U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center

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

5890
March 20, 2014

Sent Via E-Mail:
[redacted]

IntraCoastal Environmental LLC
[redacted]

RE: M14002-0001

Dear Ms. Hawkins:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $9,015.00 is full compensation for OPA claim number M14002-0001.

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. 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,

[redacted]
Claims Manager
U.S. Coast Guard

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: M14002-0001	Claimant Name: IntraCoastal Environmental LLC

I, the undersigned, ACCEPT this settlement offer of $9,015.00 as full and final compensation for removal 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

CLAIM SUMMARY / DETERMINATION

Claim Number:	M14002-0001
Claimant:	IntraCoastal Environmental LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	Dawn Unglesbee
Amount Requested:	$9,015.00

Facts:

Oil Spill Incident

On October 12, 2013, the 65-foot motor vessel, WANDERER, was found partially submerged and actively sheening diesel fuel, at the Osprey Marina, in Myrtle Beach, SC. Mr. John Aiello a representative of the owner of the vessel contacted IntraCoastal Environmental LLC (ICE, Claimant) and advised of the vessel sinking and that he needed immediate assistance.

The Responsible Party/Vessel Owner (RP) was identified as Mr. Marlon Aronstam with Dancal Thoroughbred, Inc.

The Claimant sent Mr. Aronstam an Authorization to Proceed form and Rate Sheet for signature. At this point Mr. Aronstam advised that he nor his company maintained insurance on the vessel.

Several hours passed and the Claimant had not received the signed documents to proceed with the cleanup. The Coast Guard[1] and the Claimant phoned Mr. Aronstam and advised that authorization must be received so that operations could continue. The RP emailed a signed Authorization to Proceed form back to the Claimant.

Claimant deployed 300' of boom around the vessel and secured the site for the night. Clean-up operations began on October 13, 2013 at which time the RP advised, again, that he does not have the capability to pay for the response and cleaning. After a meeting with the RP, Coast Guard, and Claimant, the Coast Guard federalized the spill response. The claimant was then retained by the Coast Guard to continue the removal of fuel from the vessel and surrounding waters. Order No. HSCG84-14-C-7XV003[2] and FPN M14002[3] was issued to Claimant for this response.[4]

All costs incurred from 10/13/2013 – 10/30/2013 and disposals were approved and invoiced under the FPN and the Order Number.

FOSC coordination was provided by MST2 Kris Schaus – USCG Detached Duty Office, Sector Charleston.

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[1] USCG Detached Duty Office, Sector Charleston
[2] *See,* Order for Supplies or Services, signed and dated October 22, 2013
[3] *See,* United States Coast Guard Authorization to Proceed with Removal and Disposal of Oil or Hazardous Material Spill, date issued, October 15, 2013
[4] *See,* Ice Summary of events, dated January 24, 2014

A total of seven 55-gallon drums of oil and two 50-gallon fuel tanks were recovered from the vessel.

Claim

Claimant made several attempts via email to collect the balance due on the invoice. However, the RP has not replied.[5]

On March 13, 2014, IntraCoastal Environmental, LLC submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of $9,015.00.[6] The Claimant's claim is for costs associated with the response services that were provided to the RP to include: personnel (Time and Per Diem) and equipment, crew trucks, liquid vacuum truck, jon boat, response trailer, hard boom, and PVC gloves.

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".

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].

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[5] *See,* email traffic provided by Claimant, dated December 09, 2013.
[6] Invoice # CHS1745

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 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. Findings of Facts

1. FOSC coordination was provided by MST2 Kris Schaus – USCG Detached Duty Office, Sector Charleston.
2. The incident involved a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701 (23), 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 cost claims.
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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis

The NPFC Claims Manager has 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 costs were adequately documented and reasonable.

Claimant provided an invoice for personnel, equipment and per diem in the amount of $9,015.00 which demonstrates the time and expense that the Claimant incurred in result of the incident. Claimant's cost for per diem is in accordance with their rate schedule.[7] Ten employees traveled over fifty miles from their normally assigned branch location at a rate of $135.00 per day. Claimant based their cost of per diem in accordance to the U.S. Government Travel Regulations.

The NPFC performed a review of the costs presented by the Claimant and has determined that the rates charged were within reason and that the actions taken by all parties responding to the incident were determined by the USCG to be consistent with the National Contingency Plan (NCP). On that basis, the Claims Manager determines that $9,015.00 is approved for this claim and that the amount is payable by the OSLTF.

C. Determined Amount

The NPFC hereby determines that the OSLTF will pay **$9,015.00** as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim number M14002-0001. 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 claimants.

Claim Supervisor: [redacted]

Date of Supervisor's review: ***3/20/14***

Supervisor Action: ***Approved***

[7] IntraCoastal Environmental Emergency Response Rate Sheet, Revised 10/1/12