

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 202-493-6843  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
4/2/2012

Sent via Email:

[REDACTED]@surfside-Marina.com

Surfside Marina  
ATTN: Sherry Harmon  
827 Gulf Road  
Surfside Beach, TX 77541

Re: Claim Number 912046-0001

Dear Sherry Harmon:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$6,169.44 is compensable for OPA claim number 912046-0001.

This reconsideration determination is based on an analysis of information submitted.

Disposition of this reconsideration constitutes final agency action.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to:

Director (ca)  
U.S. Coast Guard  
National Pollution Funds Center  
4200 Wilson Boulevard, Suite 1000  
Arlington, VA 20598-7100

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, your payment will be mailed within 30 days of receipt of the Release Form.

Sincerely,

[REDACTED]  
Thomas S. Morrison  
Chief, Claims Adjudication Division

ENCL: Claim Summary / Determination Form  
Acceptance / Release Form

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
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Claim Number: 912046-0001	Claimant Name: Surfside Marina ATTN: Sherry Harmon 827 Gulf Road Surfside Beach, TX 77541
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I, the undersigned, ACCEPT the determination of \$6,169.44 as full compensation for all removal costs approved as OPA compensable.

This determination represents full and final release and satisfaction of all removal costs approved as OPA compensable under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), arising from the *A Net* oil pollution incident. 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

_____	_____	_____
EIN / SSN Required for Payment	Bank Routing Number	Bank Account Number

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912046-0001
Claimant	: Surfside Marina
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: Dawn Unglesbee
Amount Requested	: \$6,169.44

### **Facts:**

On February 7, 2012, owner of Surfside Marina (Claimant) reported that there was oil on and around their docks. Approximately 40 gallons of oil was discharged while the vessel, *A Net*, was docked and taking on fuel. After the *A Net* left the dock there was a sheen of oil and oil soaked rugs left behind. The owner of the vessel denied spilling the oil.<sup>1</sup>

### **Responsible Party:**

The owner of the vessel, *A Net*, is Mr. John Hoffman from Katy, Texas. Mr. Hoffman denies spilling oil at the Surfside Marina however oil sample analysis proves that the oil did come from the *A Net*. The National Pollution Funds Center (NPFC or Fund) sent Mr. Hoffman a letter informing him of the claim before the Fund and the oil samples taken from his vessel are a match.<sup>2 3</sup>

### **The Claimant and the Claim:**

Surfside Marina contracted with Garner Environmental Services (Garner) to provide emergency response on February 7, 2012, associated with the *A Net*'s discharge of oil on around the docks at Surfside Marina while taking on fuel.

On March 13, 2012 Surfside Marina submitted a removal cost claim to the NPFC for reimbursement of their uncompensated removal costs in the original amount of \$5,669.44 for the time period of February 7, 2012. The NPFC sent the Responsible Party (RP) notification letter, dated March 20, 2012 to Mr. John Hoffman advising that Claimant presented a claim to the NPFC for certain uncompensated removal costs and that the oil samples taken from the docks and his vessel are a match.

### **Request for Reconsideration:**

On March 29, 2012, Ms. Sherry Harmon, Marina Director with Surfside Marina requested reconsideration of their claim and requested that the Fund revise the sum certain for their claim to \$6,169.44 in order to reflect an additional five drums that were sent to Aaron Oil Company for disposal.<sup>4</sup> While on Reconsideration, Claimant submitted a Garner invoice that reflects the additional five drums<sup>5</sup> and proof of payment for the additional drums.<sup>6</sup> It is important to note that a total of six drums were disposed of.

<sup>1</sup> Email dated March 5, 2012 to Sherry from John Hoffman.

<sup>2</sup> RP Notification letter dated March 20, 2012.

<sup>3</sup> Oil Sample Analysis Report, Case Number 12-084.

<sup>4</sup> Email from Claimant to NPFC dated March 29, 2012.

<sup>5</sup> Garner Invoice # 118101

<sup>6</sup> Check # 5103 made out to Garner Environmental Services.

### Applicable Law:

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 of OPA 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 (NCP) 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 such an incident.” 33 USC § 2701(31).

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 Part 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 [Federal On-Scene Coordinator] 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 removal actions were coordinated with the United States Coast Guard, Marine Safety Unit Texas City as evidenced by MISLE Activity # 4240522 and MISLE Case # 583687.
2. The incident involved the discharge and continuing substantial threat of 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 that it has filed no suit in court for the claimed uncompensated removal costs.
4. The claim was timely submitted in accordance with OPA.
5. Claimant presented its removal costs to the RP via email. The NPFC also advised the RP of costs via letter dated March 20, 2012.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of 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 and Reconsideration:**

Claimant states in its claim that all costs claimed are for uncompensated removal costs incurred for this incident for the time period of February 7, 2012. The claimant represents that all costs paid by Claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

The NPFC Claims Manager reviewed the Claimant's actual costs invoices and proof of payment to confirm that Claimant had incurred all costs claimed and that the costs were adequately documented and reasonable.

The Claims Manager also confirmed that the removal costs were: compensable "removal actions" under OPA and the claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize, and mitigate the effects of the incident); (2) incurred as a result of these actions; (3) incurred removal actions were determined by the FOOSC to be consistent with the NCP or directed by the FOOSC. The Claims Manager also cross referenced claim submission information to the information in MISLE.

The NPFC verified that the costs were billed in accordance with the rate schedule in place at the time services were rendered.

***Determined Amount:***

The NPFC hereby determines that the OSLTF will pay **\$6,169.44** as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 912046-0001. 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.

Claim Supervisor: 

Date of Supervisor's Review: *4/2/12*

Supervisor Action: *Approved on reconsideration*

Supervisor's Comments: