

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

4200 Wilson Blvd Stop 7100  
Arlington VA 20598-7100  
Staff Symbol: Ca  
Toll-Free: 1-800-280-7118  
Fax: 703-872-6113  
Email: ARL-PF-  
NPFCCLAIMSINFO@uscg.mil

5890  
January 29, 2014

VIA EMAIL: [REDACTED]

Redwood Shore Diving dba Parker Diving Service

ATTN: [REDACTED]  
PO Box 1648  
Sausalito, CA 94966

Re: Claim Number 914008-0001

Dear Ms. Nunn:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$4,539.86 is full compensation for OPA claim number 914008-0001.

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 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.

Sincerely



Claims Manager

ENCL: Claim Summary / Determination Form  
Acceptance/Release Form  
Summary Spreadsheet of Costs

U.S.  
Department of  
Homeland  
Security



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
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Staff Symbol: (CA)  
Phone: 800-280-7118  
E-mail: [REDACTED]  
Fax: 703-872-6113

**United States  
Coast Guard**

Claim Number: 914008-0001	Claimant Name: Redwood Shore Diving dba Parker Diving Service PO Box 1648 Sausalito, CA 94966
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I, the undersigned, ACCEPT this settlement offer of \$4,539.86 as full and final compensation for the removal costs arising from the specific claim number identified above.

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.

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
_____	_____
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	: 914008-0001
Claimant	: Redwood Shore Diving, Inc. dba Parker Diving Service
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$5,219.88

### FACTS:

**Oil Spill Incident:** On August 22, 2012 at 0900, Sector San Francisco Command Center (SCC) received a report that a 54 foot wooden recreational vessel had partially sank at the Paradise Point Marina in Stockton, CA.<sup>1</sup> The recreational vessel, NEVER SAY NEVER partially sank, after its bilge pump failed. It held approximately 400 gallons of diesel fuel oil that the USCG Federal On-Scene Coordinator-Representative (FOSC-R) considered to be substantial threat of discharging into the San Joaquin River; a navigable waterway of the US.<sup>2</sup>

**Responsible Party:** ██████████ is the owner of the vessel and was designated by the Coast Guard as the responsible party (RP) for the incident. Mr. ██████ hired PDS to refloat his vessel to prevent a potential discharge. The National Pollution Funds Center (NPFC) was not able to send an RP Notification Letter to Mr. ██████ as his whereabouts are unknown at the time of this adjudication.

**Description of Removal Activities for this Claimant:** Parker Diving Service (PDS, Claimant) arrived on scene at 1745 hours on August 22, 2012 and placed sorbent boom and pads around the vessel. PDS divers plugged the vessel's vents, and refloated it. PDS pumped 200 gallons of diesel fuel off the vessel and disposed of all the waste material.

**The Claim:** On December 18, 2013, Claimant presented its claim for uncompensated removal costs to the NPFC for the sum certain of \$5,219.88. The Claimant invoiced Mr. ██████ a total of \$8,289.88 for its services. Mr. ██████ paid PDS \$3,450.00. PDS added \$68 per month for 10 months (10 x \$68 = \$680) to the outstanding balance of \$4,539.88. PDS calculates the outstanding balance for its services at \$5,219.88 (\$4,539.88 + \$680 = \$5,219.88).

### 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".

<sup>1</sup> See NRC #1021871

<sup>2</sup> See MISCLE Case Report 610123 opened August 22, 2012.

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 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].

## **DETERMINATION OF LOSS:**

### **A. Overview:**

1. FOSC coordination was provided by the United States Coast Guard Sector San Francisco Command Center (SCC) in accordance with CFR § 136.203.
2. The incident involved the discharge or substantial threat of a 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 uncompensated removal costs.
4. The claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager (CM) has thoroughly reviewed all documentation submitted with the claim and determined which removal costs presented were for actions in accordance with the NCP and that the costs for these actions were allowable under OPA and 33 CFR § 136.205.

**B. Analysis:**

NPFC CM reviewed the actual cost invoices 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The USCG FOOSC-R was on-scene for this incident and the Claimant coordinated all actions with the FOOSC-R.<sup>3</sup> The Claimant has met its burden pursuant to the governing claims regulations found at 33 CFR 136.203 and 205 to demonstrate that its actions were determined by the FOOSC to be reasonable, necessary and consistent with the National Contingency Plan (NCP).<sup>4</sup>

Usually, the Claimant would provide a daily log showing personnel, equipment and material maintained at the incident site. In this case, the Claims Manager contacted the Ms. Maria Nunn of Parker Diving Services who explained that the responsible party had signed a contract and made partial payments therefore; PDS had no reason to believe at the time that it would have to present a claim for uncompensated removal costs to the NPFC.

The CM filled out a spreadsheet using the information provided in Claimant’s invoice G-154. The CM tracked labor categories and rates for each laborer and the start and stop times for each day. Additionally, CM finds that the invoice shows each employee’s rate as either straight time or overtime by the hour and day that the employee worked. Daily or hourly charges correspond between the Claimant’s invoice and its rate sheet. Equipment costs reflect daily or hourly charges at rates indicated on PDS’ rate-sheet. Material costs correspond to the type and quantity invoiced and the charges accurately reflect rates listed on PDS’ rate-sheet. Additionally, the invoice shows discounted mobilization and restocking charges.

- The NPFC is able to verify each invoiced line item used for this incident and can calculate OPA compensable costs using the Claimant’s rate-sheet.
- The CM’s review of Claimant’s invoice finds the daily activities correspond to the daily activities outlined in the USCG POL REP 1 for this incident.
- Claimant’s invoice identifies each piece of equipment and material that it used daily. The NPFC finds that the invoice contains sufficient details of the daily response activities to support the uncompensated removal activities.

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<sup>3</sup> Claimant representative, Ms. [REDACTED] stated this fact in email to NPFC on December 19, 2013.

<sup>4</sup> See USCG POLREP 1 and Closed

- Claimant submitted two signed waste manifests along with a copy of its check showing that this cost was incurred and payment was made accordingly. Claimant provided a billing invoice as proof of payment and a signed waste manifest from the receiving facility. Claimant invoiced disposal cost of \$2,750.00 for 165 gallons of waste liquid and six containers of solid waste material.

The NPFC denies the \$680.02 in charges associated with carrying charges of \$68.00 a month for 10 months due to non-payment by Mr. [REDACTED]. This expense is not an uncompensated removal cost and is therefore denied.

**C. Determined Amount:**

Based upon the foregoing, the NPFC finds PDS provided adequate documentation demonstrating that it incurred the costs and that these costs are based on fair and reasonable rates as reflected in the line items on its invoice along with waste disposal costs incurred and paid.<sup>5</sup>

On this basis, the Claims Manager hereby determines that the Claimant did incur \$4,539.80 in uncompensated removal costs and that this amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 914008-0001 in accordance with 33 CFR 136.203 & 205.

**AMOUNT: \$4,539.86**

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *1/29/14*

Supervisor Action: *Determination approved*

Supervisor's Comments:

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<sup>5</sup> See NPFC Spreadsheet attached