

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
September 4, 2013

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

RE: S13004-0001

Global Diving and Salvage Inc.
Attn: Daniel Pierson
3840 West Marginal Way S. W.
Seattle, WA 98106

Dear Mr. Pierson:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$11,207.77 is full compensation for OPA claim number S13004-0001.

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

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: S13004-0001	Claimant Name: Global Diving and Salvage Inc.
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I, the undersigned, ACCEPT this settlement offer of \$11,207.77 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 of Payee Please Circle one	Payee
_____	_____
Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION

Claim Number:	S13004-0001
Claimant:	Global Diving and Salvage Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	Felita Jackson
Amount Requested:	\$11,871.77

FACTS:

1. ***Oil Spill Incident:*** On March 14, 2012, Coast Guard Sector Puget Sound (Sector Puget Sound) was notified by an e-mail from the Washington State Department of Ecology (WAE CY) that the vessel *Minesweeper/YMS-439* was sinking in Skagit Bay in Everett, Washington.¹ The sinking vessel, with a large hole in the port stern area, was docked at the Seacrest Marina at the time of the incident. Sector Puget Sound coordinated with WAE CY for incident response. Federal On-Scene Coordinator Representative (FO SCR) MSTC Darryl Harvey called Global Diving and Salvage, Incorporated (Global Diving) to respond. When the Sector Puget Sound Response Team arrived at the incident site, Global Diving was already on scene. The responsible party, vessel owner David Saia, was located and notified of the incident. Mr. Saia took over the contract with Global Diving.
2. ***Description of Removal Activities for this Claim:*** Global Diving performed an assessment of the vessel and completed a 100 percent space accountability. They confirmed that the vessel had two fuel tanks; and that one tank had three gallons of fuel and the other tank was empty. Mr. Saia had Global deploy boom around the vessel. Sector Puget Sound notified WAE CY of the response activity and then closed their case in MISLE. Per the Claimant, they continued mitigation measures until the Sector Puget Sound determined that the measures were no longer needed.²
3. ***The Claim:*** On May 15, 2013, the Claimant submitted a removal cost claim in the amount of \$11,871.77 to the National Pollution Funds Center (NPFC) for reimbursement of the remainder of their uncompensated removal costs, for the services provided to David Saia. On April 16, 2012, Global Diving submitted the claim to Mr. Saia. He made two partial payments. The first payment was made on May 22, 2012 in the amount of \$250.00. The second payment of \$500.00 was made on June 2, 2012. On May 20, 2013, the NPFC sent Mr. Saia an RP Notification letter to inform him of the claim received from Global Diving.³ However, he did not respond.

¹ United States Coast Guard MISLE Case Report for Case #586834, dated March 14, 2012.

² National Pollution Funds Center Optional OSLTF Claim Form for Claimant Global Diving and Salvage Incorporated.

³ Felita Jackson, NPFC, letter to David Saia, dated May 20, 2013.

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 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 which of the 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 documents 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, and (4) whether the costs were adequately documented and reasonable.

Upon review, the Claims Manager hereby determines that there are discrepancies with regards to the Claimant’s invoice, daily worksheets, and the rate schedule provided. For work performed on Wednesday, March 14, 2012, the Claimant billed A. Johnson (AJ),

skilled laborer, for 3 hours at the standard rate of \$42.00 per hour, for a total of \$126.00. However, the daily worksheet indicates that he worked 1.5 hours at the standard rate (1400 to 1530). The Claimant will be reimbursed \$63.00 for his work. For skilled laborer J. Hennequin, the Claimant billed 3.5 hours, at the rate of \$55.00 per hour, for a total of \$192.50. However, the daily worksheet notes that he had 1.5 hours of overtime, as he was noted as off work at 1700. The Claimant will be reimbursed \$82.50 for Mr. Hennequin's 1.5 hours of overtime worked. Also, Mr. Hennequin's 2.0 hours of overtime billed for "Mob/Travel/Shop" for a total of \$110.00 was not on the daily worksheet, and is denied. The Claimant billed 1.0 hour of standard time, at the rate of \$42.00 per hour, for K. Lindberg's "Mob/Travel/Shop" task, but it was not on the daily worksheet. The \$42.00 billed is denied. K. Lindberg's two hour "Mob/Travel/Shop" task, at the overtime rate of \$55.00 per hour, for a total of \$110.00, was billed by the Claimant. However, that task was not noted on the daily worksheet regarding Mr. Lindberg; and is denied.

Regarding the Marine Vacuum Service, Incorporated (Marvac) disposal billed for \$75.00, the Claimant's daily worksheet notes Marvac information with "\$50?" for that day.⁴ On July 8, 2013, the NPFC requested cost documentation for the disposal costs from the Claimant.⁵ On July 16, 2013, the Claimant responded by informing that the Marvac disposal was charged per gallon.⁶ Again, on August 27, 2013, the NPFC made a second request for the Marvac cost documentation.⁷ The Claimant provided cost documentation that noted the cost was \$25.00. The Claimant will be reimbursed \$25.00.

For March 16, 2012, Claimant billed for both A. Johnson and J. Hennequin for 1.0 hour each of overtime, at the rate of \$55.00 per hour. Both costs, a total of \$110.00 are denied, as they are not on the daily worksheet.

The Claimant billed using Diving/Salvage rates from their rate schedule for "Mob/Travel" work performed on Thursday, July 19, 2012, but used Environmental/Remedial rates for all other work days for the skilled laborers. The Claimant will be reimbursed at the Environmental/Remedial rates. Therefore, K. Lindberg's billing of 1.0 hour for "Mob/Travel" at the \$65.00 per hour overtime rate will be reimbursed at \$55.00 per hour; and his billing of 1.0 hour of "Mob/Travel" at the standard rate of \$55.00 per hour will be reimbursed at the rate of \$42.00 per hour. P. Chappelle's 1.0 hour for "Mob/Travel/Shop" at the overtime rate of \$65.00 per hour, will be reimbursed at the \$55.00 per hour rate; and his 1.0 hour for "Mob/Travel" at the standard rate of \$55.00 per hour will be reimbursed at the \$42.00 per hour rate. And again, regarding the billing of A. Johnson, his billing of 1.0 hour at the overtime rate of \$65.00 per hour for "Mob/Travel" will be reimbursed at the rate of \$55.00 per hour; and his 1.0 hour of "Mob/Travel/Shop" at the standard rate of \$55.00 will be reimbursed at the \$42.00 per hour standard rate. A total of \$69.00 is denied were work services provided on July 19, 2012.

⁴ Global Diving & Salvage, Inc. Daily Log for Tuesday, March 13, 2012.

⁵ Felita Jackson electronic mail to Connie Alvarez, dated July 8, 2013.

⁶ Connie Alvarez electronic mail to Felita Jackson, dated July 16, 2013.

⁷ Felita Jackson Phone Notes, dated August 27, 2013.

Therefore, based on the NPFC's denial of \$664.00, the NPFC determines that the OSLTF will pay \$11,207.77 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # S13004-0001.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$11,207.77 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number S13004-0001 for removal costs.

AMOUNT: \$11,207.77

Claim Supervisor: *Donna Hellberg*

Date of Supervisor's review: *9/4/13*

Supervisor Action: *Approved*

Supervisor's Comments: