

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

US COAST GUARD  
4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100  
Staff Symbol: (CA)  
Phone: 703-872-6098  
E-mail: [REDACTED]@uscg.mil  
Fax: 703-872-6113

5890  
10/18/2012

Sent Via E-mail: [REDACTED]@ecy.wa.gov

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

Re: Claim Number 912034-0001

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 \$6,883.86 is compensable for OPA claim number 912034-0001.

This reconsideration determination is based on an analysis of the information submitted.

All costs that are not determined as compensable are considered denied. Disposition of this reconsideration constitutes final agency action.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to:

DIRECTOR  
NATIONAL POLLUTION FUNDS CENTER  
US COAST GUARD STOP 7100  
4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100

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, your payment will be mailed within 30 days of receipt of the Release Form.

[REDACTED]

Chief, Claims Adjudication Division

ENCL: Claim Summary/Determination  
Acceptance/Release Form  
Spreadsheet of costs

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Claim Number: 912034-0001	Claimant Name: State of Washington
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I, the undersigned, ACCEPT this settlement offer of \$6,883.86 as full and final compensation for the 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 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 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
_____	_____
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

_____	_____	_____
EIN/SSN Required for Payment	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 912034-0001  
Claimant : State of Washington  
Type of Claimant : State  
Type of Claim : Removal Costs  
Claim Manager : Felita Jackson  
Amount Requested : \$7,097.66

**FACTS:**

- 1. Oil Spill Incident:** On January 6, 2009, Coast Guard Sector Puget Sound (Sector Puget Sound) received a report from Coast Guard Sector Seattle (Sector Seattle) that an unknown oyster barge was partially submerged in the Puget Sound and discharging diesel fuel into the Burley Lagoon in Purdy, Washington.<sup>1</sup> The Puget Sound (Burley Lagoon) is a navigable waterway of the United States.

Sector Seattle contacted the Claimant, Washington State Department of Ecology (Ecology), to coordinate the clean-up efforts with the vessel owner, as Sector Seattle was able to contact the owner. It was determined that the Claimant and Eiichi "Jerry" Yamashita, the owner of the Western Oyster Company barge, would be funding the clean-up. Mr. Yamashita informed that an estimated 10 gallons of diesel fuel was on board the barge, as well as unknown amounts of engine oil and hydraulic oil. Sector Seattle informed the owner that he needed to hire an environmental contractor to respond to the sunken barge and he hired Global Diving and Salvage (Global). However, Global informed Ecology that they were hired to only deploy oil containment boom around the vessel.

Upon arrival, Ecology found the oyster barge partially submerged to the wheelhouse in the Lagoon, approximately 50 yards from the beach and observed a rainbow colored sheen at the incident site. They determined that deploying oil containment boom alone would not be a proper response in order to contain the diesel fuel, engine oil, and hydraulic oil, particularly with the stormy environmental conditions. The barge owner could not be reached to upgrade to the needed response.

The Claimant contacted Global and asked them to bring equipment required to pump off the vessel and informed Global that they would guarantee payment but requested they bill Mr. Yamashita first for their services. When Mr. Yamashita arrived at the incident site, he was informed by Ecology that the response had been upgraded and that he was responsible for all response and clean-up costs. Per the Claimant, Mr. Yamashita agreed to pay the costs and informed that he was going to try to salvage the barge. Ecology informed him that oil absorbents would have to be placed around the barge until it was raised.

- 2. Description of Removal Activities for this Claim:** On January 6, 2009, the Claimant hired Global for the clean-up of the barge. Global arrived at the incident site at 4:45 pm

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<sup>1</sup> See NRC Report #894137.

and attempted to launch their boat but determined they would be able to launch when the tide was higher. At 11:10 pm Global successfully launched their boat to reach the barge. By 1:00 am on January 7, 2009, Global reported to the Claimant that they pumped off the almost empty tank; there was a large amount of emulsified oil in the bilge; and that they were going to clean out as much of the oil as the environmental conditions would allow. By 2:15 am, Global reported to the Claimant that they had cleaned out some of the oil in the bilge until the tide no longer allowed them access; and that they left absorbents in the bilge and absorbent sweep around the barge.

Global was later contacted by the Claimant to reassess the vessel and change the absorbents. Global cleaned up diesel fuel floating inside the sweep; replaced the sweep; and reported that most of the contaminated bilge water was no longer there. On January 9, 2009 the Claimant learned that Global did not need to respond by changing oil absorbents because Western Oyster employees used Styrofoam to refloat the barge, but it was not removed from the water.

3. **The Claim:** On February 23, 2012, Ecology submitted a removal cost claim to the NPFC, seeking reimbursement of their uncompensated removal costs in the amount of \$7,097.00. They are seeking reimbursement for the costs of personnel and clean-up services provided by Global. On September 29, 2009, Mr. Yamashita filed an Application of Relief from Order for Reimbursement of Expenses.<sup>2</sup> On August 20, 2010, the Claimant sent Mr. Yamashita a Notice of Disposition upon Application for Relief from Order of Reimbursement to stop the recovery of their response costs.<sup>3</sup> Upon receipt of his Responsible Party Notification letter from the NPFC, Mr. Yamashita faxed the Notice to the NPFC in response.
4. **The Request for Reconsideration:** On September 11, 2012, via e-mail, the Claimant made a written request for Reconsideration to the NPFC, after requesting and then receiving additional information and cost documentation for the invoiced items from Global. The Reconsideration is for \$6,140.28 of costs previously denied in the original Settlement Offer.

## **DETERMINATION OF LOSS:**

### ***A. Overview:***

1. Federal On-Scene Coordination was provided by FO SCR MST3 Ryan Johnson of the United States Coast Guard Sector Seattle.
2. The incident involved the 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 claims. 33 U.S.C. § 2712 (h)(2).

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<sup>2</sup> 09/29/09 Application for Relief from Administrative Order filed by Eiichi Yamashita (Tab V of claim submittal).

<sup>3</sup> 08/20/10 letter from Claimant to Eiichi Yamashita and 08/17/10 signed Notice of Disposition upon Application of Relief from Order of Reimbursement (Tab V of claim submittal).

5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that some 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 as set forth below.
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as “Compensation Allowable” under 33 CFR§ 136.205.

***B. Reconsideration Analysis and Determined Amount:***

The NPFC Claims Manager has 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 FOOSC, and (4) whether the costs were adequately documented and reasonable.

The Claimant seeks reimbursement of their uncompensated removal costs associated with personnel and the clean-up services provided by Global. The uncompensated costs consist of \$957.38 for the salaries and benefits for Spill Responders Andrea Unger and Ronald Holcomb and \$6,140.28 for the services provided by Global. The NPFC will reimburse the Claimant for the base salary of each employee, at their hourly rates. However, the NPFC will not reimburse the Claimant for the benefits of the Spill Responders listed on the submitted personnel cost documents as OASI (BA), Retire (BB), Medic/IND (BC), Health (BD), and Medicare (BH).<sup>4</sup> Therefore the NPFC will pay the base salaries of \$694.74 (19.5 hours @ \$35.63/hr) for Ms. Unger and \$48.84 (.9 hours @ 54.27/hr) for Mr. Holcomb; denying \$213.80.

On July 12, 2012, via e-mail, the NPFC requested the Claimant provide the daily worksheets for the work performed by Global, as well as the rate schedule that was in effect at the time of the incident.<sup>5</sup> Then again on July 19, 2012, the same request was made to the Claimant, via e-mail, requesting the information by Tuesday July 25, 2012.<sup>6</sup> On July 20, 2012, the Claimant replied that a request for an estimated time of arrival of the information had been requested of Global but he had not heard back from them, as they were recovering the appropriate records from their archives.<sup>7</sup>

By August 9, 2012, the NPFC had not received the requested information and issued a determination to the Claimant based on the information in the claim submission. The Global costs were denied because the invoiced items could not be verified. Therefore, \$6,140.28 of the claim was also denied because of the Claimant’s failure to provide documentation necessary to support the claim for reimbursement of \$6,140.28, pursuant to 33 CFR 136.105(a) and 136.105(e)(6).

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<sup>4</sup> 08/20/09 State of Washington costs for Sunken Oyster Barge-Burley Lagoon (Tab E of claim submittal).

<sup>5</sup> See 07/12/12 e-mail to David Byers from Felita Jackson.

<sup>6</sup> See 07/18/12 e-mail to David Byers from Felita Jackson.

<sup>7</sup> See 07/20/12 e-mail to Felita Jackson from David Byers.

On September 11, 2012, the NPFC received a written request for reconsideration from the Claimant, dated September 4, 2012.<sup>8</sup> Claimant provided the daily worksheets and related cost documentation for the work performed and billed by Global. The claims manager determined that the Claimant did incur costs requested for reimbursement for Global's work.

The NPFC continues to deny a total of \$213.80 in DOE personnel costs submitted for reimbursement, as noted in the original Settlement Offer.

Based on the NPFC's denial of \$213.80 for reimbursement of the invoiced items submitted on Reconsideration, the NPFC hereby determines that the OSLTF will pay \$6,883.86 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912034-0001. This amount of \$6,883.86 consists of the original settlement offer of \$743.58 and the Global costs of \$6,140.28 approved reimbursement costs submitted for Reconsideration.

**DETERMINED AMOUNT: \$6,883.86**

Claim Supervisor:  *Thomas S. Morrison*

Date of Supervisor's review: *10/18/12*

Supervisor Action: *Reconsideration offer approved as stated above*

Supervisor's Comments:

<sup>8</sup> See 09/04/12 letter from David Byers to Director, National Pollution Funds Center.