

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 800-280-7118  
E-mail: [REDACTED]@uscg.mil  
Fax: 703-872-6113

5890  
8/27/2012

VIA EMAIL [REDACTED]@kyl.com

IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd, and The Swedish Club  
c/o Keesal, Young & Logan  
ATTN: Herbert H. Ray  
1029 West Third Avenue, Suite 650  
Anchorage, AK 99501-1954

Re: Claim Number J05003-0015

Dear Mr. Ray:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$23,103,264.96 is full compensation for the fourth removal costs claim identified as OPA claim number J05003-0015.

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 (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

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.

Sincerely



Donna Hellberg  
Lead Claims Manager  
United States Coast Guard

ENCL: Claim Summary / Determination Form  
Acceptance/Release Form

(1) Summary of costs spreadsheet with accompanying detailed spreadsheets

U.S. Department of  
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Director  
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National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 202-493-6839  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

Claim Number: J05003-0015	Claimant Name: IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd, and The Swedish Club ATTN: C/O Herbert H. Ray Keesal, Young & Logan Suite 650 1029 West Third Avenue Anchorage, AK 99501-1954
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I, the undersigned, ACCEPT this settlement offer of \$23,103,264.96 as full and final compensation for the removal costs identified for services provided by various vendor invoices as set forth in the summary and invoice listings, which are attached to this release and incorporated as if fully set forth herein. With my signature, I also acknowledge that I accept as final agency action all costs identified in Claim Number J05003-0015 that were denied in this claim 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 Claim Number J05003-0015 as described in the attached claim determination and amounts denied in this 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
_____	_____
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

_____
TIN Required for Payment Bank Routing Number

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: J05003-0015
Claimant	: IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd, and The Swedish Club
Type of Claimant	: Corporate (US)
Type of Claim	: Limit of Liability
Claim Manager	: Donna Hellberg
Amount Requested	: \$23,376,646.40

### I. INCIDENT

The M/V SELENDANG AYU (the vessel) was on a voyage from Seattle to China when, on the morning of December 6, 2004<sup>1</sup> while operating in adverse weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. The vessel drifted toward Unalaska Island and eventually grounded on December 8 on a rocky shelf on the north shore of Unalaska Island, northeast of Spray Cape. The grounding ruptured the vessel's bottom tanks, releasing approximately 330,000 gallons<sup>2</sup> of bunkers into the waters off Unalaska Island.

### II. CLAIMANT AND CLAIM

The Claimants are the OPA responsible parties and their insurers. Ayu Navigation Sdn Bhd was the owner of the vessel and IMC Shipping Co. Pte. Ltd. was the operator of the vessel. Sveriges Angfartygs Assurans Forenging (The Swedish Club), members of the International Group of Protection and Indemnity Clubs ("International Group"), and the International Group's re-insurers were their subrogated underwriters.

### III. PROCEDURAL BACKGROUND:

Pursuant to 33 U.S.C. § 2708(a)(2) Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) seeking a limit on its liability for the incident. At the time of the incident the applicable limit per ton was \$600; the gross tonnage for the *Selendang* was 39,755 gross ton; therefore, its limit on liability, if granted, was \$23,853,000.00. The Claims Adjudication Division conducted an analysis of evidence and facts and determined that IMC Shipping Co. Pte. Ltd, et al demonstrated entitlement to its limit of liability on 27 January 2012.

### IV. REMOVAL COST CLAIM

Claimant asserts that it incurred approximately \$148,651,185.13 in removal costs and hired 153 vendors to conduct the removal actions. The removal actions at the site ended on or about 23 June 2006, per a Pollution Report (PolRep) #110 dated 27 June 2006 issued by the FOSC for this incident. As required by 33 CFR 136.203, the RP worked closely with the FOSC throughout the response; MSO Anchorage provided FOSC coordination.

Based on the magnitude of the costs associated with this response, the NPFC anticipates that adjudication of this claim will be lengthy. Claimant and the NPFC agreed to adjudicate the costs on a phased basis. The NPFC will separate the claim into smaller claims, based on vendors. Each smaller claim will bear a separate claim number and after adjudication the NPFC will offer an amount for that claim. Claimant may accept the offer or request reconsideration pursuant to the Claims Regulations at 33 CFR Part 136.

<sup>1</sup> See, Claimant Submission, Attachment 24, Government's Videotape Deposition of Kailash B. Singh Vol. I, 00074.

<sup>2</sup> See, Claimant's submission letter, page 3, paragraph 3.

## V. FOURTH REMOVAL COSTS CLAIM DETERMINATION<sup>3</sup>

The NPFC adjudicated this fourth claim (J05003-0015) in the amount of 23.3M. The RP, through its legal representative, provided 32 binders of invoices to document the \$23.3M in removal costs claimed in this fourth determination package for costs associated with the following response vendors: Air Logistics, Alaska Airlines, CR Copes, Delta Western, Penco, and Peninsula Airways. The NPFC claims manager reviewed each and every submitted invoice as well as every "daily" sheet submitted to substantiate the invoices. Additionally, the NPFC claims manager reviewed the payment record against the claimed costs for each invoice. See Enclosure (1) for the summary spreadsheet of costs that make up this fourth determination and amount allowed for each invoice.

The review of the actual costs, invoices and dailies focused on (1) whether the actions were taken to prevent, minimize or 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.

Please see Enclosure (1) for an itemization of the vendor invoices and their associated documents, which make up this third claim determination. This determination is only deemed full and final for the identified vendor invoices located in Enclosure (1).

<u>Vendor</u>	<u>Binder #</u>	<u>Amount Claimed</u>	<u>NPFC Approved</u>	<u>NPFC Denied</u>
Air Logistics	82-91	\$3,107,313.51	\$3,086,321.08	\$19,482.40
Alaska Airlines	3-11	\$649,520.89	\$649,520.89	\$6,529.78
CR Copes	110	\$94,733.11	\$84,530.97	\$16,838.14
Delta Western	11-112 & 242	\$1,166,801.49	\$953,833.17	\$113,791.84
Penco	128-136	\$18,114,969.52	\$18,091,280.81	\$30,264.04
Peninsula Airways	127	\$243,307.88	\$237,778.04	\$8,144.00
<b>Total</b>		<b>\$23,376,646.40</b>	<b>\$23,103,264.96</b>	<b>\$195,050.20</b>

Claimant's sum certain for this claim is \$23,376,646.40. The claims manager determined, as more fully discussed below, that the Claimant was in error when it identified the claimed amount for every vendor included in this claim determination. The Claimant overstated the claimed amount for these vendors by a total amount of \$78,331.24. Thus; the corrected overall sum certain is \$23,298,315.16.

The NPFC has determined that \$195,050.20 is not compensable from the OSLTF and will offer the Claimants \$23,103,264.96. As noted above, the NPFC deducted the RP's statutory limit on liability from the amount determined to be compensable under claim # J05003-001. Thus, \$23,103,264.96 is payable from the Oil Spill Liability Trust Fund.

<sup>3</sup> The NPFC adjudicated the first removal cost claim, Claim Number J05003-001, in the amount of \$24,500,453.89. The NPFC deducted the statutory limit on liability of \$23,853,000.00 and offered \$546,484.54 as full and final compensation on or about May 21, 2012. Claimants accepted the offer on June 7, 2012. The NPFC adjudicated the second removal claim, Claim Number J05003-003, and offered \$ 2,168,445.20 to the Claimants on June 26, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the third removal claim, Claim Number J05003-0004, and offered \$3,668,595.70 to the Claimants on July 3, 2012. Claimants accepted the offer on August 6, 2012.

## VI. 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".

The responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of discharge of oil, may assert a claim for removal costs and damages under section 2713 only if the responsible party demonstrates that it is entitled to a defense to liability under section 2703 or to a limitation of liability under section 2704. 33 USC § 2708(a)(1) and (2).

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].

## VII. DETERMINATION OF LOSS:

### A. *Findings of Fact:*

1. MSO Anchorage, as the FOSC for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. A Responsible Party was identified. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(2);
5. The NPFC Claims Manager reviewed all documentation submitted with the claim and determined which removal costs were incurred for removal actions in accordance with the NCP and whether the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205. The Claims Manager also identified denied costs and the grounds for denial.

### B. *Analysis:*

NPFC CA reviewed the actual cost invoices and dailies to confirm that the Claimant had obtained all rights, claims and causes of actions for the 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 NPFC has determined that the majority of costs incurred by the Claimant in this fourth claim determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the costs were billed in accordance with the rate schedules and/or contracts/charter agreements in place at the time the services were rendered, unless otherwise indicated below, and were determined to be consistent with the NCP.

### *Itemizations of denied costs are broken down by Vendor invoice:*

#### *Air Logistics:*

- Inv # 4011572 - NPFC denied \$79.16. Of that, GMS had denied \$68.93 which is uncompensated and the NPFC also denied \$10.23 for magazine and detergent;
- Inv # 4011574 - NPFC denied \$10.30 for laundry. Contract allows meals and lodging only;
- Inv # 4011596 - NPFC denied \$26.25 for laundry. Contract allows meals and lodging only;
- Inv # 4011597 - NPFC denied \$56.65 for laundry. Contract allows meals and lodging only;
- Inv # 4011599 - NPFC denied \$51.50 for laundry. It is important to note that GMS also denied this for lack of receipt therefore it is also not uncompensated;
- Inv #4011600 - NPFC denied \$77.25 for laundry. Contract allows meals and lodging only;
- Inv # 4011636 - NPFC denied \$172.43. GMS denied \$102.78 therefore the NPFC denies that amount as not uncompensated and the NPFC also denied \$69.65 for laundry and long distance charges. Contract allows meals and lodging only;

- Inv # 4011637 – NPFC denied \$339.01 in miscellaneous expenses not covered by contract or otherwise not substantiated. See spreadsheet for more details;
- Inv # 4011665 – NPFC denied \$1,632.99. GMS denied duplicate hotel bill and some missing receipts which the NPFC then denies as not uncompensated. The NPFC also denied miscellaneous expenses as detailed on the spreadsheet;
- Inv # 4011666 – NPFC denied \$2,090.51. GMS denied \$1,852.53 which the NPFC also denies as not uncompensated. The NPFC also denied various charges not covered by the contract. See the spreadsheet for details;
- Inv # 4011699 – NPFC denied \$308.03. GMS denied some costs which the NPFC also denied as not uncompensated and then the NPFC denied various charges not covered by the contract. See spreadsheet for details;
- Inv # 4011700 – NPFC denied a total of \$1,135.95. The NPFC denied \$800.00 for a P&I inspection flight as not removal and \$335.95 in various charges by GMS which are not uncompensated, laundry charges and other miscellaneous expenses. See spreadsheet for details;
- Inv # 4011701 – NPFC denied \$2,900.74. The NPFC denied \$1,827.00 in flights not deemed a removal activity and \$1,073.74 in miscellaneous costs not paid by GMS therefore not uncompensated and other miscellaneous charges not covered by contract. See spreadsheet for details;
- Inv # 4011739 – NPFC denied \$75.67 in miscellaneous charges either denied by GMS as not uncompensated and other miscellaneous charges not covered by contract. See spreadsheet for details;
- Inv # 4011740 – NPFC denied \$147.53 in charges denied by GMS as not uncompensated and miscellaneous charges not covered by contract. See spreadsheet for details;
- Inv # 4011741 – NPFC denied \$1,477.86 in miscellaneous charges denied by GMS which are not uncompensated and other miscellaneous charges not covered by contract. See spreadsheet for details;
- Inv # 4011778 – NPFC denied \$820.55 in miscellaneous charges denied by GMS which are not uncompensated and other miscellaneous charges not covered by contract. See spreadsheet for details;
- Inv # 4011779 – NPFC denied \$4,236.71 in \$3,500.00 in costs denied by GMA which are therefore not uncompensated and \$736.71 in miscellaneous charges not covered by contract. See spreadsheet for details;
- Inv # 4011780 – NPFC denied \$89.49 in laundry and long distance charges not covered by contract. See spreadsheet for details;
- Inv # 4011817 – NPFC denied \$1,269.90 in miscellaneous charges not covered by contract and airfare billed improperly. See spreadsheet for details;
- Inv # 4011818 – NPFC denied \$103.79 in laundry and unidentified purchase(s). See spreadsheet for details;
- Inv # 4011819 – NPFC denied \$88.00 in tips for maid service not covered by contract;
- Inv # 4011836 – NPFC denied \$239.85 in miscellaneous charges not covered by contract and unidentified purchases. See spreadsheet for details;
- Inv # 4011837 – NPFC denied \$71.15 for laundry and miscellaneous charges not covered by the contract. See the spreadsheet for details;
- Inv # 4011896 – NPFC denied \$1,304.01 in miscellaneous charges either not covered by the contract or unsupported. See spreadsheet for details;
- Inv # 4011897 – NPFC denied \$627.92 in charges denied by GMS therefore not uncompensated and miscellaneous charges either not covered by the contract or unsupported. See spreadsheet for details;
- Inv # 4011919 – NPFC denied \$43.20 in laundry and long distance charges not covered by the contract. See spreadsheet for details;
- Inv # 4012136 – NPFC denied \$6.00 in long distance charges not covered by contract. See spreadsheet for details.

**Total Denied for Air Logistics : \$19,482.40**

***Alaska Airlines:***

- All Alaska Airline invoice denials are for either no supporting documentation or no Resource Request. See spreadsheet for individual line item denials by invoice.

**Total Denied for Alaska Airlines : \$6,529.78**

***CR Copes:***

- Inv # 20041 – The NPFC denied \$1,300.00. GMS denied \$1,250.00 which is not uncompensated and the NPFC also denied \$50.00 for a charge that had no resource request;
- Inv # 20041-A – NPFC denied \$500.00 for a restocking fee that was not actually invoiced by the vendor but paid via agreement by GMS;
- Inv # 20043 – NPFC denied \$4,940.01 for charges not supported by Resource Requests;
- Inv # 20047 – NPFC denied \$5000.00 that GMS identifies as an adjustment to the payment therefore this amount is not uncompensated;
- Inv # 20047 – NOTE – there is also a restocking fee that was not invoiced associated with this invoice that was paid by GMS therefore the NPFC denies \$2,000.00 as not invoiced by vendor;
- Inv # 20050 – NPFC denied \$204.33 for charges not supported by Resource Requests;
- Inv # 20051 – NPFC denied \$948.85 for charges not supported by Resource Requests;
- Inv # 20052 – NPFC denied \$554.95 for parts to repair damages. Not a proper use of the OSLTF;
- Inv # 20053 – NPFC denied \$450.00. GMS denied \$418.00 for parachute sea anchors that had no resource request therefore the charge is not uncompensated. Also, GMS paid \$32 for a boat repair twice. Once under check # 165 and also under wire # 68729. The NPFC denies one charge because it is for damages and the other charge as duplicate payment;
- Inv # 20054 – NPFC denied \$50.00 for charges not supported by Resource Requests;
- Inv # 20057 – NPFC denied \$440.00 for 20 items over the quantity allowed under the Resource Request. The Resource Request was for a quantity of 400 but the invoice was for 420 so the NPFC denied the overage;

**Total Denied for CR Copes : \$16,838.14**

***Delta Western:***

- Inv # 0063527-IN – NPFC denied \$18.57. The invoice exceeded the Resource Request quantity therefore the overage is denied;
- Inv # 0066721-IN – NPFC denied \$618.00 as there was no approved Resource Request for the rental of 500 gallon tank;
- Inv # 0069562-IN – NPFC denied \$200.72 as the Resource Request quantity had already been exhausted and as such, the 8 cases of 10W40 are denied as not covered by an appropriate Resource Request;
- Inv # 0069642-IN – NPFC denied \$159.94 as there was no Resource Request;

- Inv # 0069643-IN – NPFC denied \$2,761.35 as there is no Resource Request for the denied charges;
- Inv # 0069675-IN – NPFC denied \$3,075.06 as there is no Resource Request for the denied charges;
- Inv # 0069673-IN – NPFC denied \$554.04 as there is no Resource Request for the denied charges;
- Inv # 0066168-IN – NPFC denied \$8,180.04. The contract for Cape Flattery found under the Bering Sea Ecotech vendor, binder 93, indicates consumables, fuel, oil, etc. are not included and no Resource Request was provided to authorize payment of such charges therefore NPFC denies. See spreadsheet for itemization of items denied;
- Inv # 0066169-IN – NPFC denied \$1,648.44. The contract for Cape Flattery found under the Bering Sea Ecotech vendor, binder 93, indicates consumables, fuel, oil, etc. are not included and no Resource Request was provided to authorize payment of such charges therefore NPFC denies. See spreadsheet for itemization of items denied;
- Inv # 0066173-IN – NPFC denied \$369.73 as there is no Resource Request for the denied charges;
- Inv # 661138-IN – NPFC denied \$440.20 as there is no Resource Request for the denied charges;
- Inv # 0065728-IN – NPFC denied \$1,646.12 as there is no Resource Request for the denied charges;
- Inv # 0065792-IN – NPFC denied \$251.32 as there is no Resource Request for the denied charges;
- Inv # 0065874-IN – NPFC denied \$90.25 as there is no Resource Request for the denied charges;
- Inv # 0065887-IN – NPFC denied \$913.59 as there is no Resource Request for the denied charges;
- Inv # 0065885-IN – NPFC denied \$3,444.48 as there is no Resource Request for the denied charges;
- Inv # 0065911-IN – NPFC denied \$1,476.16 as there is no Resource Request for the denied charges;
- Inv # 0069608-IN – The NPFC denied a credit of \$90.60 so a duplicate adjustment made under check # 1267;
- Inv # 61433-IN – The NPFC denied \$551.96 as there is no Resource Request for the denied charges;
- Inv # 0061857-IN – NPFC denied \$288.42 as there is no Resource Request for the denied charges;
- Inv # 006180-IN – NPFC denied \$963.95 as there is no Resource Request for the denied charges;
- Inv # 0061752-IN – NPFC denied \$144.19 as there is no Resource Request for the denied charges;
- Inv # 0061780-IN – NPFC denied \$574.96 as there is no Resource Request for the denied charges;
- Inv # 0061778-IN – NPFC denied \$163.36 as there is no Resource Request for the denied charges;
- Inv # 0061858-IN – NPFC denied \$93.57 as there is no Resource Request for the denied charges;
- Inv # 0061753-IN – NPFC denied \$.01 due to rounding issue;
- Inv # 0061944 – The NPFC denied \$28.63 as these costs are listed on check # 1601 & 1617. Invoice and docs are behind check #1617 in binder 112 therefore NPFC denies this invoice and allowed it under check # 1617;
- Inv # 0069675 – The NPFC denies the credit of \$984.17 so it will offset where the NPFC originally denied this amount for no Resource Request above since the Resource Request is provided under the credit memo therefore denying the credit does away with the initial denial;

- Inv #0061719-IN – NPFC denied 351.27 for no Resource Request even though approved by Nancy Gudonis;
- Inv # 0065447-IN – NPFC denied \$611.47 as there is no Resource Request for the denied charges;
- Inv # 0065457-IN – NPFC denied \$199.12 as there is no Resource Request for the denied charges;
- Inv # 0065301-IN – NPFC denied \$514.96 as the NPFC allowed the payment of this invoice under check #1617 therefore it is denied here as duplicate;
- Inv # 0060661-IN – NPFC denied \$24,737.86 which is the amount paid by GMS vice the invoiced amount. No invoice or documentation was provided therefore the amount paid is denied;
- Inv #0060631-IN – NPFC denied \$683.01 as there is no Resource Request for the denied charges;
- Inv # 0060673-IN – NPFC denied \$35,581.78 as no invoice or documentation was provided;
- Inv # 0067029-IN – NPFC denied \$237.15 as there is no Resource Request for the denied charges;
- Inv # 0066910-IN – NPFC denied \$69.46 as there is no Resource Request for the denied charges;
- Inv # 1004843-IN – NPFC denied \$196.59 as there is no Resource Request for the denied charges;
- Inv # 0060630-IN – NPFC denied \$5,636.11 as there is no Resource Request for the denied charges;
- Inv # 0060612-IN – NPFC denied \$3,639.58 as there is no Resource Request for the denied charges;
- Inv # 0060651-IN – NPFC denied \$381.31 as there is no Resource Request for the denied charges;
- Inv # 0060628-IN – NPFC denied \$5,900.40 as there is no Resource Request for the denied charges;
- Inv # 0060616-IN – NPFC denied \$5,477.38 as there is no Resource Request for the denied charges;
- Inv # 0060676-IN – NPFC denied \$ 51.83 as there is no Resource Request for the denied charges;
- Inv # 0060933-IN – NPFC denied \$.01 as a rounding issue;
- Inv # 0060934-IN – NPFC denied \$226.60 as there is no Resource Request for the denied charges;
- Inv # 0060650-IN – NPFC denied \$199.12 as there is no Resource Request for the denied charges;
- Inv # 0066617-DM – NPFC denied \$309.00 as there is no Resource Request for the denied charges and this was rental equipment and no rental agreement was provided;
- FINANCE CHARGE invoice – NPFC denied \$377.87 as the NPFC does not pay finance charges. Not a proper use of the OSLTF;
- Inv # 0065728-DM – NPFC denied \$726.94 as there is no Resource Request for the denied charges;
- Inv # 68083 – NPFC denies \$.01 as rounding issue;
- Inv # 68093 – NPFC denied \$.01 as rounding issue;
- Inv # 54195 – NPFC denied \$.01 as rounding issue;
- Inv # 56445 – NPFC denied \$.01 as rounding issue;
- Inv # 56471 – NPFC denied \$100.68 as no invoice or documentation provided;
- Inv # 74358 – NPFC denied \$.01 as rounding issue;

**Total Denied for Delta Western : \$113,791.84**

**Peninsula Airways:**

- Inv # 894262 – NPFC denied \$8,144.00 for passenger tickets which were not provided nor were the respective Resource Request forms.

**Total Denied for Peninsula Airways : \$8,144.00**

**Penco:**

- Inv # 05-014 – NPFC denied \$4270.00 associated with personnel costs and improper billing. See spreadsheet for itemization by person of costs denied;
- Inv # 05-021 – NPFC denied \$13,069.00 associated with personnel costs and improper billing. See spreadsheet for itemization by person of costs denied;
- Inv # 05-022 – NPFC denied \$650.00 associated with personnel costs and improper billing. See spreadsheet for itemization by person of costs denied;
- Inv # 05-023 – NPFC denied \$9,669.00 associated with personnel costs and improper billing. See spreadsheet for itemization by person of costs denied;
- Inv # 05-055 – NPFC denied \$475.00 as GMS denied the costs therefore it is not uncompensated;
- Inv # 05-139 – NPFC denied \$1000.00 as GMS denied this amount therefore it is not uncompensated;
- Inv # 05-169 – NPFC denied \$1,131.04 as GMS made an adjustment of \$1,131.04 for erroneous charges made in the Grand Aleutian billings - see email in binder 135 dated 12/20,05. GMS shorted the payment on this invoice to cover the Grand Aleutian errors found after payment therefore this amount is not uncompensated.

**Total Denied for Penco : \$30,264.04**

**OVERALL DENIED COSTS = \$195,050.20**

The NPFC notes that the Summary Sheets for the vendors associated with this determination included numerous accounting and mathematical errors. The NPFC claims manager could not, and did not, rely on these sheets when adjudicating this claim. Additionally, the claims manager could not easily review the invoices because adjustments to certain invoices were either not documented or not well organized in the binders. While the final determination may not reflect these difficulties the accounting errors and disorganization of the invoices in the binders were time consuming and resulted in longer periods of time required to reconcile the invoices and to adjudicate this claim.

**VIII. SUMMARY**

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.203 and 136.205. The costs determined to be payable are for uncompensated removal costs that are determined to be consistent with the National Contingency Plan.

The NPFC hereby determines that the NPFC offers, and the OSLTF is available to pay, **\$23,103,264.96** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # J05003-0015.

**AMOUNT: \$23,103,264.96**

Claim Supervisor: *TH*

Date of Supervisor's review: *8/27/12*

Supervisor Action: *Approved*

Supervisor's Comments: