

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

US COAST GUARD STOP 7100  
4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100  
Phone: 1-800-280-7118  
E-mail: [REDACTED]  
Fax: 703-872-6136

5890  
9/23/2015

Sent Via Email: [REDACTED]

RE: N15027-0002

Cedar Bayou Towing, LLC

[REDACTED]  
6403 West Bay Road  
Baytown, TX 77523

Dear Ms. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. §2701 et seq.), has determined that it will offer \$3,600.00 as full compensation for OPA claim number N15027-0002.

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.

The NPFC is in the process of moving during the fall of 2015 and into the winter of 2016. Because of the timeliness requirement for reconsideration requests, you may email an advanced copy of your reconsideration request directly to the claims manager handling your claim or to [ARL-PF-NPFCClaimsInfo@uscg.mil](mailto:ARL-PF-NPFCClaimsInfo@uscg.mil) email address. You may also alert us that a reconsideration request is in the mail by calling 1-800-280-7118.

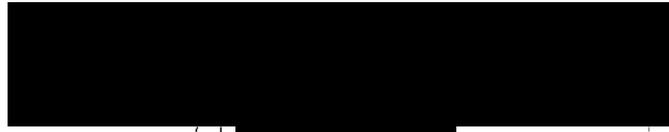
In order to satisfy OPA claims regulations, you must also mail any reconsideration request to:

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](http://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 at the above address or by phone at 1-800-280-7118.



Claims Manager  
U.S. Coast Guard

Enclosures: Claim Summary / Determination  
Acceptance / Release Agreement

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N15027-0002
Claimant	: Cedar Bayou Towing, LLC
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$3,600.00

**FACTS:**

**A. Oil Spill Incident:** The United States Coast Guard Sector Houston/Galveston reports that on April 19, 2015, an unknown sheen from an unknown source was discovered in Cedar Bayou, located in Baytown, TX. Cedar Bayou leads into Tabbs Bay, which flows into both Trinity Bay and Galveston Bay before ultimately draining into the Gulf of Mexico. All of these are navigable waterways of the US.

The Responsible Party (RP) was not initially determined therefore USCG Sector Houston/Galveston opened a federal project under FPN N15037 in order to pay for the cleanup and removal efforts. During the course of the federal response and investigation, the facility owned by Cedar Bayou Towing, LLC (CBT)(the “Claimant”) was utilized as the primary staging location for clean-up operations and investigation. The Claimant is an MTSA-regulated facility requiring security personnel and access control to be in place.

The CG Marine Safety Laboratory analysis verified the spill as originating from the Crest Chem, LLC property, which was later tagged as the RP for this incident. The incident was reported to the National Response Center on April 19, 2015 via Report # 1114051.

**B. Description of removal actions performed:** During response efforts, the Claimant assisted by using its Kobuta RTVs to haul sludge and waste from the dock to the roll-off containers stored on the property. It also provided security that would not have been necessary during normal operations (as its average traffic was usually only three to four visitors a month).

This claim is specifically for additional security personnel. The \$4,632.85 for the following claimed costs are found in NPFC Claim # N15027-0001: equipment usage/fuel; waste disposal boxes; crew lunch; assisting with the vacuum truck removal/fixing damages to the yard; and for 5,000 square feet worth of land use.

**THE CLAIMANT AND THE CLAIM:**

On May 27, 2015, Cedar Bayou Towing, LLC submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$3,600.00 for the services provided from April 19-24, 2015. A copy of the vendor rate schedule has been provided in the claim submission.

## **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 FOOSC to be consistent with the National Contingency Plan or were directed by the FOOSC."

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. Findings of Fact:**

1. FOSC Coordination has been established via USCG Sector Houston/Galveston. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
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. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined the 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. NPFC 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 Claims Manager determined the costs incurred were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP). The Claimant states that the costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from April 19-24, 2015.

The Claimant provided a well-documented claim to demonstrate that the related costs/actions performed were OPA-related and that it assisted in mitigating the effects of the oil that was released into the waterway. Additionally, the USCG Sector Houston/Galveston confirmed the costs/actions performed for this incident. Based on the actions undertaken by the Claimant, the Claims Manager hereby determines that the Claimant incurred \$3,600.00 of uncompensated removal costs and that that amount is payable by the OSLTF for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N15027-0002.

Based on the foregoing, the NPFC hereby determines that the OSLTF will offer \$3,600.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N15027-0002. All reimbursable costs are for charges paid 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 Claimant.

C. **Determined Amount: \$3,600.00**

The NPFC hereby determines that the OSLTF will pay \$3,600.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim N15027-0002.



Claim Supervisor: 

Date of Supervisor's Review: *9/23/15*

Supervisor Action: *Approved*

Supervisor's Comments: