U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
[redacted]
Fax: 703-872-6113

8/27/2014

[redacted]

State of Florida
ATTN: Ms. Peggy Brown
Department of Environmental Protection
Bureau of Emergency Response
3900 Commonwealth Blvd.
Tallahassee, FL 32399-3000

Re: Claim Number 914109-0001
Florida Case # 2012-4C-47522

Dear Ms. Peggy Brown:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that it will offer $939.04 as full compensation for OPA claim number 914109-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rational for this decision.

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 1-800-280-7118.

Sincerely,

Alyssa Lombardi
Claims Manager
U.S. Coast Guard

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

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
E-mail: Alyssa.J.Lombardi@uscg.mil
Phone: 703-872-6099
Fax: 703-872-6113

| | |
|---|---|
| Claim Number: 914109-0001<br>Florida Case # 2012-4C-47522 | Claimant Name: State of Florida<br>ATTN: Peggy Brown<br>Department of Environmental Protection<br>Bureau of Emergency Management<br>3900 Commonwealth Blvd.<br>Tallahassee, FL 32399-3000 |

I, the undersigned, ACCEPT the settlement offer of $939.04 as full compensation for all removal cost claims, except those for natural resource damages, associated with the below described incident. Other than possible claims for natural resource damages, this settlement represents full and final release and satisfaction of all removal cost claims under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4), arising from an oil pollution incident documented in the above noted Florida case number. This settlement 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, except those for natural resource damages 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 |

CLAIM SUMMARY / DETERMINATION FORM

| | |
|---|---|
| Claim Number | : 914109-0001 |
| Claimant | : State of Florida |
| Type of Claimant | : State |
| Type of Claim | : Removal Costs |
| Claim Manager | : Alyssa Lombardi |
| Amount Requested | : $939.04 |

***FACTS:***

***Oil Spill Incident:*** The Florida Department of Environmental Protection (FL DEP) reports that on July 25, 2012, the National Response Center (NRC) received a call regarding an unknown sheen near 1181 Anclote Road in the Anclote River, which is located in Tarpon Springs, FL. FL DEP personnel responded and it was determined that the sheen was leaking from a sunken fishing vessel. Weathered red diesel fuel was visible near the boat ramp and underneath the dock, as well as along the shoreline for several hundred yards in both directions.

***Description of Removal Activities for this claimant:*** Florida DEP responded on-scene along with Tarpon Springs FD, Pinellas County HazMat and USCG Sector St. Petersburg. Cleanup and removal activities were directed by USCG Sector St. Petersburg, though FL DEP made several follow-up visits at the request of a local resident to test and ensure that all diesel fuel/vapors were no longer present. The claimant is requesting reimbursement of costs associated with its response to the incident.

***The Claim:*** On August 25, 2014, the Florida Department of Environmental Protection submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel, equipment and administrative costs in the amount of $939.04.

Florida DEP is claiming $651.87 in State personnel expenses, $265.18 in State equipment (vehicle and clothing) expenses and $22.00 in State administrative documentation/photo fees.

***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) 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.

Under 33 USC §2713(a) all claims for removal costs or damages, with exceptions not applicable here, shall be presented first to the responsible party or guarantor of the source designated.

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 USC §2715(a) any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other law.

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing 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 136.107,
"(a) The claims of subrogor (e.g., insured) and subrogee (e.g., insurer) for removal costs and damages arising out of the same incident should be presented together and must be signed by all claimants.
(b) A fully subrogated claim is payable only to the subrogee.".

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."

Under 33 CFR 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. This is a de novo review. 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. The request for reconsideration must be received by the NPFC within 60 days after the date

the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

## ***DETERMINATION OF LOSS:***

### *A. Overview:*

1. FOSC Coordination has been established via USCG Sector St. Petersburg.[1]
2. 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. In accordance with33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.
5. The NPFC Claims Manager 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 indeed reasonable and allowable under OPA and 33 CFR § 136.205.

### *B. Analysis:*

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

The NPFC confirmed the actions undertaken were reasonable and necessary and billed in accordance with the state's published rates. On that basis, the Claims Manager hereby determines that the claimant did in fact incur $939.04 of uncompensated removal costs and that that 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 #914109-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on July 25, 2012. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

### C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay $939.04 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 914109-0001. 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 the Claimant.

[1] See FL DEP Emergency Response incident Report, signed by USCG Sector St. Petersburg FOSCR on 8/28/2012.

***AMOUNT: $939.04***

Claim Supervisc [redacted]

Date of Supervisor's review: ***8/27/14***

Supervisor Action: ***Approved***