

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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Arlington VA 20598-7100
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NPFCCCLAIMSINFO@uscg.mil

5890
January 14, 2014

VIA EMAIL: sven@millerslaunch.com

Miller's Launch, Inc.
c/o Mr. Sven van Batavia
Pier 7 1/2
Staten Island, NY 10301

RE: Claim Number: 913089-0001

Dear Mr. Batavia:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$140,316.08 is compensable for OPA claim number 913089-0001.

This reconsideration determination is based on an analysis of the information submitted.

All costs that are not determined as compensable are considered denied. Disposition of this reconsideration constitutes final agency action.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to:

DIRECTOR
NATIONAL POLLUTION FUNDS CENTER
US COAST GUARD STOP 7100
4200 WILSON BLVD STE 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 determination is void. If the determination is accepted, your payment will be mailed within 30 days of receipt of the Release Form.

Sincerely,



Chief, Claims Adjudication Branch
U.S. Coast Guard

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement
Copy of the Privacy Act

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 913089-0001	Claimant Name: Miller's Launch, Inc.
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I, the undersigned, ACCEPT this settlement offer of \$140,316.08 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. 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 amounts paid for which I have been compensated under this claim. 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 and associated with those amounts paid for which I am compensated for with this settlement offer. 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 amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

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 for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by 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
_____	_____
Printed Name of Claimant or Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Printed Name of Witness	Signature

_____	_____	_____
*DUNS/EIN/SSN	Bank Routing Number	Bank Account Number
*Required for Payment		

CLAIM SUMMARY / DETERMINATION

Claim Number:	913089-0001
Claimant:	Miller's Launch, Inc.
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	William Dodson
Amount Requested:	\$182,889.60

FACTS:

On April 13, 2013, United States Coast Guard (USCG) Sector New York was notified of the crane barge MIKE B that blew out a spud well and partially sank off the Steeplechase Pier on the Lower Bay of the Hudson River, a navigable waterway of the United States.¹ The initial report was received by CG Sector New York at 0143, followed by a National Response Center (NRC) report # 1043817 at approximately 0313.²

The report indicated that a lattice crane and a 500 gallon diesel fuel storage tank was onboard the crane barge and posed a substantial threat of sinking with the barge and discharging oil into the Hudson River.³

USCG Sector New York responded and observed the barge listing hard to starboard and sitting starboard side down on the river bottom in approximately 10 feet of water. The barge had been hard boomed and there was no indication of pollution in the water from either the lattice crane or diesel fuel storage tank.⁴

On April 13, 2013, Sector New York issued a Captain of the Port Order (COTP) #039-13 to the barge operator, Coastal Environmental Group, Inc., to develop and submit a salvage plan along with a pollution response plan with a detailed timeline of operation to be conducted since a substantial threat of discharge of oil still remained. Coast Guard personnel then departed the scene with the understanding that the operator of the barge wouldn't attempt salvage of the barge until their salvage plan was submitted and approved by CG Sector New York. All other activities would be monitored by the Coast Guard D1 Command Center.

CLAIM AND CLAIMANT:

On April 12, 2013, Miller's Launch, Inc. was contracted by Coastal Environmental Group, Inc. to mobilize an emergency response crew in order to stabilize the listing crane barge MIKE B. and to remove the diesel fuel and associated oils from the lattice crane and diesel fuel storage tank located on the barge. As storm force winds were in effect at the time of their arrival, Miller personnel tied off to the listing crane barge and kept it off the pier and prevented it from breaking away and sinking until the weather subsided.

On April 13, 2013, Miller personnel deployed 800 feet of 18 inch containment boom around the listing barge and deployed dewatering pumps onto the barge in an effort to dewater the barge. In addition, a skid mounted vacuum pump was brought on-scene in an attempt to remove the diesel fuel and oils from the lattice crane and diesel fuel storage tank. Efforts to remove the diesel fuel and associated oils were

¹ See USCG MISLE Case Report #632520

² See NRC Report # 1043817 on April 13, 2013.

³ See email from MST2 Warhurst to William Dodson dated November 21, 2013.

⁴ See USCG MISLE Case #632520.

completed by 2000. However, because of the list and stability of the barge, it was not possible to remove all of the residue diesel fuel and oil from the lattice crane and diesel fuel storage tank. Miller continued barge dewatering, boom management with oil spill removal activities on April 14, 2013.

On April 15, 2013, the lattice crane and diesel fuel storage tank were successfully removed from the listing crane barge and placed onto another barge. CG Sector New York personnel returned to the scene and deemed the pollution threat mitigated at that time. Clean-up activities were concluded and demobilization was completed on April 16, 2013. The oil recovered from lattice crane and diesel fuel storage tank was properly disposed of at Clean Water of New York on April 16, 2013.

On September 23, 2013, Miller's Launch, Inc. presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$182,889.60.⁵

On December 19, 2013, the NPFC offered \$121,941.87 to Miller's Launch, Inc. as full compensation for their claim. Inconsistencies in the claim were noted and partial costs denied based upon removal charges for activities that occurred before the documented start time and removal charges for activities that occurred after the documented demobilization time of the response; inconsistencies and overlap time of response personnel; response assets billed as on-scene but not supported as being on-scene and duplicate charges for billed expenditures.

REQUEST FOR RECONSIDERATION:

On January 8, 2014, the NPFC received the Claimant's reconsideration request. In support of this request, the Claimant provided a spreadsheet that itemized the expenditures denied by the NPFC with a brief explanation of their validity. In addition, they provided a letter that provided specific detail to their response efforts of Monday, April 15, 2013. Lastly, they provide a copy of their Time and Material Rate Sheet with emphasis on their company's mobilization and demobilization policy to charge portal to portal costs on all labor and equipment.

NPFC Determination on Reconsideration

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. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim.

Upon receipt of the Claimant's request for reconsideration, the NPFC performed a *de novo* review of the entire claim submission.

This review sought to determine whether or not the Claimant provided evidence on reconsideration sufficient to prove that their removal costs were legitimate for reimbursement.

In their request for reconsideration, the Claimant argues that in accordance with their Time and Material Rate Sheet, all mobilization and demobilization charges for labor and equipment shall be billed on a portal to portal basis. In its claim submitted to the NPFC, 16 billed charges were partially denied as their charges were determined to be "overlap" charges and not reimbursed on a portal to portal basis.

The NPFC reviewed the Miller's Launch Time and Material Rate Sheet and agrees that all reasonable mobilization and demobilization charges for labor and equipment should be reimbursed on a portal to

⁵ NPFC Standard Claim Form dated September 23, 2013.

portal basis. As such, the 16 partial charges previously denied for “overlap” were re-evaluated and determined legitimate for reimbursement.

The Claimant also argues that labor costs for 18 Miller’s Launch personnel that had been denied for work performed on April 14 and April 15, 2013 for lack of supporting documentation be reconsidered. Specifically, Miller’s Launch provided an explanation of those 18 response personnel on-scene on April 14 and April 15, 2013 with a detailed description of their duties and time on and off scene.

The NPFC reviewed Miller’s Launch detailed explanation of response personnel on-scene on April 14 and April 15, 2013 and agree that the labor costs for the 18 personnel previously denied were reasonable and legitimate for reimbursement.

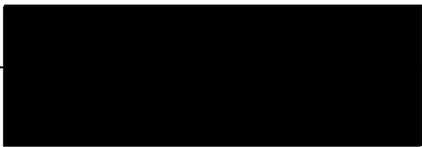
The Claimant also argued that the cost of an all terrain forklift which had been partially denied for not being listed in their Time and Material Rate Sheet was in fact listed in their Time and Material Rate Sheet and provided a copy of the document to support their claim.

The NPFC reviewed the Miller’s Launch Time and Material Rate Sheet and agrees that the all terrain forklift is listed. As such, that cost has been determined legitimate for reimbursement.

The NPFC continues to deny a total of \$42,573.52 in removal costs submitted for reimbursement, as noted in the original Settlement Offer. These costs remain denied based upon removal charges for activities that occurred before the documented start time and removal charges for activities that occurred after the documented demobilization time of the response and response assets billed as on-scene but not supported as being on-scene.

Based on the NPFC’s denial of \$42,573.52 for reimbursement of the invoiced items submitted on Reconsideration, the NPFC hereby determines that the OSLTF will pay \$140,316.08 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913089-0001.

DETERMINED AMOUNT: \$140,316.08

Claim Supervisor:	
Date of Supervisor’s review:	<i>1/14/2014</i>
Supervisor Action:	<i>Reconsideration offer approved as stated above</i>
Supervisor’s Comments:	