

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

US COAST GUARD STOP 7100  
4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
3/02/2012

Via email: [REDACTED]@yahoo.com

Roberson Marine Service  
Attn: Mr. Mike Roberson  
P.O. Box 1513  
Port Aransas, TX 78373

RE: Claim Number: 912033-0001

Dear Mr. Roberson:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 912033-0001. Please see the attached Claim Summary / Determination Form for details associated with this denial.

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 912033-0001.

Mail reconsideration requests to:

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

Sincerely,

A large black rectangular redaction box covering the signature of the Claims Manager.

Claims Manager  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/02/2012
Claim Number	: 912033-0001
Claimant	: Roberson Marine Services
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$9,335.00

### FACTS:

**Oil Spill Incident:** On November 12, 2011, the Corpus Christi Police Department responded to a boat explosion located at 13546 King Phillip Court, in Corpus Christi, TX. The location was a private home slip located in Padre Isles, located on an inlet of Corpus Christi Bay, which drains into the Gulf of Mexico, a navigable waterway of the US. This incident was later reported to the National Response Center (NRC) on November 12, 2011.<sup>1</sup>

The owner of the vessel, Mr. David Barclay, was transferring fuel when the explosion happened. Both a USCG Sector Corpus Christi Pollution Investigator (PI) and a Texas General Land Office (TGLO) representative responded to the incident. After arriving on-scene at 0140 hours on November 13, 2011, the USCG PI reported that the vessel had sunk and that it was no longer leaking oil. Miller Environmental had removed all oil from the vessel and surrounding area and had it placed in two 55-gallon barrels for disposal. Towboat US (d.b.a. Roberson Marine Service (RMS)) was hired by the owner for salvage of the vessel.<sup>2</sup>

- 1. Description of removal actions performed:** The Claimant, RMS, arrived on-site on November 12, 2011. Upon arrival, RMS deployed crews and equipment to recover the sunken vessel. The vessel was re-floated, towed to a boat ramp, and removed from the water, transporting it successfully to a storage yard.
- 3. The Claim:** On February 17, 2012, RMS submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$9,335.00 for the services provided November 12 and 13, 2011. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

This claim consists of copies of the following: NRC Report # 995347, dated 11/12/2011; USCG Sector Corpus Christi Case Report # 576094, opened 11/12/2011; RMS invoicing for this incident; and the City of Corpus Christi Investigation Profile Report for this incident.

The review of the actual cost invoicing and dailies 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)

<sup>1</sup> See NRC Report # 995347, dated 11/12/2011, as well as USCG Sector Corpus Christi Case Report # 576094, opened 11/12/2011.

<sup>2</sup> See USCG Sector Corpus Christi Case Report # 576094, opened 11/12/2011.

whether the costs were incurred as a result of these actions; (3) whether the actions taken were consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

**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".

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].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

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 OF LOSS:**

#### **A. Overview:**

1. The FOSC coordination has not been established via USCG Sector Corpus Christi for salvage activities.<sup>3</sup>
2. The incident involved the report of a 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. The claim was submitted within the six year statute of limitations for removal costs.
5. The RP was notified; however, there has been no response to date. 33 U.S.C. § 2701(32).
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all none of the 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.

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

NPFC CA 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 NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

RMS seeks reimbursement of \$9,335.00 in what they assert are uncompensated removal costs. Upon review of the documentation presented by the Claimant and consideration of other case information, the actions undertaken by the Claimant are strictly salvage related and were not coordinated with the Federal On Scene Coordinator (FOSC) as a necessary response to the incident in order to mitigate the effects of the incident.

It appears based on the documentation that the RP hired the Claimant in order to salvage the vessel and the United States Coast Guard reported that Miller environmental was hired to handle all response actions and disposal in accordance with the National Contingency Plan (NCP). As such, the Claimant’s activities were not coordinated with the FOSC and are therefore not compensable as an appropriate removal cost.

<sup>3</sup> See USCG Sector Corpus Christi Case Report # 576094, opened 11/12/2011.

Should the Claimant decide to request reconsideration, the Claimant will need to coordinate with the United States Coast Guard and provide written confirmation that the salvage of the vessel was at direction of the United States Coast Guard along with a statement as to why salvage was a necessary response action.

**C. *Determined Amount:***

The NPFC hereby determines this claim is denied because (1) the Claimant failed to properly coordinate its actions with the United States Coast Guard pursuant to 33 CFR 136.203 & 205.

**AMOUNT: \$0.00**

Claim Supervisor:

Date of Supervisor's review: *3/2/12*

Supervisor Action: *Denial approved*

Supervisor's Comments: