

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912090-0001
Claimant	: New Bedford Fire Department
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$1,237.04

### FACTS:

**Oil Spill Incident:** On January 29, 2012, the F/V Full Circle sank at her mooring at the Steamship Pier in New Bedford Harbor, New Bedford, MA.<sup>1</sup> Because the sinking of the vessel created a substantial threat of discharge of oil into a navigable waterway, boom was deployed around the vessel.<sup>2</sup> According to NRC Report 1001601, this vessel has a history of sinking pier-side. [REDACTED], the Responsible Party (RP), informed the Claimant and responding agency that there was no insurance on the vessel, but would pay out of pocket for the response. The Claimant submitted their claim for removal costs to the RP on May 24, 2012, which to date has not been answered.

**Description of Removal Actions:** The New Bedford Fire Department (NBFD) initially responded to this incident with a personnel-manned ladder truck, engine company, and a marine response vessel for the deployment of containment boom. [REDACTED], salvor summoned to raise the vessel, deployed sorbents at the scene which were disposed of by the same.<sup>4</sup> The containment boom was later cleaned and returned to the NBFD by the salvor.

**The Claim:** New Bedford Fire Department presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$1,237.04 associated with their uncompensated removal costs.

The claim consists of OSLTF Optional Claim Form, New Bedford Fire Department memorandum to the RP requesting reimbursement of their costs incurred, Massachusetts Fire Chief Association Recommended Rate Schedule, NRC Report 1001601, and the NBFD original invoice for services rendered.

The NPFC conducted independent research into the incident and obtained copies of the USCG MISLE report, pollution reports and pay rates for NBFD firefighters.

### 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).

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<sup>1</sup> See, OSLTF Claim Form, dated September 10, 2012.

<sup>2</sup> See, USCG MISLE Case Number 582846, dated January 29, 2012.

<sup>3</sup> See, OSLTF Claim Form, dated September 10, 2012.

<sup>4</sup> See, Email correspondence from Claimant, dated September 27, 2012 and USCG MISLE Case Number 582846, dated January 29, 2012.

"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:**

### ***Overview:***

1. FOSC coordination was made by USCG Sector Southeastern New England by way of MST2 [REDACTED], via MISLE Case Number # 582846.
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 majority of 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the removal costs presented and incurred were billed appropriately at the time services were rendered. The NPFC performed independent research into the incident and obtained copies of the Coast Guard Pollution Reports and a copy of all evidence in the Coast Guard MISLE system.

The Nbfd presented personnel costs in the amount of \$87.04, and equipment costs of \$1,150.00.

Based on the USCG records, daily field documentation, rate schedule pricing and disposal information, the Claims Manager hereby determines that the Claimant did in fact incur \$1,234.07 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 912090-0001.

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 \$1,237.04 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912090-0001. 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: *10/23/12*

Supervisor Action: *Approved*

Supervisor’s Comments: