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
[redacted]
Fax: 703-872-6113

5890
9/16/2014

[redacted]

State of Washington Department of Ecology
ATTN: Mr. David Byers
PO Box 47611
Olympia, WA 98504-7611

Re: Claim Number 914133-0001

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 $4,156.05 is compensation for OPA claim number 914133-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rational 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.

[redacted]
Claims Manager
U.S. Coast Guard

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
E-mail: Alyssa.J.Lombardi@uscg.mil
Phone: 703-872-6099
Fax: 703-872-6113

Claim Number: 914133-0001	**Claimant Name:** State of Washington Department of Ecology ATTN: Cashiering Section (8PP8) PO Box 47611 Olympia, WA 98504-7611

I, the undersigned, ACCEPT this settlement offer of $4,156.05 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 under any other law, that I may have against any party, person, firm or corporation that may be liable for the amounts 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 is 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 FORM

Claim Number	: 914133-0001
Claimant	: State of Washington Department of Ecology
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: $4,156.05

FACTS:

A. Oil Spill Incident:

On September 6, 2010, the State of Washington Department of Ecology (Ecology) received notification that a vessel had sunk in Mats Mats Bay near Port Ludlow, WA. Mats Mats Bay is a navigable waterway of the US. The vessel was the F/V HUSSAR, a possible derelict vessel with a fuel capacity of 1000 to 2000 gallons. Ecology could not determine how the vessel sank. There were citizen reports of pollution coming from the vessel. While on-scene, Ecology responders observed pockets of oil rising to the surface. Ecology coordinated with USCG Sector Puget Sound that evening with an understanding that the United States Coast Guard (USCG) Puget Sound would respond the next morning.

On September 7, 2010, Ecology responders deployed to Mats Mats Bay observed a mast (only) approximately 150 feet from shore. Once on-scene where the vessel was positioned in the water, sporadic pockets of oil were observed surfacing and spreading out into rainbow/blackish sheens. It was undetermined how much fuel was on board the vessel. The owner of the vessel was not immediately identified or present. Ecology consulted with the USCG and learned that a USCG response would not occur due to staffing issues related to the Deep Water Horizon response. It was agreed that Ecology would take the lead and hire contractors to assess the vessel and take measures to contain oil.

The Washington State Department of Natural Resources (WDNR) Derelict Vessel Program posted the vessel to take legal custody on October 12, 2010. On October 12, 2010, WDNR was notified by a citizen that the vessel was gone from Mats Mats Bay. It was not removed by WDNR, but presumably by the owner.

A Responsible Party (RP), Mr. Steve Ewald, was identified for this spill but, to date, has not remitted payment. The USCG Sector Puget Sound was made aware of this event and activities surrounding the eventual removal of the vessel from the waterway.

B. Description of removal actions performed:

Ecology hired Global Diving and Salvage, Seattle, WA to minimize the potential for release of oil. Global Diving plugged the tank vents, filled ports and hoses on the vessel. Ecology also required Global to place a buoy on the mast of the sunken vessel as a navigational warning for nearby boaters.

Ecology did not recover any oil from the vessel and though no samples were taken by Ecology, Global Diving did take them.

C. ***The Claim:*** On September 9, 2014, Ecology submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of $4,156.05 for the services provided on September 7, 2010. 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 file.

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), a responsible party for a vessel or facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident.

"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".

"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". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

"Claimant" means "any person or government who presents a claim for compensation under this subchapter." 33 USC § 2701(4).

33 USC § 2712(f), which is entitled "Rights of Subrogation," provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States

Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

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 136.203, the claimant bears the burden to prove the removal costs 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 has been established via United States Coast Guard Sector Puget Sound.
2. 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.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has been identified. 33 U.S.C. § 2701(32).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The USCG Sector Portland Puget Sound was made aware of the incident and the actions Ecology performed. It provided third-party dailies, invoicing and lab analysis of the work performed, including its own personnel costs. These were deemed reasonable to accomplish the response objective. The contractor rate schedule (for Global Diving) in place at the time services were rendered was reviewed as well. Oversight was performed by USCG Sector Puget Sound. Therefore, the work performed has been deemed reasonable, necessary and in accordance with the NCP in order to mitigate the effects of the spill.

Based on the evidence in this claim submission for the actions undertaken by Ecology, the Claims Manager hereby determines that the claimant incurred $4,156.05 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by Ecology and submitted to the NPFC under claim #914133-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on September 7, 2010. Ecology represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. *Determined Amount: $4,156.05*

The NPFC hereby determines that the OSLTF will pay $4,156.05 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 914133-0001. 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.

Claim Supervisor: [redacted]

Date of Supervisor's review: 9/17/2014

Supervisor Action: Offer Approved.

Supervisor's Comments: