

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
Phone: [REDACTED]

5890
5/31/2013

Sent Via Email: [REDACTED]@usesgroup.com

United States Environmental Services LLC
ATTN: Mr. Jose Delgado
365 Canal Street Suite # 2520
New Orleans, LA 70130

Re: Claim Number 913045-0001

Dear Mr. Delgado;

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$9,274.80 is full compensation for OPA claim number 913045-0001.

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.

[REDACTED]
Alyssa Lombardi
Claims Manager
U.S. Coast Guard

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 913045-0001
Claimant	: United States Environmental Services LLC
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$9,274.80

FACTS:

1. ***Oil Spill Incident:*** The United States Coast Guard Sector New Orleans reports¹ that on June 4, 2012, Shoreline Marine was performing water operations when one of its crane dredges went off a barge and into the Bayou Castine, which drains into Lake Pontchartrain, both navigable waterways of the US. This resulted in the release of approximately 16 gallons of oil and diesel fuel into the water.

The Responsible Party (RP) was identified as Shoreline Marine, which signed the work order contract on 6/04/2012.²

2. ***Description of removal actions performed:*** The claimant, United States Environmental Services LLC (USES), responded to the spill site and began to place sorbent boom in and around the affected area. A total of eight 55-gallon drums were collected and disposed of on June 18, 2012.
3. ***The Claim:*** On April 22, 2013, USES submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$9,274.80 for the services provided from June 4 through June 6, 2012. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule was provided with the claim submission.

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 FOOSC, and (4) whether the costs were adequately documented.

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 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).

¹ See Sector New Orleans Case Report # 596688, opened 6/04/2013.

² See Contract between Shoreline Marine and USES, dated 6/04/2012, and submitted with the claim by the claimant on 4/22/2013.

"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. FOSC Coordination has been established via USCG Sector New Orleans.³
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 three year statute of limitations. 33 U.S.C. § 2712(h)(1).
5. A Responsible Party was determined, but has not submitted payment. The NPFC also made notification to the RP but, to date, no payment has been received. 33 U.S.C. § 2701(32).
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 validated the costs incurred and determined what, of these costs, were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP). The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from June 4 through June 6, 2012. The Claimant represents that the costs it paid are compensable removal costs, payable by the OSLTF as presented by the claimant.

After a review of the file, and reading the supplemental documentation supplied by Sector New Orleans, the response by USES appears reasonable and justified to mitigate any further damage the oil may have caused. An audit of the costs was performed, weighing the requested amounts against the rate sheets in place. On that basis, the Claims Manager hereby determines that the claimant incurred \$9,274.80 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable

³ See Sector New Orleans Case Report # 596688, opened 6/04/2013, as well as email from PO Jessica Evans, USCG, to Ms. Alyssa Lombardi, NPFC, dated 5/29/2013.

removal costs incurred by the claimant and submitted to the NPFC under claim #913045-0001.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$9,274.80 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 913045-0001. 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: \$9,274.80

Claim Supervisor: *Donna Heilberg*

Date of Supervisor's review: *5/31/13*

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

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
E-mail: [REDACTED]@uscg.mil
Phone: [REDACTED]

Claim Number: 913045-0001	Claimant Name: United States Environmental Services LLC ATTN: Ms. Kate Mills 365 Canal Street Suite # 2520 New Orleans, LA 70130
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I, the undersigned, ACCEPT this settlement offer of \$9,274.80 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
_____	_____
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 Required for Payment	Bank Routing Number	Bank Account Number