

Supervisor Action:  
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  
Fax: 202-493-6937

5890  
4/28/2011

Via email: [REDACTED]@ecy.wa.gov

State of Washington  
Attn: Mr. David Byers  
P.O. Box 47775  
Olympia, WA 98504-7775

Re: Claim Number 911053-0001

Dear Mr. Byers:

The National Pollution Funds Center (NPFCC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$6,384.96 is full compensation for OPA claim number 911053-0001.

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.ccr.gov](http://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 202-493-6883.

[REDACTED SIGNATURE]

Alyssa Lombardi  
Claims Manager

ENCL: Claim Summary / Determination Form  
Acceptance/Release Form

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Claim Number: 911053-0001	Claimant Name: State of Washington Attn: Mr. David Byers P.O. Box 47775 Olympia, WA 98504-7775
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I, the undersigned, ACCEPT the determination of \$6,384.96 as full compensation for the claim listed above.

This determination represents full and final release and satisfaction of all removal cost claims 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).

_____	_____
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 #	Bank Routing Number	Bank Account Number

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/28/2011
Claim Number	: 911053-0001
Claimant	: State of Washington
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$6,622.09

### **FACTS:**

- 1. Oil Spill Incident:** On 12 July 2008, the Washington State Department of Ecology (WDE) responded to a large oil sheen located at Steamboat Slough, which flows into Skagit Sound, a navigable waterway in the US. Upon arrival, WDE personnel discovered that approximately 5 gallons of red-dyed diesel oil was spilled into the water, with the potential of 300 gallons. The source of the spill was determined to be the P/C King Oscar, a derelict vessel beached a few hundred yards away with no visible WN number. No Responsible Party (RP) could be identified. This incident was reported to the National Response Center (NRC) via report # 877072 on 12 July 2008.
- 2. Description of removal actions performed:** The claimant, WDE, hired National Response Corporation Environmental Services (NRCES) for cleanup and removal activities. WDE assisted NRCES in deploying boom and absorbent materials. NRCES placed approximately 200 feet of boom around the vessel. It also checked the oil tanks, removed the battery, wrapped sweep around the vessel, placed pads within it, removing them as needed, and monitored the vessel for potential sheening. No samples were taken and the sheen was not recoverable.  
  
USCG Sector Seattle assisted WDE in coordinating a helicopter flyover, but there was no Federal On-Scene Coordinator (FOSC) for this incident.
- 3. The Claim:** On 14 April 2011, WDE submitted a removal cost claim to the National Pollution Funds Center (NPFCC), for reimbursement of removal costs in the amount of \$6,622.09 for the services provided from 12-17 July 2008. 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 is provided in the claim submission.

This claim consists of copies of: invoicing, posted rate schedule; NRC Report # 877072; State of WA Project Cost Sheet for Mr. Carl Andersen; WDE Indirect Costs Worksheet; State of WA Travel Expense Voucher; proof of payment to NRCES; State of WA Invoice Voucher for NRCES; WDE Environmental Report Tracking System report # 607003; WDE Detail of Expenditures sheet; photographs of the flyover and internal email correspondence.

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 FOSC, 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).

"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 NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
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. A Responsible Party could not be determined. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
5. 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.
6. 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 if 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 confirmed that the claimant did in fact perform a joint site assessment with the USCG on October 6, 2008. While the Claims Manager validated the costs incurred and determined they were reasonable and necessary, it was also determined that the removal actions were not performed in accordance with the National Contingency Plan (NCP).

Due to the preponderance of the evidence, the NPFC has found that, of the \$6,622.09 claimed, only \$6,384.96 is compensable. The breakdown of costs approved and costs denied are as follows:

#### **Salary:**

**Total Salary Costs Claimed: \$666.42**

**Total Salary Costs Approved: \$666.42**

**Reasoning:** The WDE provided the NPFC with a breakdown of personnel costs attributed to this spill. After cross-checking the hours associated with WDE Project # 8PS8-02-00 (State of WA Travel Expense Voucher) and based on the rates provided to the NPFC by WDE (State of WA Project Cost Sheet for Mr. Carl Andersen), the amount of compensable personnel costs totals \$666.42.

**Contracts:**

**Total Contract Costs Claimed: \$5621.79**  
**Total Contract Costs Approved: \$5621.79**

**Reasoning:** The WDE submitted both dailies and invoicing from its contractor, Veolia. After cross-checking and verifying contractor costs (Contractor: NRCES spreadsheet of costs and invoice; Mileage: AFRS Journal Voucher), based on the rates provided to the NPFC by WDE, the amount of compensable personnel costs totals \$55621.79.

**Travel:**

**Total Supply Costs Claimed: \$97.50**  
**Total Supply Costs Approved: \$96.75**

**Reasoning:** The invoices provided for supply costs calculate a total of \$96.75. The NPFC cross-checked these claimed costs (State of WA Travel Expense Voucher) and found \$97.50 to be compensable under OPA. The denied \$0.75 is a result of the WDE rounding up mileage allowances from the Travel Expense Voucher, from the actual \$29.25 to \$30.00 in the Detail of Expenditures sheet.

**Indirect Charges:**

**Total Indirect Charges Claimed: \$236.38**  
**Total Indirect Charges Approved: \$0.00**

**Reasoning:** The WDE did provide the NPFC with a breakdown of money allotted to Indirect Costs for this project during FY 2009; however, it did not provide documentation as to how the totals were derived. Therefore, due to the lack of evidence to support its claim, all WDE Indirect Costs have been denied.

***C. Determined Amount:***

The NPFC hereby determines that the OSLTF will pay \$6,384.96 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #911053-0001. 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: \$6,384.96**

Claim Supervisor: *Donna Hellberg*

Date of Supervisor's review: