

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: 202-493-6849  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
8/01/2011

VIA EMAIL: [REDACTED]@TRIADRESPONSEGROUP.COM

Triad Emergency Response, LLC  
ATTN: Scott Butaud  
319 East Milton Avenue  
Lafayette, LA 70508

Re: Claim Number E11620-0001

Dear Mr. Butaud:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$191,460.80 is full compensation for OPA claim number E11620-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination and spreadsheet 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 or within 30 days of your receipt of this letter, whichever date is earlier, 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](http://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 202-493-6849.

Sincerely,



Eric Bunn  
Claims Manager

- ENCL: 1) Claim Summary/Determination Form  
2) Spreadsheet  
3) Acceptance/Release Form

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Claim Number: E11620-0001	Claimant Name: Triad Emergency Response, LLC ATTN: Scott Butaud 319 East Milton Avenue Lafayette, LA 70508
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I, the undersigned, ACCEPT the determination of \$191,460.80 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

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number : E11620-0001  
Claimant : Triad Emergency Response, LLC  
Type of Claimant : Corporate (US)  
Type of Claim : Removal Costs  
Claim Manager : Eric Bunin  
Amount Requested : \$198,591.07

### **FACTS:**

On May 29, 2011, Southwest Rice Mill employees were cleaning a ditch when the employee operating an excavator struck and broke a valve off of a tank located alongside the Acadiana rail spur, adjacent to the ditch. The oil in the tank drained into Bayou Blanc, a navigable water of the U.S. The responsible party, the owner of the tank, is currently unknown.

### **Claimant and Claim**

The claimant, Triad Emergency Response, LLC (Triad) is an oil spill response company contracted by the mill owner to conduct removal actions. The Authorization to Proceed was executed by both parties on May 30, 2011; however the mill owner dismissed Triad on June 1 and refused to pay for the actions taken. The EPA FOSC verified by letter dated June 8, 2011 that Triad's actions were necessary, appropriate and consistent with the National Contingency Plan.

Triad submitted its invoices to the mill owner on May 29, 2011 – June 1, 2011, assuming that he was the responsible party. The mill owner denied the claim. Because the owner of the tank has not been identified, i.e., there is no known responsible party at this time,<sup>1</sup> the Claimant submitted its claim to the National Pollution Funds Center (NPFC) for reimbursement of uncompensated removal costs to the NPFC on June 10, 2011. These costs encompass services rendered by Triad from May 29, 2011 through June 1, 2011.

### **APPLICABLE LAW:**

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC § 2712(a)(4) and 2713 of OPA 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 (NCP) 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 such an incident." 33 USC § 2701(31).

The Claims Regulations at 33 CFR § 136.105(b) provide that each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. Claimant bears the burden of providing all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim. 33 CFR 136.105(a). In addition, the claimant bears the burden to prove the removal actions were reasonable in response to the

<sup>1</sup> If a responsible party is subsequently identified the NPFC will bill that RP for the costs paid from the Oil Spill Liability Trust Fund for this claim.

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 [Federal On-Scene Coordinator] 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].

Claims for uncompensated removal costs must be presented to the Fund within six years after the date of completion of all removal actions for that incident. 33 USC § 2712(h).

### **DETERMINATION OF LOSS:**

#### **A. Overview:**

1. The removal actions were coordinated with the FOSC as evidenced by the letter from the EPA FOSC dated June 8, 2011.
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant certified that it has filed no suit in court for the claimed uncompensated removal costs.
4. The claim was submitted within six years after the date of completion of all removal actions for this incident.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that the most of the removal 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. The excepted or denied costs are itemized in the attached spreadsheet.

#### **B. Analysis:**

Claimant states that all costs claimed are for uncompensated removal costs incurred for this incident for the time period of May 29 through June 1, 2011. The Claimant represents that all costs claimed are compensable removal costs, payable by the OSLTF.

The NPFC Claims Manager reviewed the Claimant’s actual cost invoices/dailies, rate schedule and receipts to confirm that the Claimant had incurred the costs claimed, that the costs were uncompensated, and that the costs were adequately documented and reasonable. Because the services and materials/equipment listed on the daily sheets were provided pursuant to a contract with specified rates and the FOSC verified the necessity of the costs, NPFC further finds that

Triad has satisfied its burden of showing that the amounts claimed were reasonable and necessary.<sup>2</sup>

The Claims Manager confirmed that the removal costs were: for 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) incurred as a result of these actions; and (3) incurred for removal actions determined by the FOSC to be consistent with the NCP or directed by the FOSC.

As detailed in the attached spreadsheet, the NPFC has approved \$191,460.80 in OPA-compensable costs. The Claims Manager found that most of the costs were compensable. Some of the costs were reduced or denied for several reasons, including lack of documentation such as receipts/proof of payment, denial if not supported by receipt or existence on rate sheet, adjustment to match rate schedule, and adjustment to match subcontractor invoice. The total denied is \$7,130.27. On this basis, the NPFC Claims Manager hereby determines that the Claimant did incur \$191,460.80 of uncompensated removal costs that are supported by the record and that this amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under the claim.

**AMOUNT:**

The NPFC hereby determines that the OSLTF will pay **\$191,460.80** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E11620-0001.

Claim Supervisor: *Donna Heiberg*

Date of Supervisor's review: *8/1/11*

Supervisor Action: *Approved*

Supervisor's Comments:

<sup>2</sup> NPFC policy provides that a written agreement between the responsible party and the cleanup contractor for removal actions evidences that the removal costs and resources incurred pursuant to that agreement are deemed reasonable and compensable.