

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912072-0001
Claimant	: State of Vermont
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$2362.50

FACTS:

Oil Spill Incident: On March 12, 2012, an orphan above-ground storage tank (AST) was discovered to be floating down the White River proximal to the intersection of Jericho Rd and VT State Rt 14 in Hartford, VT.¹

The Hartford Fire Department arrived on scene and stabilized the tank to prevent its continued journey down river, and subsequently contacted [REDACTED] of Vermont Department of Environmental Conservation (VTDEC) to arrange for its removal. VTDEC reported the incident to NRC via report number 1005507 and EPA OSC [REDACTED] for coordination.²

Description of Removal Actions: The Claimant hired ENPRO to perform removal actions at the spill site where the AST was stabilized. There was sheen on the river as well as product remaining in the tank. ENPRO and VTDEC applied sorbent boom and pads to remove visible oil in the river and retrieved the tank from the river.³ The oil was pumped out of the AST as well and the oily waste recovered during cleanup was disposed of in accordance with the National Contingency Plan (NCP).

The Claim: The Vermont Department of Environmental Conservation (VTDEC) presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$2,362.50.

The claim consists of an Incident Summary Sheet, OSLTF Optional Claim Form, contractor invoicing, some detailed daily information, miscellaneous receipts, and copies of disposal manifests.

Upon further investigation, the NPFC was able to obtain the ENPRO rate schedule and confirmation of payment made to them for their invoices, and all Pollution Reports.

APPLICABLE LAW:

"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".

¹ See, OSLTF Optional Claim Form, received June 28, 2012.

² See, OSLTF Optional Claim Form, received June 28, 2012, and NRC Report 1005507, dated March 12, 2012.

³ See, NRC Report Number 1005507, dated March 12, 2012.

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the USLTF 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:

Overview:

1. FOSC coordination was made by US EPA Region [REDACTED]
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. 33 U.S.C. § 2712(h)(2)
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that 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.

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 Claimant billed oil spill removal contractor costs in the amount of \$2,362.50 in accordance with the rate schedule that was in place at the time services were rendered. The NPFC confirmed the presence of the Claimant throughout the incident response and activities.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$2,362.50 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #A06010-0001.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$2,362.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 912072-0001. 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:

Date of Supervisor's review: 9/6/12

Supervisor Action: *Approved*

Supervisor's Comments:

[illegible]

[illegible]