

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-6824
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
6/21/2011

SENT BY EMAIL in PDF ATTACHMENT

Rhino Services, LLC
ATTN: Lonnie Blackstone
P.O. Box 876
Tyrone, GA 30290

Re: Claim Number 911052-0001

Dear Ms. Blackstone:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$13,498.75 is full compensation for OPA claim number 911052-0001.

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

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

If we do not receive the signed original Acceptance/Release Form 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 Central Contractor

Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.ccr.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6824.

Sincerely,


Mark R. Erbe
Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

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Claim Number: 911052-0001	Claimant Name: Rhino Services, LLC ATTN: Lonnie Blackstone P.O. Box 876 Tyrone, GA 30290
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I, the undersigned, ACCEPT the determination of \$13,498.75 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination is not an admission of liability by any party. 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 loss. 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 the incident. 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 costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

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 any compensation received from any other source for the same claim, 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
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
TIN Required for Payment	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 911052-0001
Claimant	: Rhino Services, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: Mark R. Erbe
Amount Requested	: \$13,867.75

I. FACTS:

A. Oil Spill Incident:

On March 17, 2011 a mystery spill of oil was reported to the Duty Officer at the US Environmental Protection Agency (Region IV). The Coweta County Fire Department (Georgia) requested assistance to clean-up approximately 200 gallons of oil that was found in a retention pond on undeveloped residential subdivision property referred to as Concord Court. The nearest street address to the location site is 5629 Gordon Road, Senoia, GA. The oil from an unknown source flowed across a paved road into a retention pond that overflows into an unnamed tributary of the Flint River. The Flint River is a navigable waterway of the United States.

B. FOSC Coordination:

The acting Federal on-Scene Coordinator (FOSC) was Subash Patel of the U.S. Environmental Protection Agency (EPA), Region IV. Mr. Patel drove to the site of the spill and met with personnel from the Coweta County Fire Department (CCFD) who also responded to the spill. Mr. Patel conferred with Rhino Services that arrived mid-day on March 17, 2011 in order to remove and dispose of the discharged oil.

C. Responsible Party:

The EPA POLREP indicated that the property owner was notified of the spill; however, no responsible party has been designated.

D. Claim:

Rhino Services, LLC seeks compensation from the Oil Spill Liability Trust Fund (FUND) for their uncompensated removal costs in the amount of \$13,867.75.

E. Description of Removal Activities for this Claim:

On March 17, 2011 Rhino Services responded to the oil spill. Six employees arrived at the spill site to collect and remove the oil. To check if oil drums were buried on the property, Rhino Services was also instructed by the FOSC to dig six test holes near the spill site. No oil drums were found and no source for the discharged oil was discovered. On March 18, 2011, four Rhino employees returned to the spill site to remove residual oil from the storm drains, catch basin and retention pond. All contaminated soil and materials were placed in lined roll-off containers and transported to Pine Ridge Landfill for disposal. Erosion control measures were taken before leaving the site. Rhino Services submitted a signed manifest from the landfill operator.

II. 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".

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 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].

III. DETERMINATION OF LOSS:

The NPFC Claims Manager has reviewed all documentation submitted with the claim and determined that some of the removal 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.

The Claims Manager reviewed Rhino Service's two invoices and two Work Orders for services performed on March 17 and 18, 2011. The Claims Manager focused on: (1) whether the actions taken were compensable "disposal actions" under OPA and the claims regulations at 33 CFR 136 (e.g. actions to prevent, minimize, mitigate the effects of the incident); and (2) whether the costs were incurred as a result of these actions; and (3) whether the actions taken were consistent with the National Contingency Plan (NCP) or, directed by the (Federal On-Site Coordinator) FOSC; and (4) whether the costs were adequately documented and reasonable.

The Claims Manager reviewed Rhino Service's invoices for equipment and materials by way of its daily Work Order and found that the items generally matched the Claimant's current rate schedule.¹ One exception noted was that the rate sheet indicated the daily rate of \$500 for a Cat 312 Excavator. The Claimant invoiced the excavator at \$225 per day. The NPFC finds the invoiced amount of \$225 per day to be the compensable rate. Additionally, the Claims Manager emailed the FOSC requesting that he review the Work Orders and provide affirmation that the equipment was indeed necessary for the response. Mr. Patel replied by email verifying that the equipment and personnel listed were used for the incident. He also initialed the Work Orders. The NPFC finds that the other equipment listed on the Work Orders and invoices match the Claimant's rate sheet and are compensable.

The Claims Manager compared labor costs on the invoices to their corresponding daily Work Orders and found that the labor invoiced matches the labor rates established on the Claimant's rate sheet. However, there was one exception noted. Three employees on invoice 11-127 do not appear on the daily Work Order #20368. The labor charges for these three employees who are not listed on the daily Work Order (#20368) for March 17, 2011 are as follows:

Director of Emergency Response invoiced (#11-127) at \$123 per day...	\$125.00
Disposal Manager invoiced (#11-127) 2 hours at \$85 per hour.....	\$170.00
Admin Asst./ Clerical invoice (#11-127) 2 hours at \$37 per hour.....	\$ 74.00
Total denied amount.....	\$369.00 ²

The NPFC denies \$396.00 because these costs were not supported by the daily Work Orders therefore denied.

The NPFC has determined \$13,498.75 as full compensation for the reimbursable removal costs incurred by the Claimant.

IV. AMOUNT: \$13,498.75

<p>Claim Supervisor: <i>Donna Helberg</i></p> <p>Date of Supervisor's Review: <i>6/21/11</i></p> <p>Supervisor Action: <i>Approved</i></p> <p>Supervisor Comments:</p>
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¹ See claimant's Spill Response Pricing, (Revised 01/25/11)
² See attached spreadsheet for Invoice 11-127 compared to Work Order