

CLAIM SUMMARY / DETERMINATION FORM

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| Date | : 1/14/2009 |
| Claim Number | : 909055-001 |
| Claimant | : State of Washington |
| Type of Claimant | : State |
| Type of Claim | : Removal Costs |
| Claim Manager | : ██████████ |
| Amount Requested | : \$15,652.05 |

FACTS:

1. Oil Spill Incident: On March 4, 2007, Sector Seattle received a report of an abandoned vessel that had sunk near the Pleasant Harbor Marina in Hood Canal, a navigable waterway of the US. As a result of the sinking, approximately 5-10 gallons of gasoline and other miscellaneous oils discharged from the vessel and created a sheen on the water. The claimant, Washington Department of Ecology (WA DOE) also received notification and responded to the incident. WA DOE's response officer was Ms. Andrea Unger. The vessel was found to be the F/V SWAN II (WN399SKK), owned by a Mr. Maures T. Tinaza, SR. Many attempts were to contact Mr. Tinaza. When he was finally notified, he failed to take any action for environmental cleanup and salvage of the vessel. The USCG kept in contact with the SOSC and obtained the following information from her timeline:

Pleasant Harbor Marina residents and the Skokomish Tribal police informed WA DOE that the vessel had been anchored there for about 6 months and that it belonged to Mr. Maures T. Tinaza, Sr. The Skokomish Tribal police made efforts to contact Mr. Tinaza to inform him that his vessel was sinking. The police went to his residence and left a note taped to his front door. WADOE hired Global Diving & Salvage in order to make an assessment of the vessel, and attempt to plug the vents and remove any possible fuel onboard. Because the way the vessel was laying on the bottom, they could not sting the tanks or plug the vents. They re-scheduled to come out on March 7, 2007 with some salvage equipment.

On March 5, 2007, there was no response from Mr. Tinaza. WA DOE rep, Ms. Unger, drafted a letter to Mr. Tinaza informing him that his vessel had sunk, and sent it via Federal Express to his residence along with a Notice of Potential Legal Liability. On March 7, 2007, there was still no response from Mr. Tinaza. Global Diving returned to the site location in order to conduct salvage in order to mitigate the ongoing threat. Ms. Unger met Global on site to oversee the operation. Global was able to up-right the vessel, but because of the poor condition of the vessel, they had to wait until low tide the next morning to attempt to get any fuel off. Global reported seeing fuel bubbling up from the tanks and absorbent sweep was then placed around the vessel.

On March 8, 2007, there was still no response from Mr. Tinaza so Ms. Unger returned to his residence and spoke with a woman who stated she was his wife and she confirmed that Mr. Tinaza did live there. She also told Ms. Unger that the fishing vessel in Pleasant Harbor did belong to Mr. Tinaza. She denied ever seeing a note left on the door by the Skokomish Tribal police, or receiving any letters that were sent via FedEx. Ms. Unger gave copies of the letters to the woman, and told her that it was very important that Mr. Tinaza contact her, and take action to cleanup after his sunken vessel. Global Diving finished pumping off the vessel and was able to

get it floating again. They estimated that approximately 5-10 gallons of gasoline and other miscellaneous oil had discharged from the vessel in the past 4 days that it was sinking.

MST1 Jordan Shelton of USCG Sector Seattle, contacted Mr. Jonathan Wolfe of the Skokomish Tribe's Department of Fisheries, and he confirmed that Mr. Tinaza, Sr. was the registered owner of the vessel in question. The incident was reported to the National Response Center (NRC) via report #828113 on March 4, 2007 by Mr. Ryan Kaufman of Pleasant Harbor Marina. The claimant made presentment of the claim costs to Mr. Tinaza, Sr. on July 23, 2008.

2. The Claim: On January 6, 2009, WA DOE submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$15,652.05.

WA DOE is claiming State personnel expenses of \$2,010.03, indirect expenses of \$782.91, response contractor expenses of \$12,215.11, travel costs of \$59.00, and Laboratory costs of \$585.00.

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).

"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. MST1 Jordan Shelton of Sector Seattle provided FOSC coordination.
2. The incident involved the substantial threat and actual 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.
5. 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.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$15,652.05 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 #909055-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on March 4, 2007. 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 hereby determines that the OSLTF will pay \$15,652.05 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 909055-001. 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 Claimants.

AMOUNT: \$15,652.05

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

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
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5890
1/14/2009

VIA EMAIL: [REDACTED]@ecy.wa.gov

State of Washington
ATTN: Mr. David Byers
Department of Ecology
HQ Spill Response
P.O. Box 47775
Olympia, WA 98504-7775

Re: Claim Number 909055-001

Dear Mr. David Byers:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$15,652.05 is full compensation for OPA claim number 909055-001.

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 (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

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 [REDACTED]

Sincerely,

[REDACTED]
Program Analyst

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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Phone: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

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| Claim Number: 909055-001 | Claimant Name: State of Washington ATTN: Mr. David Byers Department of Ecology HQ Spill Response P.O. Box 47775 Olympia, WA 98504-7775 |
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I, the undersigned, ACCEPT the determination of \$15,652.05 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. 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).

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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 |

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