

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

Fax: 703-872-6113

3/14/2014

State of Florida

Re: Claim Number MI1023-0001  
Florida Case # 2011-4C-45774

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 \$1,420.40 is full compensation for OPA claim number MI1023-0001.

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.

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](http://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.

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 20508-7100

Fax: 703-872-6113

Claim Number: M11023-0001 Florida Case # 2011-4C-45774	Claimant Name: State of Florida ATTN: Peggy Brown Department of Environmental Protection Bureau of Emergency Management 3900 Commonwealth Blvd. Tallahassee, FL 32399-3000
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I, the undersigned, ACCEPT the settlement offer of \$1,420.40 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	: M11023-0001
Claimant	: State of Florida
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$1,420.40

**FACTS:**

***Oil Spill Incident:*** On June 8, 2011, Florida Department of Environmental Protection (DEP) received notification from the National Response Center (NRC) that the Tampa Bay Police Marine Patrol reported a large diesel spill in Tampa Bay, a navigable waterway near the Ballast Point Park on Interbay Boulevard in Tampa, FL. After receiving the NRC report, DEP personnel and the USCG Sector St. Petersburg responded to the site from a nearby 5,000-gal diesel spill at the Port of Tampa.

The Tampa Police Marine Patrol unit believed that the spill at Ballast Point Park was associated with the 5,000-gal Kinder Morgan spill at the port. After inspecting Ballast Point Park, the USCG determined that the spills were not related. The diesel fuel at the site was very weathered with a yellow tint. The fuel at the Kinder Morgan release was red dyed diesel fuel with an unweathered appearance. The source of the release was unidentified. DEP personnel estimated that the diesel spill was approximately 300 gallons. The USCG decided to open the fund under FPN M11023, and hired SWS for the cleanup.

***Description of Removal Activities for this claimant:*** DEP personnel assisted the USCG with the response. The currents in the Tampa Bay caused the diesel fuel to remain inshore and follow the seawall/riprap. The free product migrated from Ballast Point Park to Bayshore Blvd (a distance of several miles). A small beach area behind a condo complex was used as a collection area. This claim is for personnel response actions prior to the Fund being opened and a Federal Project Number being assigned to it. It does not include costs related to materials and equipment used to mitigate, cleanup and dispose of the oil in the affected area. Therefore, all subsequent actions are costs covered under FPN M11023.

***The Claim:*** On March 7, 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 \$1,420.40.

Florida DEP is claiming \$1,115.40 in State personnel expenses, \$283.00 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(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 136.205 “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 FOSC MSTC Steven Natale.
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.

3. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs..
4. 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:***

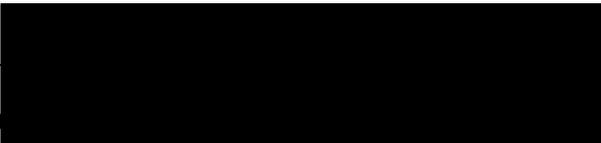
NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, 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 rates. On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$1,420.40 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 #M11023-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on June 8, 2011. 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 \$1,420.40 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # M11023-0001. 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.

**AMOUNT: \$1,420.40**

Claim Supervisor: *D* 

Date of Supervisor's review: *3/14/14*

Supervisor Action: *Approved*