U.S. Department of Homeland Security

**United States Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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5890
5/9/2012

VIA EMAIL: [redacted]@dep.state.fl.us

State of Florida
ATTN: Mr. Peggy Brown
Florida Department of Environmental Protection
3900 Commonwealth Blvd. M.S. 10
Tallahassee, FL 32399-3000

Re: Claim Number 912058-0001
FL BER #2011-4C-44967

Dear Ms. 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 $348.13 is full compensation for OPA claim number 912058-0001.

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 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 202-493-1026.

Sincerely,

[redacted]

Stephen Coode
Claims Manager

ENCL: Claim Summary/Determination Form
Acceptance/Release Form

CLAIM SUMMARY / DETERMINATION FORM

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|---|---|
| Claim Number | : 912058-0001 |
| Claimant | : State of Florida |
| Type of Claimant | : State |
| Type of Claim | : Removal Costs |
| Claim Manager | : Stephen Coode |
| Amount Requested | : $348.13 |

***FACTS:***

***Oil Spill Incident:*** On March 20, 2011, the Florida Fish and Wildlife Conservation Commission (FL FWC) reported a sunken boat, "Seawitch", which released approximately one gallon of lube oil into Signal Cove Canal, Pasco County, Florida, a navigable waterway of the U.S. USCG Sector St Petersburg was notified, and FL Bureau of Environmental Response (FL BER) followed up. FL BER Jamie Arleo reported to the scene and witnessed minimal rainbow sheen in the waterway. The incident was reported to the NRC by a private party on March 20, 2011, via report #970585. Due to the small amount of fuel observed and the vessel being refloated, FL BER closed the case.

***Description of Removal Activities for this claimant:*** BER did not conduct any cleanup of this release, but only conducted an initial assessment and investigation.

***The Claim:*** The Florida Department of Environmental Protection submitted a removal cost claim to the National Pollution Funds Center (NPFC) seeking reimbursement of their uncompensated removal costs of State personnel, equipment and transportation, and administrative costs in the amount of $348.13.

Florida DEP is claiming State personnel expenses of $213.51, State equipment expenses of $112.62, and State administrative documentation/photo expenses of $22.00. The claim consists of: FL DEP cover letter and invoice; RP certified letter; and a FL BER incident field report.

***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 NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved the 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 within the six year statute of limitations. 33

U.S.C. § 2712(h)(1);

5. A Responsible Party was determined for this incident. 33 U.S.C. § 2701(32);
6. 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 FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon adjudication of this claim, the NPFC confirmed that the services provided by FL BER were billed in accordance with the rate schedule in place at the time services were rendered. The NPFC has determined that the actions undertaken were reasonable, necessary and consistent with the NCP. On that basis, the Claims Manager hereby determines that the claimant did in fact incur $348.13 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 #912058-0001.

**C. *Determined Amount:***

The NPFC hereby determines that the OSLTF will pay $348.13 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912058-0001. 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: $348.13***

[redacted]

Claim Supervisor: *D*

Date of Supervisor's review: ***5/9/12***

Supervisor Action: *Approved*

Supervisor's Comments:

U.S. Department of Homeland Security

**United States Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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Staff Symbol: (CA)
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Fax: 202-493-6937

| | |
|---|---|
| Claim Number: 912058-0001<br>FL BER #2011-4C-44967 | Claimant Name: State of Florida<br>Florida Department of Environmental Protection<br>3900 Commonwealth Blvd. M.S. 10<br>Tallahassee, FL 32399-3000 |

I, the undersigned, ACCEPT the settlement offer of $348.13 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.

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.

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).

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|---|---|
| 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 |

| | | |
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| TIN Required for Payment | Bank Routing Number | Bank Account Number |