

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Toll-Free: 1-800-280-7118
Fax: 703-872-6113
Email: ARL-PF-
NPFCCCLAIMSINFO@uscg.mil

5890
December 14, 2012

Sent Via E-mail: [REDACTED]@aol.com

Atlantic Coast Marine Group, Inc
Attn: Captain Lee Sykes
P.O. Box 2298
Beaufort, NC 28516

RE: 913017-0001

Dear Captain Sykes:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$2,996.00 is compensation for OPA claim number 913017-0001.

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.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement 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 Contractor Registration 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 Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

Sincerely,



Felita Jackson
Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

CLAIM SUMMARY / DETERMINATION

Claim Number:	913017-0001
Claimant:	Atlantic Coast Marine Group, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	Felita Jackson
Amount Requested:	\$3,020.00

FACTS:

1. **Oil Spill Incident:** On April 29, 2012, Coast Guard Sector North Carolina (Coast Guard) received a report from the Old Town Yacht Club that a large sheen, 75 yards long and 10 feet wide, was in the marina.¹ The caller reported that the large rainbow sheen in the marina that was approximately 3 to 4 inches thick and was diesel fuel. The marina pressured their lines to determine loss of their inventory and determined that there was no loss of diesel from the marina. It was then reported by Gillikan Marine Railways Marina in Beaufort, North Carolina that the sunken vessel, *M/V Sabor A Mi*, was the source of discharging diesel into the Atlantic Intracoastal Waterway (ICW), a navigable waterway of the United States.

The owner of the marina, James Gillikin, informed the Coast Guard that the vessel had been left there at least six years ago and that he tried to call the owner several times, but was not successful.² The Coast Guard responded to find the stern of the vessel had sunk and discharged approximately 150 gallons of diesel into the ICW. Mr. Gillikin began the clean-up by deploying hard boom to contain the fuel and absorbent pads to remove the fuel from the water.

2. **Description of Removal Activities for this Claimant:** On April 29, 2012, Tow Boat U.S. deployed eleven cases of absorbent boom to assist Mr. Gillikin with the clean up. The Claimant notes that it was on-scene for 2.5 hours, and it that time also deployed Tow Boat *Lindsey*, Captain Lee Sykes, Captain Gray Williams, Laborer Axson Smith III, and a field clerk for the clean-up.
3. **The Claim:** On November 30, 2012, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of \$3,020.00 for their oil spill response. The amount includes \$345.00 in personnel costs; \$500.00 for vehicle use; \$975.00 for materials; and \$1,200.00 for disposal. However, he owner of the vessel remains unknown.

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

¹ See NRC Report #1009985.

² See James D. Gillikin U.S. Coast Guard Witness/Investigator Statement Form, dated May 5, 2012.

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 NPFC has determined that the actions undertaken by the claimant are deemed consistent with the National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.
2. The incident involved 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 for removal costs;
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has 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 FOOSC, and (4) whether the costs were adequately documented and reasonable.

During the incident, the Claimant provided clean-up services alongside the marina owner in response of the release of diesel fuel discharged from the sunken vessel. Captain Sykes supervised their efforts, while Captain Williams and Mr. Smith provided labor, along with a field clerk, deployed boom using Towboat *Lindsey*. The towboat was billed for 2.50 hours. All personnel billed three hours for their services and noted on their cost breakdown that they were on-scene for 2.50 hours.

The NPFC does note that the Claimant billed the tow boat for 2.5 hours at the rate of \$250.00, but listed \$500.00 as the total amount claimed. The \$500.00 total is consistent with the authorized BOA rates listed on their rate schedule at the \$200.00 per hour rate. The NPFC will reimburse the Claimant at the \$200.00 per hour rate for \$500.00.

The disposal of eight drums was handled by Noble Oil Services (Noble). The Claimant requested reimbursement of \$2,000.00 for disposal, at the rate of \$150.00 per drum. However, per the Claimant's December 7, 2012 e-mail to the NPFC, Noble charged

\$147.00 per drum for disposal.³ The Claimant will be reimbursed at the rate of \$147.00 per drum for disposal, for a total of \$1,176.00; denying \$24.00.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$2,996.00 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 # 913017-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on April 29, 2012. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$2,996.00 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number 913017-0001 for removal costs.

AMOUNT: \$2,996.00

Claim Supervisor: *Donna Heiberg*

Date of Supervisor's review: *12/14/12*

Supervisor Action: *Approved*

Supervisor's Comments:

³ See e-mail to Felita Jackson from Carol Roop, dated December 7, 2012.

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 913017-0001	Claimant Name: Atlantic Coast Marine Group, Inc.
---------------------------	--

I, the undersigned, ACCEPT this settlement offer of \$2,996.00 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

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 and amounts denied in the determination for which I received no compensation.

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
_____	_____
Printed Name of Claimant or Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Printed Name of Witness	Signature

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