

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
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NPFCCCLAIMSINFO@uscg.mil

5890
July 1, 2013

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

State of Washington
Department of Ecology
ATTN: David Byers
P.O. Box 47600
Olympia, WA 98504-7600

RE: 913069-0001

Dear Mr. 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 \$6,340.67 is full compensation for OPA claim number 913012-0001.

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 by phone at 1-
[REDACTED] or email at [REDACTED]

Sincerely,

[REDACTED]
Galen Wetzel
Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

CLAIM SUMMARY / DETERMINATION

Claim Number:	913069-0001
Claimant:	State of Washington
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	Galen Wetzel
Amount Requested:	\$6,458.42

FACTS:

Oil Spill Incident: On April 15, 2010, the M/V HERON (WN0327RM) sank in Commencement Bay near Browns Point, Tacoma, Washington. The State of Washington Department of Ecology (Ecology) responded and found sheening around the vessel. Due to the discharge of fuel oil and approximately 50 gallons of diesel remaining on board the vessel, NRC Environmental Services (NRCES) was hired to boom the vessel. The HERON was refloated by the vessel owner and boom collected by NRCES on April 16, 2010.

Commencement Bay is a navigable waterway of the United States.

Responsible Party: Mr. Russ Beery, the Responsible Party (RP), owned the vessel HERON at the time of the incident and is determined to be the responsible party under the Oil Pollution Act. The National Pollution Funds Center (NPFC) sent a RP Notification letter to the RP on June 18, 2013.

Description of Removal Activities: On April 15, 2010, Ecology arrived on scene and interviewed the vessel owner. It was determined that the RP did not have the financial ability to take mitigating steps to prevent the spread of the spilled fuel. Ecology contacted the USCG Sector Pudget Sound and requested that the USCG fund the booming of the vessel. After it was determined that the USCG was not going to fund the boom deployment, Ecology retained the services of NRCES to deploy boom around the sunken vessel and apply sorbents within the boom to collect the spilled oil. Ecology personnel remained at the scene until booming operations were completed.

Ecology chose not to have NRCES plug the vessel fuel vents because the diver would not arrive on scene before the ebb tide would have the vessel's fuel vents above the water surface and the RP would be able to take this preventative step.

On April 16, 2010, Ecology returned to the scene to monitor the RP's actions to repair and dewater the vessel. Ecology departed the scene once the vessel was floated with high tide, hull integrity confirmed, and containment boom and absorbents was removed by NRCES.

On April 20, 2010, Ecology gathered the analytical results from NRCES which calculated the recovered oil and oily water to be approximately 60.74 gallons from the HERON.

The Claim: On June 11, 2013, State of Washington presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$6,458.42.

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. FOSC coordination was provided by USCG Sector Puget Sound.
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were 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 Claimant is requesting \$60.00 (20 at \$3.00 each) for expenses paid to NRCES for Plastic Bags used during the incident response. NRCES Contracted Rate Schedule lists the cost for a Plastic bag at \$2.00 each. The invoiced amount is not per the contracted rate schedule. Therefore the NPFC determines that the OPA compensable cost is \$40.00 and the remaining cost of \$20.00 are denied.

The Claimant is requesting \$97.75 for expenses paid to NRCES for the disposal of the contaminated waste. The Claimant or NRCES is unable to support this cost with a waste manifest. Therefore the NPFC denies the cost of \$97.75 as unsubstantiated.

All other costs were validated and the NPFC has determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$6,340.67 of uncompensated removal costs and 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 #913069-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on March 15, 2010. 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 \$6,340.67 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913069-0001. 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 Claimants.

AMOUNT: \$6,340.67



Claim Supervisor: *Donna Hellberg*

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Date of Supervisor's review: *7/1/13*

Supervisor Action: *Approved*

Supervisor's Comments:

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 913069-0001	Claimant Name: State of Washington
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I, the undersigned, ACCEPT this settlement offer of \$6,340.67 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		