

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
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NPFCCCLAIMSINFO@uscg.mil

5890
March 05, 2014

SENT VIA EMAIL TO: [REDACTED]@stpete.org

City of St. Petersburg Municipal Marina
ATTN: David Wirth
500 1st Avenue SE
St. Petersburg, FL 33701-3906

RE: 914018-0001

Dear Mr. Wirth:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$6,430.52 is full compensation for OPA claim number 914018-0001.

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
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement 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 Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-7 [REDACTED]

Regards,

Mark Erbe
Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

CLAIM SUMMARY / DETERMINATION

Claim Number:	914018-0001
Claimant:	City of St. Petersburg Municipal Marina
Type of Claimant:	Government
Type of Claim:	Removal Costs
Claim Manager:	Mark Erbe
Amount Requested:	\$6,430.52

FACTS:

Oil Spill Incident: On October 7, 2013 at 012:25 Sector St Petersburg received a notification from the National Response Center (NRC# 106289) of a 100' x 100' diesel oil sheen on the surface waters of the City of St. Petersburg Marina, a tributary to a navigable waterway of the US. Coast Guard investigators were unable to find the source of the discharge and the acting Federal On-Scene Coordinator – Representative (FOSC-R) classified the incident as a mystery spill.¹

Responsible Party: At this time no responsible party has been identified.

Description of Removal Activities for this Claimant: The City of St. Petersburg hired Progressive Environmental/ SWS Environmental Services (SWSES) to remove the diesel oil.² SWSES coordinated with the USCG FOCS-R as to the scope of the clean-up.³ SWSES arrived on scene at 15:00 hours on October 7, 2013 and placed sorbent boom and pads around the spill to contain and clean it up. The waste material was transported to Clark Environmental, Inc. of Mulberry, FL. The waste manifest indicates 660 pounds of waste material were disposed and there's an invoice from Clark Environmental for \$39.60 included with SWSES' invoice.⁴

The Claim: On January 16, 2014, the City of St. Petersburg (Claimant) presented its claim for uncompensated removal costs to the NPFC for the sum certain of \$6,430.52. The City of St Petersburg, Florida paid SWSES' invoice #142104 and submitted a copy the City's check #690324 for \$6,430.52.⁵

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

¹ See USCG Investigator's Statement Form in file MISLE Case #65077

² See invoice showing parent corporation as Progressive Environmental Services, Inc of Atlanta, GA

³ See SITREP One

⁴ See Waste Manifests from Clark Environmental

⁵ See copy of both sides of check in file accounts payable receipt for SWSES

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 St Petersburg 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 that the 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 invoice 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 FOSC-R, to be consistent with the NCP or directed by the FOSC-R, and (4) whether the costs were adequately documented and reasonable.

The documentation shows that the USCG FOSC-R was on-scene for this incident and that SWSES coordinated with the FOSC-R. The NPFC finds 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 FOSC-R to be reasonable, necessary and consistent with the National Contingency Plan (NCP).⁶

The Claimant provided SWSES’ invoice showing each of its personnel, equipment and material that it maintained at the incident site. In this case, the Claims Manager contacted Mr. David Wirth, the manager for the City of St Petersburg Marina. Mr. Wirth explained that the City hired and paid SWSES to remove the oil then presented the City’s claim for uncompensated removal costs to the NPFC. The CM phoned Ms Shelly Largo⁷ of SWSES to confirm that all invoiced charges were paid by Claimant.

The CM created a summary of costs spreadsheet using the information provided in Claimant’s invoice 142104. The CM tracked labor and equipment categories. Rates for each laborer are listed on the invoice and start to stop times for each personnel day. Additionally, CM finds that the invoice shows the rate for each employee 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.⁸ Equipment costs reflect daily or hourly charges at rates indicated on SWSES’ rate-sheet. Material costs correspond to the type and quantity invoiced and the charges accurately reflect rates listed on SWSES’ rate-sheet.

- The NPFC is able to verify each line item invoiced used for this incident and can calculate OPA compensable costs using the Claimant’s rate-sheet.
- The CM reviewed Claimant’s invoice and finds that it corresponds to the daily activities as noted in the USCG SITREP 1 for this incident.
- Claimant’s invoice identifies each person and piece of equipment and material that it used daily. The NPFC finds that the invoice contains enough details of the daily response activities to support the uncompensated removal activities.
- Claimant submitted a signed waste manifest (tracking # API-310-1167) from the receiving facility showing that it properly disposed of 660 (lbs) of solid waste

⁶ See USCG SITREP 1 and Closed

⁷ Ms Largo emailed rate sheet to David Wirth, Manager of City of St Petersburg Municipal Marina who then emailed them to me.

⁸ See SWSES’ rate sheet effective though October 2013

material. As proof of payment, Claimant provided an invoice from Clark Environmental (#61685) showing that SWSES received Clark's invoice and paid charges for disposal costs of \$39.60 then added a 130% surcharge to the City for the waste disposal. Claimant submitted a copy of both sides of its check showing it was paid and includes this cost.

C. *Determined Amount:*

Based upon the foregoing, the NPFC finds that Claimant 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.⁹

On this basis, the Claims Manager hereby determines that the Claimant did incur \$6,430.52 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 # 914018-0001 in accordance with 33 CFR 136.203 & 205.

AMOUNT: \$6,430.52

Claim Supervisor: *Donna Hellberg*

Date of Supervisor's Review: *3/5/14*

Supervisor Action: *Approved*

Supervisor's Comments:

⁹ See NPFC Spreadsheet attached

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 914018-0001	Claimant Name: City of St. Petersburg Municipal Marina
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I, the undersigned, ACCEPT this settlement offer of \$6,430.52 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 of Payee Please Circle one	Payee
_____	_____
Bank Routing Number	Bank Account Number