

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: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
9/22/2009

Via email: [REDACTED]@talensmarine.com

Talen's Marine & Fuel, L.L.C.  
Attn: Mr. Rod Boudreaux  
225 Pleasant Street  
Lake Arthur, LA 70549

Re: Claim Number 909102-001

Dear Mr. Boudreaux:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$3,154.30 is full compensation for OPA claim number 909102-001.

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 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 are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at [www.ccr.gov](http://www.ccr.gov). Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6883.

Sincerely,

[REDACTED SIGNATURE]

Claims Manager

ENCL: Claim Summary / Determination Form  
Acceptance/Release Form

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Fax: 202-493-6937

Claim Number: 909102-001	Claimant Name: Talen's Marine & Fuel, L.L.C. ATTN: Mr. Rod Boudreaux 225 Pleasant Street Lake Arthur, LA 70549
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I, the undersigned, ACCEPT the determination of \$3154.30 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination 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, 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

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Date : 9/18/2009  
Claim Number : 909102-001  
Claimant : Talen's Marine & Fuel, L.L.C.  
Type of Claimant : Corporate  
Type of Claim : Removal Costs  
Claim Manager : ██████████  
Amount Requested : \$3154.30

**FACTS:**

- 1. Oil Spill Incident:** The United States Coast Guard Marine Sector Morgan City reports that on March 26, 2009, a discharge of approximately 5 to 10 gallons of used oil was discovered around the fuel facility and boat slip at Talen's Marine & Fuel, L.L.C. (Talens). The source of the discharge is unknown. The diesel oil discharged into Freshwater Bayou, a tributary of the Gulf of Mexico, a navigable waterway of the US, creating a sheen of oil on the water's surface.<sup>1</sup>

The incident was reported to the National Response Center (NRC) on March 26, 2009 at approximately 10:11 am CST via report # 900969 by Mr. Kenneth Bellino of Talens. The report described the incident as an unknown amount of an unknown oil from an unknown cause.<sup>2</sup> The Coast Guard Pollution Investigative (PI) team stated that the cause of this discharge was unknown and it had most likely floated in from somewhere further down the canal. They further stated that the source was being secured by Environmental Safety and Health Consulting Services, L.L.C. (ES&H), the OSRO that had been hired.<sup>3</sup>

- 1. Description of removal actions performed:** The claimant, Talens, discovered contamination along the waterfront property of a facility they owned by an unknown oil floating on top of the water. To protect their property and the property of others, Talens placed absorbent boom and pads in the water before ES&H arrived at the site. After gaining USCG Morgan City approval, ES&H continued cleanup of the contaminated water. Upon completion of the project, when it was determined that there was no longer a discharge of oil on the water, ES&H gave the debris-filled drums over to Talens for disposal. Talens then disposed of the drums using American Recovery, L.L.C.<sup>4</sup>
- 3. The Claim:** On June 25, 2009, Talen's Marine & Fuel, L.L.C. (Talens) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$3,154.30 for the services provided on March 26, 2009. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

<sup>1</sup> See email dated September 9, 2009 from MST2 Kaleena Schouweiler to Ms. Alyssa Lombardi, NPFC

<sup>2</sup> See, NRC report # 900969 dated March 26, 2009

<sup>3</sup> See email dated September 9, 2009 from MST2 Kaleena Schouweiler to Ms. Alyssa Lombardi, NPFC and Claim submission forms, submitted by Talen's Marine & Fuel, L.L.C. to the NPFC on 6/25/2009

<sup>4</sup> See Claim submission forms, submitted by Talen's Marine & Fuel, L.L.C. to the NPFC on 6/25/2009 and ES&H Supervisor's Log, submitted by Ms. Patsy Eschete of ES&H to Ms. Alyssa Lombardi, NPFC, on 9/9/2009

This claim consists of copies of the invoicing, posted rate schedule, NRC report, a copy of ES&H Supervisor's Log for 3/26/2009, a copy of the American Recovery Non-Hazardous Waste manifest, the Non-Hazardous Waste Manifest and internal email correspondence.

**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].

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. Overview:**

1. The FOSC coordination has been established via an email sent to Ms. Alyssa Lombardi, NPFC Claims Manager, from MST2 Kaleen Schouweiler, dated September 9, 2009.<sup>5</sup>
2. The incident involved 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 on time.
5. A Responsible Party could not be determined.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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 Claims Manager confirmed that the claimant did in fact perform a joint site assessment with the USCG on March 26, 2009. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$3,154.30 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 #909102-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of March 26, 2009. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

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<sup>5</sup> See email dated September 9, 2009 from MST2 Kaleena Schouweiler to Ms. Alyssa Lombardi, NPFC

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$3,154.30 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #909102-001. 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: \$3154.30**

Claim Supervisor:



Date of Supervisor's review: *9/22/09*

Supervisor Action: *Approved*

Supervisor's Comments: