

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds
Center

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16480

June 8, 2011

Cindy Dohner
Regional Director, USFWS Southeast Region
1875 Century Blvd., Suite 400
Atlanta, GA 30345

Dave Westerholm
Director, NOAA Office of Response and Restoration
1315 East West Highway
Silver Spring, MD 20910

RE: Claim Number: 088272-OC1 - *Equinox* Oil Spill Assessment Costs

Dear Ms. Dohner and Mr. Westerholm:

The National Pollution Funds Center (NPFC) has reviewed the claim submitted by the U.S. Department of the Interior (DOI) and the National Oceanic and Atmospheric Administration (NOAA) (claimants) for uncompensated costs incurred to assess natural resource injuries resulting from the *Equinox* oil spill. The claim, as revised, totals \$35,000, representing \$1,001.50 of DOI costs and \$33,998.50 of NOAA costs. We have determined that claimed costs are compensable pursuant to the Oil Pollution Act (OPA) and the OPA claims regulations. 33 C.F.R. §136, 33 U.S.C. §2701 *et seq.* The basis of our determination follows.

Summary of Claim

On September 22, 1998, a well owned by Equinox Oil Company (Equinox) blew out, discharging 450 to 1,500 barrels of crude oil into Lake Grande Ecaille off the coast of Louisiana. Equinox and the U.S. Coast Guard responded to the incident, deploying booms and cleaning shorelines. Several thousand acres of water and wetlands were exposed to the spilled oil.

DOI, NOAA, and the state of Louisiana conducted a natural resource damage assessment (NRDA) with Equinox representatives¹. From September 1998 to July 2000, DOI and

¹ The claim presented only included DOI and NOAA assessment costs.

NOAA incurred assessment costs totaling \$91,141.88. On June 14, 1999, Equinox filed for Chapter 11 bankruptcy and, on December 14, 1999 the U.S. Department of Justice (DOJ), on behalf of DOI and NOAA, filed a Proof of Claim in the bankruptcy proceedings for unpaid damage assessment costs. The bankruptcy court determined that the proceeds from the Lexington Insurance policy were outside the bankruptcy liabilities and would be available to pay the trustees for natural resource damages. On August 18, 2000, Lexington Insurance (Equinox Insurer) agreed to pay these costs, as well as the costs of restoration, minus a 50,000 deductible under Equinox's insurance policy with Lexington.

On November 5, 2001, DOI and NOAA presented a claim for the uncompensated assessment costs (\$50,000) to the NPFC. The NPFC then notified the claimants in July 2002 that it could not approve a claim during the pendency of the ongoing bankruptcy action in court to recover costs which are the subject of the claim. 33 U.S.C. §2713(b)(2).

On February 10, 2011, the claimants notified the NPFC that legal proceedings had ended, that the trustees were awarded an additional \$15,000 through the bankruptcy proceedings, and that they were revising their claim amount to \$35,000. The NPFC then reinitiated claim adjudication.

Jurisdictional Information

The NPFC first considered whether the claimed damages arose from an incident as defined by OPA. 33 U.S.C. §2701 *et seq.* To be covered, the incident must involve a discharge of oil or a substantial threat of discharge of oil from a vessel or facility into navigable waters of the United States after August 18, 1990. Based on the information provided by the trustees in their claim, and verified by the NPFC, this incident resulted from a discharge of oil from a facility into the waters of Lake Grande Ecaille, a navigable waterway, on September 22, 1998. The NPFC therefore finds that this spill is an incident as defined by OPA.

Claimant Eligibility

Claims for uncompensated natural resource damages may be presented to the Oil Spill Liability Trust Fund (OSLTF) by an appropriate natural resource trustee for the reasonable costs of assessing those damages. 33 U.S.C. §2712(a)(2) and 33 C.F.R. §136.207(b). Federal natural resource trustees are designated by the President according to Section 1006(b) of OPA. 33 U.S.C. §2706 (b).

This claim for uncompensated assessment costs was submitted by DOI and NOAA. DOI, under the authority of the Secretary of the Interior, and NOAA, under authority of the Secretary of Commerce, are designated Federal natural resource trustees under OPA, Executive Order 12777, and Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan. 40 C.F.R. §300.600, 56 Fed. Reg. 54757, Oct. 22, 1991.

Claimant's Burden of Proof and Adherence to NRDA Regulations

Under OPA, trustees bear the burden of proving their entitlement to the amount claimed for compensation of natural resource damages. 33 C.F.R. §136.105. Trustees are assisted by the rebuttable presumption found at 33 U.S.C. §2706 (e)(2) and 15 C.F.R. §990.13 when they follow 15 C.F.R. §990 *et seq.* Trustee determinations made in accordance with 15 C.F.R. §990 *et seq.* are initially presumed correct, but the presumption of correctness may be rebutted if the rebuttal evidence is of sufficient weight.

After careful review of the claim and supporting documents, the NPFC finds that the trustees followed 15 C.F.R. §990 *et seq.* Specifically, the trustees: coordinated actions to ensure no double recovery of damages; invited the responsible party (RP) to participate in the damage assessment process; issued a notice of intent to conduct restoration planning; prepared a draft and final Plan that was reviewed by the public; and maintained an administrative record that was made available for public review.

Claimant Presentation

With certain exceptions claims for removal costs or damages must be presented first to the RP. 33 U.S.C. §2713(a). If a claim is presented in accordance with 2713(a) and the claim is not settled by any person by payment within 90 days after the date upon which the claim was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. §2712(c). No claim of a person may be approved or certified during the pendency of an action by the person in court to recover costs that are the subject of the claim. 2712 (b)(2). Claims to the OSLTF must be presented to the NPFC in writing, for a sum certain, and signed by the claimant within three years from the date of completion of the natural resource damage assessment to present claims to the OSLTF². 33 U.S.C. §2713(h)(2), 33 C.F.R. §136.101(a)(1)(ii), 15 C.F.R. §990.64(b) and, 33 C.F.R. §136.105.

DOI and NOAA presented Lexington Insurance Company, an agent for the RP, with assessment costs totaling \$91,141.88, on November 12, 2000 and September 11, 2000, respectively. Lexington paid all costs presented by DOI and NOAA, except the \$50,000 deductible under the insurance policy. DOJ on behalf of DOI and NOAA filed a proof of claim in the Equinox bankruptcy proceedings. DOI and NOAA then presented a claim to the OSLTF for the \$50,000. The claim could not be adjudicated or approved during the pendency of the bankruptcy proceedings. When the bankruptcy was concluded DOI and NOAA requested that the NPFC adjudicate the claim for the remaining \$35,000 of uncompensated natural resource damages not paid from the bankruptcy proceedings. Thus, this meets the presentment requirements under OPA and the claims regulations.

² The Coast Guard, National Pollution Funds Center, administers the OSLTF.

Review of Natural Resource Preassessment Costs

From September 1998 to July 2000, DOI and NOAA incurred \$91,141.88 of costs to assess natural resource damages resulting from the *Equinox* incident, of which \$35,000 is uncompensated. Costs included trustee labor, travel, purchases, and contracts for technical support towards (1) determining injuries to water column fauna, birds, benthic and marsh habitat, and recreational use, and (2) planning a marsh creation and enhancement project to restore those injuries.

The NPFC reviewed documentation of assessment costs submitted by DOI and NOAA (\$91,141.88), including contracts, travel vouchers with receipts, purchase receipts, and labor summary sheets. We find that the assessment activities and costs are appropriately documented and reasonable and appropriate for the incident.

Summary

The NPFC has determined that the claim for uncompensated assessment costs incurred by DOI and NOAA following the *Equinox* oil spill is compensable under OPA and the OPA claims regulations. 33 U.S.C. §2701 *et seq.* and 33 C.F.R. §136. Accordingly, the NPFC offers to pay the claim, as follows:

Trustee assessment costs	\$91,141.88
RP payment (via Lexington Insurance)	\$41,141.88
Trustee claim presented to the NPFC (November 5, 2001)	\$50,000.00
Amount awarded to the trustees in bankruptcy court	(\$15,000.00)
Revised claim amount presented to the NPFC (February 10, 2011)	\$35,000.00
Total amount of compensable costs and offer amount	\$35,000.00

This offer constitutes full and final payment of all DOI and NOAA assessment costs for the *Equinox* incident. If you accept this offer, please sign the enclosed Acceptance/Release Form where indicated and return to:

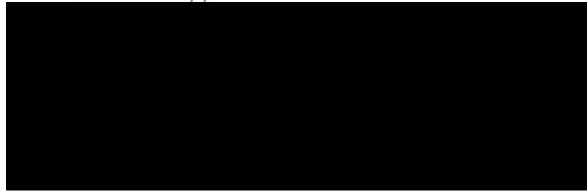
Director (Cn)
U.S. Coast Guard, Stop 7100
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the offer is void. If the settlement is accepted, your payment will be mailed within 30 days of receipt of the form. Please provide account information including Agency Locator Codes (ALC) with matching addresses, Treasury Accounting

Symbol (TAS) number, and instruction for the transfer of funds to trustee accounts when you submit the Release Form.

If you have any questions or would like to discuss the matter, you may write me at the above address or contact me by phone at (202) 493-6623.

Sincerely,



Claims Manager
Natural Resource Damage Claims Division
U.S. Coast Guard

Enclosure: Acceptance/ Release Form