

CLAIM SUMMARY / DETERMINATION

Claim Number:	913049-0001
Claimant:	Florida Department of Environmental Protection
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$514.58

FACTS:

Oil Spill Incident: On September 13, 2011, a report was received concerning a 300' x 25' oil sheen, with recoverable product, in the Port of Cape Canaveral, a navigable waterway of the US. Marina owner volunteered his absorbent pads and boom to collect the product from the water. The sheen was traced to the F/V Cheryl Lynn, owned by Sea Star Seafood's in Honduras. USCG collected oil samples from the water's surface and the bilge of the F/V Cheryl Lynn.¹ The samples were analyzed by the USCG Marine Safety Laboratory and they concluded that the samples matched.²

Description of Removal Activities for this claimant: On September 13, 2011, Florida Department of Environmental Protection (FLDEP) provided coordination with first responders, port authority personnel and the Federal On-Scene Coordinator Representative (FOSCR) from USCG Marine Safety Detachment Port Canaveral. On September 14, 2011, FLDEP mobilized to the spill location assisting the FOSC with determining the area of impact and evaluating the wildlife affected by the spill.³

The Claim: On May 14, 2013, FLDEP presented a removal cost claim to the National Pollution Funds Center (NDFC) for reimbursement of their uncompensated removal costs in the amount of \$514.58.

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

¹ USCG MISLE Case Number 569084 provided incident description details.

² USCG Marine Safety Laboratory Case Number 11-323.

³ FLDEP BER Response Information Form for incident number 2011-7C-45867.

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. FOSC coordination was made with USCG Sector Jacksonville, FL.
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)(1).
5. A Responsible Party was determined, but to date, has not paid this claim. 33 U.S.C. § 2701(32).
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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 that these costs, were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP). The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on September 13, 2011. The Claimant represents that the costs it paid are compensable removal costs, payable by the OSLTF as presented by the claimant.

After a review of the file, and reading the corresponding FL DEP documents, the response by FL DEP is determined reasonable and necessary to mitigate any further damage the oil may have caused. On that basis, the Claims Manager hereby determines that the Claimant incurred \$514.58 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 #913049-0001.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$514.58 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913049-0001. 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 Claimants.

AMOUNT: \$514.58

Claim Supervisor:

Date of Supervisor's review: 5/21/13

Supervisor Action: *Approved*

Supervisor's Comments: