

CLAIM SUMMARY / DETERMINATION FORM

Date	: 8/27/2010
Claim Number	: 910125-0001
Claimant	: Bollinger Marine Fabricators
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: Mark Erbe
Amount Requested	: \$3,103.33

FACTS:

Incident: On May 18, 2010 personnel at Bollinger Marine Fabricators discovered diesel oil on the surface waters in four of its boat slips. Bollinger Marine Fabricators (BMF) is located along the Intracoastal Canal at Bayou Bouef near Mile Marker 88.5 on the Mississippi River. Bayou Bouef is a navigable waterway of the United States and subject to the Oil Pollution Act of 1990 and its governing regulations.

The Facility Environmental Representative contacted the National Response Center to report the unknown sheen (report # 940608).¹

The acting Federal on Scene Coordinator Representative (FOSCR) was USCG Marine Science Technician (MST3), Joe Torcivia of Marine Safety Unit, Morgan City, Louisiana. He visited BMF's boat slips the day of the incident and took samples for identification. No match was found relating to any other discharged diesel oil and the investigation was closed.²

Description of Removal Activities for this Claim:

1. BMF hired Environmental Equipment, Inc. (EEI) of 626 Hobson Street in Houma, Louisiana to drive to Amelia, La and clean the oil from its four boat slips.
2. EEI responded with six employees who worked six hours. Two Equipment Operators at \$35 per hour and four Technicians at \$30 per hour for a total of \$1,140.00.
3. EEI brought its work truck, 20-foot utility trailer, and 18-foot workboat with outboard.
4. EEI used three, 8-foot sorbent booms to contain the mystery oil.
5. EEI applied 400 sorbent pads to remove the oil.
6. EEI used one box of pillow bags.
7. Four drums for \$95 for disposal/ see waste manifest

Claim: On August 11, 2010, the National Pollution Funds Center (NPFC) received BMF's claim for uncompensated removal costs with a sum certain of \$3,301.33. Part of the claim was BMF's invoice from EEI of \$2,740.00 and, the other part was for personnel time associated with Traci Dufrene in the amount of \$363.33.

NPFC's review of the actual cost invoices and dailies focused on: (1) whether the actions taken were compensable "disposal 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 are determined to be consistent with the National Contingency Plan (NCP) or directed by the (Federal On-Site Coordinator) FOSC; and (4) whether the costs were adequately documented and reasonable.

¹ See email from S.Falgout to M. Erbe dated August 25, 2010 in the file and PDF in CPS

² See email dated August 17, 2010 in Part 5 of the claim file and PDF in CPS.

The Claims Manager found EEI's invoice for labor, equipment and materials matched its rate schedule dated May 10, 2010. All rates were effective at the time services were provided.

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".

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].

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:

Overview:

1. MST3 Joseph Torcivia provided FOSC coordination and took samples of the mystery oil.
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), into navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has indicated on the claim form (Optional OSLTF Claim Form) that no suit has been filed in court for its uncompensated removal costs.
4. The claim was submitted within the statute of limitations for uncompensated removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that most of the removal costs presented were for actions in accordance with the National Contingency Plan and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

Analysis:

The NPFC 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 Part 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 FOOSC to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager confirmed that the services provided were billed in accordance with the rate schedule and that the response was consistent with the NCP. After review of the costs presented, the NPFC has determined that the 10.5 hours of personnel time for Traci Dufrene is denied as unsubstantiated. The Claimant has failed to provide a detailed description of the work performed by this person and has also failed to produce the pricing mechanism which indicates where the personnel labor cost was derived from.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$2,740.00 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #910125-001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on May 18, 2010. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Determined Amount:

The NPFC determines that the OSLTF will pay \$2,740.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 910125-001. All costs claimed are for charges paid for 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 Claimant.

AMOUNT: \$2,740.00

Claim Supervisor: *Donna Hellberg*

Date of Supervisor’s review: *9/7/10*

Supervisor Action: *Approved*

Supervisor’s Comments:

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: 2 [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
9/7/2010

VIA E MAIL: [REDACTED]@bollingershipyards.com

Bollinger Marine Fabricators
ATTN: Lynn Falgout
816 Bollinger lane
Amelia, LA 70340

Re: NPFC Claim Number 910125-0001

Dear Ms. Falgout:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$2,740.00 as full compensation for OPA claim number 910125-0001.

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.

All costs that are not determined as compensable are considered denied. 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 claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration 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 corresponding claim number.

Mail reconsideration request to:

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

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 2 [REDACTED]
[REDACTED]

Sincerely,

Mark Erbe
Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

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: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

Claim Number: 910125-0001	Claimant Name: Bollinger Marine Fabricators ATTN: Lynn Falgout 816 Bollinger lane Amelia, LA 70340
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I, the undersigned, ACCEPT the determination of \$2,740.00 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