U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Toll-Free: 1-800-280-7118
Fax: 703-872-6113
Email: [redacted]

5890
8/28/2015

SENT VIA EMAIL: [redacted]

District Department of the Environment
[redacted]
1200 First Street, NE – 5th Floor
Washington, DC 20002

RE: Claim Number: 915097-0001

Dear [redacted]

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number 915097-0001. Please see the enclosed Claim Summary/Determination Form for further explanation.

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. If, however 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 915097-0001.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Claims Manager
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	:	915097-0001
Claimant	:	District Department of the Environment
Type of Claimant	:	Corporate
Type of Claim	:	Removal Costs
Claim Manager	:	[redacted]
Amount Requested	:	$32,450.00

INCIDENT:

The Washington, DC District Department of the Environment (DDOE) reports that on August 7, 2014 (and several times thereafter), it responded to an oil sheen/odor in Hickey Run (near the intersection of Bladensburg Road and New York Avenue in Northeast DC). Hickey Run is a tributary of the Anacostia River, a navigable waterway of the US. DDOE states that during these ongoing responses, lubricating oil and low sulfur diesel were discovered. It is believed to be from a large underground source as discharges usually appear approximately 2-3 days after heavy rains.

This incident was reported to the National Response Center (NRC) via report # 1091645. As of the time of this determination, no Responsible Party has been identified.

CLAIM AND CLAIMANT:

The Claimant, DDOE, hired Tetra Tech/Miller Environmental for cleanup and removal activities for the recurring incident.[1] Actions included placing boom and sorbent pads, providing personnel and equipment to vacuum leaking petroleum from the storm drain catch basin and disposing of the oiled water and debris at an approved disposal facility. United States Coast G uard (USCG) Sector Baltimore assisted the Claimant by providing/assisting with oil spill analyses.

On July 15, 2015, DDOE presented its removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the total amount of $32,450.00 for its ongoing response to a mystery spill of oil on or about August 7, 2014 to the present time.

The NPFC's review of the actual cost invoice and related documents focused on: (1) whether the actions taken were compensable removal actions under OPA and the claims regulations at 33 CFR Part 136 (e.g. whether the actions were taken to prevent, minimize, and mitigate the effects of the incident; (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken are determined to be consistent with the National Contingency Plan (NCP) or directed by the FOSC; (4) whether the costs were adequately documented and reasonable, and (5) whether the Claimant's submitted costs were uncompensated.

[1] The Claimant provided by email on 8/04/2015 invoices for the following dates: 8/8-8/13/2014, 9/12/2014, 9/18/2014, 11/04/2014, 12/08/2014, 2/12/2015, 2/28/2015, 4/06/2015, 5/11/2015 and 6/09/2015.

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".

"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". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

"Claimant" means "any person or government who presents a claim for compensation under this subchapter." 33 USC § 2701(4).

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 136.203, the claimant bears the burden to prove the removal costs 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 <u>uncompensated</u> *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 been established via a signed statement from MST [redacted] of Sector Baltimore dated July 23,, 2015, as the FOSCR for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);[2]
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. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
4. A Responsible Party has not been determined. 33 U.S.C. § 2701(32).
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. NPFC Analysis:

DDOE states in its claim that all costs claimed are for uncompensated removal costs incurred for this incident. It represents that all costs presented to the Fund are compensable removal costs, payable by the OSLTF.

The NPFC Claims Manager reviewed DDOE's actual cost invoicing and dailies to ensure that the Claimant had incurred all costs claimed and that the costs were adequately documented and reasonable. Pursuant to 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.

Based on a preponderance of the evidence, while te\he Claimant was able to obtain coordination from the FOSC/Sector Baltimore, the claim is ultimately denied because (1) the Claimant has not provided proof of payment to its contractors/subcontractors to demonstrate it has actually incurred uncompensated removal costs, and (2) it has not provided documentation for $2,325.07 in claimed costs. While it did provide invoices and supporting documentation for $30,124.93 of the claimed $32,450.00,[3] the Claimant was asked to provide proof of payment for its contractor costs on numerous occasions,[4] but has failed to respond and provide the requested information. As such,, the NPFC is unable to determine whether or not the Claimant has uncompensated removal costs, as is required by the governing claims regulations.[5]

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[2] See Email from MSTCS [redacted] USCG, to Ms. [redacted] NPFC, dated 7/23/2015.
[3] See email from Mr. [redacted] DDOE, to Ms. [redacted] NPFC, dated 8/04/2015.
[4] See emails from the NPFC to Mr. [redacted] DDOE, dated 7/16/2015, 7/20/2015, 8/05/2015 and 8/15/2015.
[5] See 33 CFR 136.205.

Should DDOE choose to request reconsideration of its claim, it would need to provide documentation to support all claimed costs, as well as provide proof of payment of all third-party invoicing. Based on the foregoing, this claim is denied.

C. <u>Determined Amount: $0.00</u>

The NPFC hereby determines this claim is denied because (1) the Claimant failed to provide evidence that it has incurred uncompensated removal costs pursuant to 33 CFR 1036.205, (2) the Claimant failed to produce all evidence, information, and documentation deemed necessary to support the claim pursuant to 33 CFR 136.105(a) and 136.105(e)(6), (3) the Claimant failed to produce evidence of proper disposal in accordance with the National Contingency Plan (NCP), and (4) the Claimant failed to produce evidence that the product was an OPA oil therefore this claim is denied.

[redacted]

Claim Supervisor: [redacted]

Date of Supervisor's review: ***8/28/15***

Supervisor Action: ***Denial approved***

Supervisor's Comments: