CLAIM SUMMARY / DETERMINATION FORM

Date	:	4/6/2010
Claim Number	:	910081-001
Claimant	:	State of New Jersey
Type of Claimant	:	State
Type of Claim	:	Removal Costs
Claim Manager	:	Emma Sutherland
Amount Requested	:	$14,306.96

FACTS:

1. ***Oil Spill Incident:*** On February 19, 2009, the New Jersey Bureau of Emergency Response (NJ BER) was alerted by Bergen County Health Department (BCHD) of a petroleum spill in a tributary of the Overpeck Creek in Ridgefield Park, Bergen County. NJ BER responders Carl and Camargo were subsequently deployed to assist with the investigation. Upon arrival, the responders discovered fifty to seventy-five gallons of petroleum oil in the tributary.

   The incident was reported to the National Response Center (NRC) on the day of the incident via report # 897974. Although a tractor-trailer fire occurred several weeks earlier near the scene of the incident, BCHD could not determine if the oil was related to the fire or was a new discharge into the tributary by another source. Thus, the source of the spill is unknown.

2. ***Description of Removal Actions:*** Upon arrival to the incident site, BER responders discovered that the fifty to seventy-five gallons of petroleum oil were contained by sorbent booms deployed across the tributary. At 1715 hours, Region-1 Supervisor, Gary Pearson, authorized $15,000.00 to mobilize the department's emergency contractor to remediate the spill. At 1900 hours, Environmental Products & Services (EPS) personnel arrived on site. They proceeded to deploy additional sorbent booms within the tributary to reinforce containment of the oil, remove oil soaked sorbent booms and pads along with oil that accumulated in front of the sorbent lines, generated waste was placed into drums and transportation of waste to a storage facility, and disposal of all additional waste was performed.

3. ***The Claim:*** The NJ BER submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs associated with this incident in the amount of $14,306.96. The claim consisted of invoices, proof of payment, BER Report, NRC Report, contractor dailies, EPA FOSC coordination letter, BER Emergency Work Authorization, contractor rate schedule, and Disposal Manifest.

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. USEPA provided FOSC coordination via a letter dated October 6, 2009.
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 USC § 2701(23) to navigable waterways.
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 on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the 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 NPFC has denied $1,315.58 which is the State of New Jersey indirect cost associated with the OMB A-87 agreed rate. The NPFC has allowed the 23% derived figure for the state's labor category although we cannot approve the unsubstantiated indirect cost charged over above the initial 23% as this is considered an improper use of the OSLTF. See 33 CFR §136.105(e)(6).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur $12,991.38 of uncompensated removal costs in order to remove and further mitigate the substantial threat of discharge and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #910081-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on February 19, 2009. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay $12,991.38 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 910081-001. 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.

AMOUNT: $12,991.38

Claim Supervisor: ***Donna Hellberg***

Date of Supervisor's review: ***4/13/10***

Supervisor Action: ***Approved***

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
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5890
4/13/2010

VIA EMAIL: [redacted]r@dep.state.nj.us

State of New Jersey
Dept of Environmental Protection
Attn: Ms. Marlene Volper
401 East State St
P.O. Box 413
Trenton, NJ 08625-0413

Re: Claim Number 910081-001
NJ Spill Case # 09-02-19-1716-10

Dear Ms. Volper:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $12,991.38 is full compensation for OPA claim number 910081-001.

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 (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. 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 Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.**ccr**.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at [redacted].

Sincerely,

Emma Sutherland
Claims Manager

ENCL: Claim Summary/Determination Form
Acceptance/Release Form

U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

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Claim Number: 910081-001 NJ Case # 09-02-19-1716-10	Claimant Name: State of New Jersey Dept of Environmental Protection Attn: Ms. Marlene Volper 401 East State St P.O. Box 413 Trenton, NJ 08625-0413

I, the undersigned, ACCEPT the determination of $12,991.38 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4), associated with the above referenced claim. This determination is not an admission of liability by any party. 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 loss. 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 the incident. 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 costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

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 the same claim, 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

DUNS #	Bank Routing Number	Bank Account Number