

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: 202-493-6839
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[REDACTED]@uscg.mil
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5890
7/5/11

VIA EMAIL: [REDACTED]@yahoo.com

Atlantic Coast Marine Group, Inc
ATTN: Mr. Lee Sykes
PO Box 2298
Beaufort, NC 28516

Re: Claim Number 911047-0001

Dear Mr. Sykes:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$8,136.50 is full compensation for OPA claim number 911047-0001.

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.

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 202-493-6839.

Sincerely,

[REDACTED]
Donna Henberg
Lead Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

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Claim Number: 911047-0001	Claimant Name: Atlantic Coast Marine Group, Inc ATTN: Lee Sykes PO Box 2298 Beaufort, NC 28516
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I, the undersigned, ACCEPT the determination of \$8,136.50 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	: 911047-0001
Claimant	: Atlantic Coast Marine Group, Inc
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: Donna Hellberg
Amount Requested	: \$8,136.50

FACTS:

Oil Spill Incident: On August 1, 2010, the fishing vessel *Miss Melodie* was destroyed in a fire as it was headed to the Pamlico Sound to work. Atlantic Coast Marine Group, Inc. aka Tow Boat US (Claimant) responded to the incident. When they arrived on scene, they found the 55-foot vessel fully engulfed in flames and located partially in the Intercoastal Waterway.

Description of removal actions performed: Upon arrival on site, the Claimant began shuttling firefighters to the vessel and assisted with fighting the fire when it became apparent that the vessel was discharging diesel fuel and engine oil into the waterway. Fire Chiefs were immediately notified of the pollution although since they had no boom to deploy, the Claimant was asked to deploy boom, which they did.

The boat Captain, Mr. Steve Raynor, advised everyone on scene that he had no insurance or a means to pay for mitigation or containment efforts. USCG members arrived on scene. The Claimant deployed 560' of soft boom and 800' of hard boom. Once the spill was contained, the USCG informed the Claimant that the Responsible Party was going to provide his own cleanup. The Claimant stated that Mr. Raynor was provided a carbon copy of the invoice at the end of the day.

The Claim: On March 31, 2011, Atlantic Coast Marine Group (Claimant) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$8,136.50 for the services provided on August 1, 2010. 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 invoicing and associated dailies, a written summary of events, photographs and internal email correspondence.

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) 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. "NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4)."
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 6 year statute of limitations for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and has determined that the actions are reasonable, necessary and in accordance with 33 CFR 136.203 & 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.

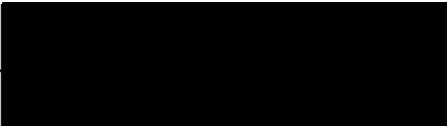
The NPFC called and spoke with Mr. Ben Barnett, Carteret County Fire Marshall on June 30, 2011, who confirmed the Claimant's statement as well as he confirmed the existence of the personnel and equipment/materials as billed by the Claimant. He also confirmed that while the County of Carteret Emergency Services did later bring resources to the scene at no charge to Mr. Raynor, the resources used by the Claimant were definitely there and used.

The Claimant requests a total of \$8,136.50 in uncompensated removal costs. The NPFC sent Mr. Raynor an RP Notification Letter advising him the claim was presented. Mr. Raynor called and disagreed that the Claimant provided him a copy of the invoicing. Additionally, he said the County deployed resources that were free of charge which is why Mr. Raynor disputes the validity of the charges.

Based on a conversation with the Fire Marshall, the NPFC has determined that the resources were present and used, billed in accordance with its pricing schedule in response to a valid OPA event therefore the NPFC has determined the claim is compensable in the amount requested.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$8,136.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 911047-0001. All costs deemed compensable are for charges incurred in response to the pollution incident on August 1, 2010 and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Claim Supervisor:  *Thomas Morrison*

Date of Supervisor's review: *7/5/11*

Supervisor Action: *Approved*

Supervisor's Comments: