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
2/08/2012

Via email: [redacted]@millardref.com

Millard Refrigerated Services
Attn: Mr. Craig Foil
7730 Deer River Road
Theodore, AL 36582

Re: Claim Number 912031-0001

Dear Mr. Foil:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $20,109.28 is full compensation for OPA claim number 912031-0001.

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 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. 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.

[redacted]

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

U.S. Department of Homeland Security

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| Claim Number: 912031-0001 | Claimant Name: Millard Refrigerated Services<br>Attn: Mr. Craig Foil<br>7730 Deer River Road<br>Theodore, AL 36582 |
|---|---|

I, the undersigned, ACCEPT the determination of $20,109.28 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 | : 2/08/2012 |
| Claim Number | : 912031-0001 |
| Claimant | : Millard Industrial Services |
| Type of Claimant | : Corporate |
| Type of Claim | : Removal Costs |
| Claim Manager | : Alyssa Lombardi |
| Amount Requested | : $20,109.28 |

***FACTS:***

1. ***Oil Spill Incident:*** The United States Coast Guard Sector Mobile[1] reports that on July 19, 2011, a dark sheen was discovered collecting around Millard Refrigerated Services Pier, located in the Theodore Industrial Canal, a navigable waterway of the US.[2] The incident was reported to the National Response Center (NRC) on July 19, 2011 at approximately 0838 hours local time via report # 944256 by Mr. David Jackson, of Millard Refrigerated Services.[3]

   The USCG Sector Mobile Incident Management Division took samples and had analyses performed which determined this waste oil to be a slightly degraded heavy fuel oil. While Millard Industrial Services (Millard) was originally charged with the responsibility to clean up and dispose of the oil and contaminated waste, an investigation conducted by Sector Mobile later determined the responsible party to be unknown.[4]

1. ***Description of removal actions performed:*** The Claimant, Millard, followed its response plan and hired United States Environmental Services (USES) to clean up and dispose of the oil and contaminated waste. Removal actions consisted of containing and removing product from the surface of the water. USCG Sector Mobile was on-scene, monitoring operations and verifying that they were in accordance with the National Contingency Plan (NCP).[5]

3. ***The Claim:*** On February 2, 2012, Millard submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of $20,109.28 for the services provided from July 19 through July 31, 2011. This claim is for removal costs based on the rate schedule in place at the time services were provided.

   This claim consists of copies of the following: Sector Mobile Case Report # 558920; NRC Report # 983107; letter written by MST2 Joshua Waltz, USCG Sector Mobile; USES invoicing for this incident; Evergreen Tank Solutions invoicing for this incident; Greer Enterprises, LLC invoicing for this incident; signed ORC work order; the Federal W-9 Form for USES; the USES proof of payment for this incident; the Non-Hazardous Waste Manifest for this incident and internal email correspondence.

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[1] See USCG Sector Mobile Case Report # 558920, dated 7/19/2011.

[2] See 7/29/2011 letter written by MST2 Joshua Glenn, USCG, to Mr. David Jackson, Millard, and submitted with the claim by the claimant on 2/02/2012.

[3] See NRC Report # 983107, dated 7/19/2011.

[4] See 7/29/2011 letter written by MST2 Joshua Glenn, USCG, to Mr. David Jackson, Millard, and submitted with the claim by the claimant on 2/02/2012.

[5] *Ibid.*

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

***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 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 initial FOSC coordination has been established via USCG Sector Mobile Case Report # 558920, and via a written statement from PO Joshua Glenn, USCG Sector Mobile.[6]
2. The incident involved the report of 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.
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 perform a site assessment with USCG Sector Mobile on July 19, 2011. 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 $20,109.28 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912031-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from July 19 through July 31, 2011. 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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[6] See USCG Sector Mobile Case Report # 558920, opened 6/16/2010 and 7/29/2011 letter written by MST2 Joshua Glenn, USCG, to Mr. David Jackson, Millard, and submitted with the claim by the claimant on 2/02/2012.

**C. *Determined Amount:***

The NPFC hereby determines that the OSLTF will pay $20,109.28 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912031-0001. 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: $20,109.28***

Claim Superviso[redacted]

Date of Supervisor's review: *2/8/12*

Supervisor Action: ***Approved***

Supervisor's Comments: