

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
January 10, 2013

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

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

RE: 913018-0001

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 \$6,428.21 is full compensation for OPA claim number 913018-0001.

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



Mark Erbe
Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 913018-0001	Claimant Name: Washington State Dept of Ecology
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I, the undersigned, ACCEPT this settlement offer of \$6,428.21 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		

CLAIM SUMMARY / DETERMINATION

Claim Number:	913018-0001
Claimant:	Washington State Department of Ecology
Type of Claimant:	State Government
Type of Claim:	Removal Costs
Claim Manager:	Mark Erbe
Amount Requested:	\$6,428.21

FACTS:

Oil Spill Incident: On November 20, 2007 at 13:05 PST, personnel from Washington State Department of Ecology (DOE) responded to a report that a 30-foot recreational vessel, the COMMANDER TOAD was partially submerged in its berth at Eagle Harbor Marina on Bainbridge Island, Washington.¹ DOE estimated that 30 gallons of oil were released into the waterway. On-water recovery removed 28 gallons of diesel oil. Eagle Harbor is a tributary of Pudget Sound and a navigable waterway of the U.S.

Responsible Party: The responsible party (RP) for the spill is Team Tiburon Foundation of Belvedere, CA that owned the COMMANDER TOAD at the time of the spill incident.²

Mr. Lloyd Benson represented the responsible party (RP). Mr. Benson hired Mr. Bruce McKay, a local salvage diver to seal the leaking diesel fuel tanks and to raise the vessel. DOE asked Mr. Benson to hire a qualified oil-spill removal contractor that was capable of recovering the oil-sheen from the waterway. However, at the time, Mr. Benson refused to hire an oil spill response contractor.

Claimant & Claim: On December 4, 2012, the NPFC received a removal cost claim from the State of Washington Department of Ecology (DOE). The DOE oversees cleanup of oil-spills in the state and is considered the State On Scene Coordinator (SOSC).

DOE seeks its uncompensated removal costs for this incident in the amount of \$6,428.21.³

Description of Removal Activities: DOE personnel arrived on-scene November 20, 2007 at 13:05 hours and observed diesel-oil discharging from the COMMANDER TOAD. DOE observed that there was no boom around the vessel and found oil saturated sorbents around the vessel. DOE personnel observed an oil-sheen covering approximately 6,000 square-feet of harbor waters.

DOE deployed its supply of oil-sweeps and requested the local fire department deploy its containment boom and additional sorbents. When the potential responsible party (PRP), Mr. Benson, refused to hire a qualified oil-spill response contractor to recover the residual oil from the waterway, DOE hired Phillips Services Corporation (PSC) to handle response actions.

¹ See National Response Center report # 855099 dated November 20, 2007 taken at 13:15 hours.

² See Initial Report Environmental Report Tracking System #602139 by WADOE (Claimant Exhibit R)

³ See Claimant Exhibit B

Further removal actions were taken on November 21, 2007 after DOE returned to the scene and found that the containment boom had been removed by the PRP's local diver. After discussion with Mr. McKay, DOE found that he was not prepared to properly raise the vessel and persuaded Mr. Benson to hire another contractor to raise the vessel. Emerald Underwater Services was hired by the PRP to raise the vessel, without further pollution incident. The PRP paid for Emerald Underwater Services and reimbursed the harbor and local fire department for use of its sorbents and boom.

Federal On-Scene Coordination: DOE contacted USCG, Petty Officer Hughes at MSO Pudget Sound and conveyed to Hughes that DOE was responding to the spill. MSO Pudget Sound agreed with DOE that DOE would oversee the response and cleanup.⁴

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."

⁴ See MISLE case #383234 in admin record

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:

Overview:

1. Federal On-Scene Coordination was provided by Sector Pudget Sound (MISLE case #38324).
2. The incident involved the discharge of oil as defined in OPA, 33 U.S.C. Section 2701 (23) to navigable waters.
3. In accordance with CFR 135.106 Claimant has certified that 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 claims 33 U.S.C. 2712 (h)(1)

Analysis of Claim:

The NPFC Claims Manager has reviewed the cost invoices and dailies to confirm that the claimant has incurred all costs as 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 and 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 National Contingency Plan; and (4) whether the costs were adequately documented and reasonable.

Costs were incurred after the PRP refused to hire an oil-spill response organization to cleanup the oil on harbor waters. \$5,557.83 represents the cost to hire Global Diving and Salvage to cleanup and recover oil on the water. Global Diving and Salvage is the subcontractor to Phillips Services Corporation (PSC). PSC is retained under a contract by DOE to respond to spills whenever it is needed.⁵ The remainder of the uncompensated removal costs represent \$818.38 for two DOE personnel and \$52.00 in per diem for meals for two days ($\$5,557.83 + \$818.38 + \$52 = \$6,428.21$).⁶

Claimant seeks reimbursement of its uncompensated removal costs associated with its response personnel and for oil removal services provided by Global Diving and Salvage as subcontractor to PSC. Uncompensated removal costs consist of \$818.38 for the time and benefits for DOE personnel:⁷ Chris Wilkerson and Dave Kline and \$52 for per diem for two meals.⁸ The distance from the DOE office to the spill location is approximately 87 miles each way. Additionally, the NPFC will compensate DOE for the services of its contractor, Global Diving and Salvage that provided oil spill removal services invoiced at \$5,557.83 for personnel and equipment identified in Global Diving and Salvage's dailies that were reimbursed by the DOE.⁹ The NPFC will reimburse the Claimant for the base salary of each employee, at their hourly rates as found in PSC rate sheet.¹⁰

The NPFC sent a RP Notification letter to the PRP on December 6, 2012. To date, no response has been received.

AMOUNT: \$6,428.21

Claim Supervisor:  *Donna Henberg*

Date of Supervisor's review: *January 10, 2013*

Supervisor Action: *Approved*

Supervisor's Comments:

⁵ See Memorandum of Agreement – contractor cost agreement (Claimant Exhibit E) in admin record

⁶ See WADOE Detail Expenditures (Claimant Exhibit B, C, D & I) in admin record

⁷ See Claimant Exhibit C in admin record

⁸ See DOE Travel Expense Voucher (Claimant Exhibit D - per diem costs)

⁹ See invoice #5788222 from PSC to WADOE December 31, 2007

¹⁰ See Global Diving & Salvage dailies (Claimant Exhibit J)