

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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4/11/2012

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Redwood Shore Diving Inc.
dba Parker Diving Service
P.O. Box 1648
Sausalito, CA 94966

RE: Claim Number: 912035-0001

Dear Sir:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 912035-0001 involving a vessel sinking at Suisun Marina on November 17, 2011. Compensation is denied because the Claimant failed to prove FOSC coordination in addition to required reporting requirements to the National Response Center.

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 912035-0001.

Mail reconsideration requests to:

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

[REDACTED]
ROBERT KLOUX
Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date : 4/11/2012
Claim Number : 912035-0001
Claimant : Redwood Shore Diving Inc.
Type of Claimant : OSRO
Type of Claim : Removal Costs
Claim Manager : Robert Rioux
Amount Requested : \$4,448.00

FACTS:

1. Oil Spill Incident:

On November 17, 2011, Parker Diving (Redwood Shore Diving, Inc.) responded to a vessel that sank at Suisun City Marina, in Suisun City, California. The vessel had approximately 15-20 gallons of fuel onboard, which was leaking out of the vessel. Neither the Claimant, nor the marina reported the incident to the National Response Center (NRC). Additionally, no Federal On-scene Coordination (FOSC) was provided.

2. Description of removal actions performed:

Early in the response, the marina placed absorbent boom around the vessel. When Parker Diving arrived on-scene, a diver attempted to plug the fuel vents but could only locate one of them. Parker Diving placed containment boom out and raised the vessel to stop the leaking fuel.

THE CLAIM:

On February 14, 2012, Redwood Shore Diving, Inc. dba Parker Diving Service submitted a cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$4,448.00 for the services provided November 17, 2011. This claim is for 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.

Claimant presented its costs to the Responsible Party (RP), who had signed a contract at the time removal operations were performed. However, Claimant states that the insurance the RP provided in the contract was only for car insurance. Since then, the RP has not responded to the Claimant's communication attempts. The NPFC sent an RP notification letter on February 28, 2012, which was returned "unclaimed".

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].

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 incident involved a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23); however, the record does not demonstrate that it was reported to the National Response Center (NRC). Additionally, no FOSC coordination was obtained.

2. A Responsible Party was determined and subsequently notified by the NPFC via a letter February 28, 2012. The Claimant presented their costs to the RP via Invoice #F-200 but the RP allegedly failed to make payment. 33 U.S.C. § 2701(32).
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2).
4. 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.

B. Determination

The NPFC requested additional information on February 28, 2012. We asked for proof of FOSC coordination and proof the spill was reported to the National Response Center (NRC). In Claimant's response email dated March 21, 2012, they state there was no FOSC coordination and no report was made to the NRC. Both of these are required as part of the National Contingency Plan. Additionally, the Claimant could not provide the vessel's registration or documentation number for identification purposes.

Thus, the NPFC determines that the Claimant has failed to meet its burden in demonstrating that the discharge of oil from a vessel in the Suisun City Marina were overseen by a FOSC as required by 33 136.203 and 33 136.205.

The NPFC denies this claim because the Claimant failed to meet their burden to demonstrate that the actions taken were directed by the FOSC, which is a requirement of the National Contingency Plan.

Amount Offered: \$0.00


Claim Supervisor: Thomas Morrison

Date of Supervisor's Review: 4/11/12

Supervisor Action: approved

Supervisor's Comments: