Responsible Party Claims

Overview

A [responsible party](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) (RP) for a [vessel](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) or [facility](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) from which [oil](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) is discharged, or which poses the substantial threat of oil discharge, may assert a claim for uncompensated pollution [removal costs](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) or [damages](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) as noted below:

* The RP is entitled to a defense to liability if they establish, by a preponderance of evidence, that the discharge or substantial threat of an oil discharge and the resulting removal costs or damages were caused solely by an act of God; an act of war; or an act or omission of a third party, other than an employee or agent of the RP or a third party whose act or omission occurs in connection with any contractual relationship with the RP.

Additionally, the RP must also establish by a preponderance of the evidence that they exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances; and took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions.

Lastly, the RP must establish that they reported the oil spill incident as required by the law if they knew or had reason to know of the incident; they provided all reasonable cooperation and assistance as requested by a responsible official in connection with the removal activities; and without sufficient cause, complied with an order issued under the Clean Water Act/33 U.S.C. § 1321 or Intervention on the High Seas Act/33 U.S.C. § 1471.
* The RP is entitled to limit its vessel’s liability so long as the incident was not proximately caused by RP’s gross negligence or willful misconduct; or the violation of an applicable Federal safety, construction, or operating regulation by the RP, the agent or employee of the RP, or a person acting pursuant to a contractual relationship with the RP except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail.

Additionally, the RP must establish that they reported the oil spill incident as required by the law if they knew or had reason to know of the incident; they provided all reasonable cooperation and assistance as requested by a responsible official in connections with the removal activities; and without sufficient cause, complied with an order issued under the Clean Water Act/33 U.S.C. § 1321 or Intervention on the High Seas Act/33 U.S.C. § 1471.

General Claim Requirements

When preparing the claim for submission to the [Oil Spill Liability Trust Fund](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) (OSLTF or Fund), the RP is reminded that they bear the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the CG National Pollution Funds Center (NPFC), to support and properly process the claim. At a minimum, the RP will be required to:

* Prove that the uncompensated pollution removal costs and/or damage(s) associated with the claim meet the criteria for a claim as established within the [Oil Pollution Act of 1990](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) (OPA) as detailed below.

	+ The substance associated with the response was [oil](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/);
	+ That there was a [discharge](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) of oil or [substantial threat of discharge](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) of oil;
	+ The discharge or substantial threat of oil discharge impacted a [navigable waterway of the United States](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/); and
	+ The discharge or substantial threat of discharge of oil originated from a [vessel](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) or [facility](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/).
* Prove that the removal actions were reasonable and determined by the [Federal On-Scene Coordinator](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) (FOSC) to be consistent with the [National Contingency Plan](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary) or directed by the FOSC.
* Prove that the removal actions were necessary to prevent, minimize, or mitigate the effects of the incident. Additionally, that the uncompensated pollution removal costs were incurred as a result of these actions.
* For any damages incurred as a result of the incident (e.g., real or personal property damage or loss of profits or earning capacity), provide the additional proof required to substantiate those damages.
* Submit your signed claim in writing with a [sum certain](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) (total claimed costs) for compensation resulting from the incident.
* For removal cost associated with the claim, submit the claim within six years after the date of completion of all removal actions for the incident. Specifically, the actual date of completion of all removal actions for the incident or the date the FOSC determines that the removal actions which form the basis of the costs being claimed are completed, whichever is earlier.
* For damages associated with the claim, submit the claim within three years after the date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care.

Examples of RP Claims

You own an oil-production facility that stores oil in above ground storage tanks (AST). Unbeknownst to you, a vandal entered your property and damaged an AST which resulted in oil discharging from your facility and entering a navigable waterway of the United States. In preparation of submitting your claim to the Fund, you were able to obtain information that proved the damages to your AST which resulted in the discharge of oil were caused solely by an act or omission of a third party. Additionally, you obtained facility records verifying the security measures employed by your facility; the inspection and maintenance programs undertaken to ensure the safe storage and transfer of oil from your facility; and your planning for, and execution of, an immediate response to the oil spill from your facility; all of which support your claim of exercising due care and taking reasonable precautions to prevent both intentional and accidental releases of oil from your facility. Lastly, you obtained documentation confirming that you reported the oil spill incident as required by the law; provided all reasonable cooperation and assistance as requested by a responsible official in connections with the removal activities; and complied with all orders issued under the Clean Water Act/33 U.S.C. § 1321. By providing this information along with other required information (e.g., General Claim requirements and other Supporting Documentation), you may be entitled to assert an affirmative defense and submit a defense to liability claim to the Fund.

You own a vessel that sank during a heavy weather event and discharged oil into a navigable waterway of the United States. In preparation of submitting your claim to the Fund for the removal costs and/or damages incurred in excess of your vessel’s limit of liability, you were able to obtain documentation that proved the incident was not proximately caused by the RP’s gross negligence or willful misconduct; or the violation of an applicable Federal safety, construction, or operating regulation. Additionally, you obtained documentation confirming that you reported the oil spill incident as required by the law; provided all reasonable cooperation and assistance as requested by a responsible official in connections with the removal activities; and complied with all orders issued under the Clean Water Act/33 U.S.C. § 1321 or Intervention on the High Seas Act/33 U.S.C. § 1471. By providing this information along with other required information (e.g., General Claim requirements and other Supporting Documentation), you may be entitled to limit your vessel’s liability and submit a limit of liability claim to the Fund.

Examples of Supporting Documentation

You must provide evidence that supports your claim and can use whatever documentation you believe best supports your claim. Listed below are examples of documentation typically submitted in support removal cost and/or damage claims:

* Photographs or videos of the incident and the response actions.
* Reports from local, State, or Federal agencies overseeing or involved in the incident.
* Analysis of the oil that is the subject of the incident on which you based your claim submission.
* Report or statement from the FOSC attesting:
	+ That your response activities were consistent with the National Contingency Plan or directed by the FOSC;
	+ That your level of effort in responding to the oil spill was reasonable and necessary to prevent, minimize, or mitigate the effects of the incident; and
	+ The date the FOSC considered all pollution removal activities complete.
* Contractor and subcontractor rate schedules, invoices, and receipts.
* Proof of payment (copies of cancelled checks or affidavits) indicating the date and the amount you paid each contractor and subcontractor.
* Contractor and subcontractor daily logs that include:
	+ The names of personnel, labor categories/titles, hours worked, dates worked, and personnel rates;
	+ Equipment used, equipment rates, and hours/dates used; and
	+ Summary of work accomplished each day.
* Disposal manifests provided by the disposal facility.
* Disposal facility’s invoice with proof of payment.
* Affidavits or witness statements attesting to the incident and your response to the incident.
* Pre-casualty and post-casualty surveys of the vessel (as applicable).
* Vessel Response Plan (as applicable).
* Inspection and/or maintenance records of the vessel or facility.
* Schematics of the facility to include the location of all tanks, piping, and security measures (e.g., fencing, lighting, cameras, warning signs, motion detectors, roving patrols) (as applicable).
* Police reports (as applicable).
* Facility Spill Prevention, Control, and Countermeasures Plan (SPCC) (as applicable).
* Any additional documentation that you feel supports your claim.

How to Submit Your Claim

1. Develop a claim submission or complete the [Optional OSLTF Claims Form](https://www.uscg.mil/Portals/0/NPFC/docs/PDFs/OSLTF_Claim_Form_Rev_Aug19.pdf?ver=2017-08-15-124737-893)that describes your claim.
2. Attach supporting documentation, such as those listed above.
3. Submit your claim submission electronically to the NPFC Claims Division at hqs-smb-npfc-claimsinfo@uscg.mil. Please note, the NPFC’s email server will only accept email attachments up to 8MB in size and any attachments larger than 8MB will be rejected by the NPFC’s mail server. As such, the NPFC recommends claimants request a drop-off for any supporting claim documents in excess of 8MB within their claim submission email to the NPFC. Upon receipt of your electronic claim submission and email request to drop-off additional documents, the NPFC will send you a link to the DoD SAFE server that will allow you to upload your additional documents using the NPFC’s Claims Division email account hqs-smb-npfc-claimsinfo@uscg.mil as the recipient of your documents.

In the alternative, you can mail your claim submission with supporting documentation via US Postal Service or other mail service carriers to the following address:

CG National Pollution Funds Center: Claims

US Coast Guard Stop 7605

2703 Martin Luther King Jr Ave. SE

Washington DC 20593-7605

Note – all mail intended for the NPFC is screened before delivery to our office. In the past, the irradiation methods employed during screening have destroyed CDs and thumb-drives mailed to the NPFC in support of claim submissions. As such, the NPFC Claims Division may ask you to provide your information electronically via the DoD SAFE site if the CDs/thumb drives provided in support of your claim submission are damaged during the screening process.

Questions

The NPFC maintains a toll-free number that’s monitored Monday – Friday from 7:00 a.m. to 4 p.m. EST. The toll-free number is 1-800-280-7118. You can also email the NPFC Claims Division at hqs-smb-npfc-claimsinfo@uscg.mil. Calls or emails placed to the NPFC Claims Division after normal working hours, or on Holidays/weekends, will be responded to on the next business day.

Disclaimer

The summary information contained within this document is intended to assist claimants in the preparation of their claim and not as the sole source of information regarding the OPA or claims regulations. Instead, claimants should review and then rely upon the OPA located at <https://uscode.house.gov/view.xhtml?path=/prelim@title33/chapter40&edition=prelim> and implementing regulations located at <https://www.ecfr.gov/current/title-33/chapter-I/subchapter-M/part-136> for information definitive to their claim and claim submission.