:**

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"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".

<sup>1</sup> IWO Invoice #17606

<sup>2</sup> Claimant invoice totaling \$4,993.77.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as “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 an incident”.

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

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 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].

## **Determination**

### ***A. Findings of Facts:***

1. The removal actions were not coordinated with a Federal on Scene Coordinator (FOSC). 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident did not involve the discharge nor substantial threat of 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 RP made a partial payment of costs on March 10, 2009.
4. The claim was submitted within the six-year statute of limitation for removal costs. 33 U.S.C. § 2712(h)(2).
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim.

***B. Analysis:***

Under 33 CFR 136.105(a) and 136.105(d)(6), Claimant bears the burden of providing the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

On November 3, 2011, the NPFC requested that the Claimant provide the evidence to prove the nexus to navigable waters<sup>3</sup> and to provide a published rate schedule for Inland Waters of Ohio. This additional information was required to be presented by December 3, 2011. To date, the Claimant has not submitted the requested additional information.

Based on the foregoing, the Claimant has (1) failed to provide the necessary information to prove that the contaminated nearby pond provides a nexus to the navigable waters of the United States, (2) has failed to provide the rate schedule in support of the amounts charged for services rendered, and (3) has failed to obtain FOSC coordination pursuant to 33 CFR 136.203 and 205 therefore the NPFC hereby determines that this claim is denied.

**Total Amount Denied = \$2,993.77**

Claim Supervisor: *Donna Heuberg*

Date of Supervisor's review: *12/6/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

<sup>3</sup> See 33 CFR 2701(21) "navigable waters" means the waters of the United States, including the territorial sea.