CLAIM SUMMARY / DETERMINATION

Claim Number:	913057-0001
Claimant:	Florida Department of Environmental Protection
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	Galen Wetzel
Amount Requested:	$137.91

FACTS:

Oil Spill Incident: On May 3, 2010, as a forklift was operating in the vicinity of the seawall at the Marathon Boat Yard in Marathon, FL, it fell into the water and sank due to the failure of the seawall. An estimated six gallons of lube oil was released into the water resulting from the accident. The fuel tank was not compromised. The marina owner deployed harbor boom around the spilled area. Oil was removed from the water surface utilizing absorbent materials from the marina. Marathon Marina leads to the Atlantic Ocean, a navigable waterway of the US. USCG Sector Key West requested the assistance from the Florida Department of Environmental Protection (FLDEP) for this incident.

Description of Removal Activities for this claimant: FLDEP provided oversight and monitoring at the request of the Federal On-Scene Coordinator (FOSC), Sector Key West. On May 3, 2010, personnel responded to the scene and found that the owner had boomed off the area which contained the sheening. FLDEP instructed the owner to have the boat yard's trained employees work the absorbent pads around to better collect the spilled material.

On May 5, 2010, FLDEP returned to the marina and found that the forklift was still in the water but there was no product or sheening observed. FLDEP personnel found two open drums holding contaminated absorbent material. FLDEP had the owner close and label the drums for disposal. Salvage plans had not been finalized.

On June 11, 2010, FLDEP closed the case after they called the owner and determined that the forklift was removed from the water during the week of May 10, 2010.[1]

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 $137.91.

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

[1] FLDEP BER Response Information Form for incident number 2010-3C-43652..

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. FOSC coordination was made with USCG Sector Key West, 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 the NPFC determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan as confirmed by the FOSC.[2] The claims manager also determines that the response actions were properly documented in order to support the charged billed.

On that basis, the Claims Manager herby determines that the Claimant did in fact incur $137.91 of uncompensated removal costs and 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 #913057-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on May 3, 2010. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

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[2] FLDEP Incident Report Number 2010-3C-43652 with FOSC signature endorsement.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay $137.91 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913057-0001. 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: $137.91

Claim Supervisor: [redacted]

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

Supervisor Action: *Approved*

Supervisor's Comments: