U.S. Department of Homeland Security
United States Coast Guard

Director
National Pollution Funds Center

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5890
August 07, 2013

VIA EMAIL: [redacted]@mosslandingharbor.dst.ca.us

Moss Landing Harbor District
ATTN: Tommy Razzeca
7881 Sandholdt Road
Moss Landing, CA 95309

RE: 913072-0001

Dear Mr. Razzeca:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $51,456.00 is full compensation for OPA claim number 913072-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. 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 claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration 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 corresponding claim number.

Mail reconsideration request to:
Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you

are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.**SAM**.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me by phone at 1-[redacted] or email at [redacted]@uscg.mil.

Sincerely,

[redacted]

Galen Wetzel
Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

CLAIM SUMMARY / DETERMINATION

Claim Number:	913072-0001
Claimant:	Moss Landing Harbor District
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	Galen Wetzel
Amount Requested:	$63,380.62

FACTS:

Oil Spill Incident: On February 20, 2013, the M/V TRI-ONE (912865) was found listing to its port side at berth B171 in Moss Landing Harbor at Moss Landing, California. The Moss Landing Harbor District (MLHD) personnel responded to the scene and found the vessel in the reported condition with no visible signs of pollution. Moss Landing Harbor Distirct (MLHD) found that the vessel's port pontoon fuel tank was compromised after Monterey Bay Diving (MBD) applied lift bags to stabilize and bring the vessel back to a level keel and then the port pontoon burped 5-10 gallons of diesel fuel.

On February 21, 2013, MLHD found a small amount of diesel burping from the port pontoon at which time notifications were made to the National Response Center, USCG Sector San Francisco and the State of California. MLHD states that the vessel was abandoned by Mr. Dave Chamberlain. MLHD informs the USCG that they can contract with MBD to remove all hazardous material from the vessel instead of waiting for a USCG contractor to arrive. USCG provided MLHD with a list of material[1] that was to be removed from the vessel.

On February 22, 2013, MLHD decided that the M/V TRI-ONE would need to be removed from the water in order to removal all remaining hazardous material because (1) they were unable to determine for a fact that all fuel from the vessel had been removed, (2) the vessel's stability was dependent on the lift bags applied to the port side, and (3) the asbestos removal would require cutting open the deck of the vessel for access to exhaust system. The vessel was lifted from the water on February 26, 2013.

On March 7, 2013, MLHD completed the removal of all hazardous material. All recovered petroleum products were disposed of with Evergreen Environmental Services. On March 8, 2013, demolition of the M/V TRI-ONE was completed.[2]

Moss Landing Harbor is a navigable waterway of the United States.

Responsible Party: USCG Sector San Francisco issued a Notice of Federal Interest (NOFI) to Mr. Dave Chamberlin, the Responsible Party (RP), who owned the vessel TRI-ONE at the time of the incident and is determined to be the responsible party under the Oil Pollution Act. The National Pollution Funds Center (NPFC) sent a RP Notification letter to the RP on July 30, 2013.

Description of Removal Activities: On February 20, 2013, MLHD staff found the M/V TRI-ONE listing to port and deployed boom around vessel as a precaution. MLHD requests MBD to plug holes in port pontoon. MBD determined that the vessel needed to be raised with lift bags to raise fuel vents from the water and to stabilize the vessel. Absorbent pads were used to collect the diesel that burped from the fuel tank.

[1] Email dated July 30, 2013 from SEC SF to NPFC lists items as fuel, propane tanks and household hazmat.
[2] Description of incident gathered from MLHD Timeline of Events.

On February 21, 2013, after additional sheening was found absorbent pads were deployed by MLHD. MBD was contracted to remove all hazardous material from the vessel. One 55 gallon drum of diesel fuel removed and half of one drum of hydraulic fluid removed. All material was disposed of by MLHD staff members for temporary storage at MLHD on-site collection station.

On February 22, 2013, MLHD staff determined that there was additional fuel trapped by baffle plates within the port pontoon. Two 55 gallon drums of diesel fuel removed. MLHD contracted Hatton Crane and Rigging Inc. (HCRI) to lift the TRI-ONE from the water on February 26, 2013. MLHD also determined that the vessel exhaust system contained asbestos that must be removed.

On February 26, 2013, MLHD personnel tow the M/V TRI-ONE to the K dock. MBD was contracted to provide in the water rigging and any other in-water support needed during the vessel removal. HCRI discovered that the vessel was 10 tons heavier than the tonnage listed on the vessel's documentation and was unable to lift the vessel from the water. MLHD attempted to pump additional water from the port pontoon until diesel fuel was observed in the pontoon again. MLHD contracted Sanctuary Stainless to cut off the starboard pontoon. HCRI lifted the vessel from the water after the starboard pontoon was removed and placed the vessel in the unimproved parking lot of MLHD. The starboard pontoon was then lifted from the water by HCRI.

On February 27, 2013, MLHD contracted with A&S Metals to cut up and dispose of the M/V TRI-ONE and contracted Disasters Kleenup Specialist to remove all asbestos material. A&S Metals instructed that additional diesel fuel remained on board and will need to be collected during demolition.

On March 4, 2013, MLHD staff pumped approximately 45 gallons of diesel fuel from the starboard pontoon. On March 5, 2013, the M/V TRI-ONE was cut open by A&S Metals for the removal of the asbestos material. Twenty total bags of material were removed from the vessel.

On March 6 & 7, 2013, MLHD removed seventeen and a half (17.5) 55 gallon drums of diesel fuel from the centerline pontoon. A&S Metals continued the demolition of the vessel. On March 8th, the vessel demolition was completed.

March 20, 2013, MLHD disposed of 1,115 gallons of liquid waste to Evergreen Environmental Services – Evergreen Oil.

The Claim: On June 25, 2013, Moss Landing Harbor District presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of $63,480.62.[3]

On August 6, 2013, MLHD presented a revised sum certain for their removal cost claim for the amount of $63,380.62.[4]

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

[3] USCG NPFC Optional OSLTF Claim Form dated June 24, 2013.
[4] Email from MLHD General Manager dated August 6, 2013.

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. FOSC coordination was provided by USCG Sector San Francisco.[5]
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with33 U.S.C. § 2712(h)(1), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what 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:

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.

The Claimant is requesting personnel costs of $2,730.00 for response activities of three MLHD personnel on February 26, 2013 (33 total hours). However MLHD only provided documentation[6] that shows each staff member only worked 3.5 hours each.[7] Therefore the NPFC determines that the OPA compensable personnel cost is $1,020.00 and the remaining costs of $1,710.00 are denied as unsubstantiated.

The Claimant is requesting personnel costs of $280.00 for response activities of two MLHD personnel on March 6, 2013 (four total hours). However, MLHD only provided documentation[8] that shows each staff member only worked 1.25 hours each.[9] Therefore the NPFC determines that the OPA compensable cost is $175.00 and the remaining costs of $105.00 are denied as unsubstantiated.

The Claimant is requesting equipment cost of $23,800 for five lift bags[10] utilized by MBD on February 20-26, 2013. The NPFC requested supplemental information[11] concerning the placement of the bags and was provided with the MBD Daily Log, which did not provide any placement information. During NPFC research into the incident, photographs were obtained that clearly show a total of three lift bags applied to the vessel. As such, the NPFC determines that the OPA compensable cost is $15,400 and the remaining cost $8,400 are denied as unsubstantiated.

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[5] Letter from USCG Sector San Francisco dated May 14, 2013.
[6] MLHD Timeline of Events for February 26, 2013.
[7] 1130-1330 pumped out port pontoon. 1745-1915 placed wood cribbing and inspected starboard pontoon.
[8] MLHD Timeline of Events for March 6, 2013.
[9] 1430-1545 removed fuel from the center pontoon fuel tank.
[10] Two 8,000 pound lift bags and three 6,000 pound lift bags.
[11] Email to MLHD dated July 26, 2013.

The Claimant is requesting removal costs of $1,709.62 for the removal of asbestos from the vessel's engine exhaust by Disaster Kleenup on March 1, 2013. Since the asbestos did not pose a hazard to response personnel during the removal of the hazardous material on February 21, 2013 or impede the removal of petroleum products from the pontoon fuel tanks, the asbestos is not an OPA compensable cost. Therefore the cost of $1,709.62 is denied.

All other costs were validated and the NPFC has determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager herby determines that the Claimant did in fact incur $51,456.00 of uncompensated removal costs and that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913072-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on February 20, 2013. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay $51,456.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913072-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimants.

AMOUNT: $51,456.00

Claim Supervis[redacted]

Date of Supervisor's review: *8/7/13*

Supervisor Action: ***Approved***

Supervisor's Comments:

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 913072-0001	Claimant Name: Moss Landing Harbor District

I, the undersigned, ACCEPT this settlement offer of $51,456.00 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

Title of Person Signing	Date of Signature
Printed Name of Claimant or Authorized Representative	Signature

Title of Witness	Date of Signature
Printed Name of Witness	Signature

*DUNS/EIN/SSN ***Required for Payment**	Bank Routing Number	Bank Account Number