

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: [REDACTED]@uscg.mil
Fax: 703-872-6113

5890
10/10/2012

VIA EMAIL: [REDACTED]@portofpoulsbo.com

Port of Poulsbo
ATTN: Kirk Stickels
P.O. Box 732
18809 Front Street
Poulsbo, WA 98370

Re: Claim Number 912094-0001

Dear Mr. Stickels:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$2,524.74 is full compensation for OPA claim number 912094-0001.

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.SAM.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.

[REDACTED]
Eric Bunin
Claims Manager

ENCL: 1) Claim Summary/Determination
2) Acceptance/Release Form

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Claim Number: 912094-0001	Claimant Name: Port of Poulsbo ATTN: Kirk Stickels P.O. Box 732 18809 Front Street Poulsbo, WA 98370
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I, the undersigned, ACCEPT this settlement offer of \$2,524.74 as full and final compensation for removal costs arising from the specific claim number identified above.

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.

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
_____	_____
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

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

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912094-0001
Claimant	: Port of Poulsbo
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Amount Requested	: \$2,524.74

FACTS:

On Wednesday, June 1, 2011, Port of Poulsbo personnel observed a sheen in Liberty Bay, a navigable water of the U.S. They followed the sheen to its source, which was the fishing vessel ERIC J, owned by Jon Greenway, the responsible party (RP). The vessel was leaking red-dye marine diesel from two holes in the aft port side of the hull. The hull makes up part of the fuel tank, so fuel can leak into the water if the hull is breached. Port of Poulsbo personnel completely surrounded the vessel with absorbent boom and placed absorbent pads within the boomed area. These actions contained the oil until the leak could be stopped. Approximately 120 gallons of oil leaked into the water. USCG Sector Puget Sound responded, issued a Captain of the Port order to the RP, and directed the removal actions.

CLAIMANT and CLAIM:

Claimant is a Port in Poulsbo, Washington on Liberty Bay, in the Puget Sound region. The Port of Poulsbo offers a wide range of facilities for boat owners, including berthing, covered slips, transient facilities and other services. Claimant seeks reimbursement for labor and materials it expended in response to the incident.

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 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:

A. Overview:

1. The CG FOSC from Sector Puget Sound was notified of the incident, issued a Captain of the Port Order to the vessel owner and directed the response;
2. The incident involved the report of a discharge or substantial threat 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 period of limitations for claims. 33 U.S.C. § 2712(h)(2);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the incident is an OPA incident.

B. Analysis:

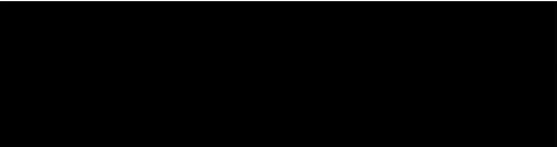
The Claims Manager reviewed the documentation provided by the Claimant in support of the uncompensated costs as claimed. The Claims Manager focused on: (1) whether an OPA-incident gave rise to the claim (i.e. whether there was a discharge or substantial threat of the discharge of oil into a navigable water of the U.S.) (2) whether the actions taken were compensable "removal actions" under OPA and its regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

Claimant argues that it is entitled to reimbursement of costs it expended in response to the oil leak from the ERIC J into the navigable water. Claimant was the first responder to the discharge

and immediately took actions that successfully contained the discharge. NPFC reviewed the documentation provided by the Claimant including incident reports, photos, invoices, proof of payment, its rates, and daily employee labor activity details. The NPFC finds that the actions performed by the Claimant were necessary and reasonable to mitigate and minimize the effects of the oil in the water. The costs it incurred were also necessary and reasonable under the circumstances. Therefore, the NPFC finds that the Claimant should be reimbursed the full amount of its claim.

AMOUNT: \$2,524.74

Claim Supervisor



Date of Supervisor's review: *10/10/12*

Supervisor Action: *Approved*

Supervisor's Comments: