

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	914031-0001
<b>Claimant:</b>	Florida Department of Environmental Protection
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$8,731.98

### FACTS:

**Oil Spill Incident:** On 1 Sep 2011, the Florida Bureau of Emergency Response (BER) received a report of a truck fire at 1105 United Way, Orlando, FL. FL BER responded and found a truck with a 70 gallon diesel fuel storage tank in the bed of the truck that had been set on fire and rolled into a canal that fed Boggy Creek. Boggy Creek is a tributary to Kissimmee River, a navigable waterway of the United States. An investigation revealed that the truck had been stolen, intentionally set on fire and rolled into the canal. Attempts to identify the person who stole the truck were unsuccessful. FL Department of Environmental Protection (DEP) didn't provide the registered owner of the truck therefore the responsible party remains unknown.<sup>1</sup>

**Description of Removal Activities for this claimant:** The Orlando Fire Department extinguished the fire and SWS personnel removed approximately 40 gallons of diesel fuel from the storage tank in the back of the vehicle. Remediation of the site included the removal of the truck from the canal; recovery of diesel fuel from the canal and soil remediation from the banks of the canal. All liquid waste and oil contaminated soil were disposed of properly at Clark Environmental, Mulberry, FL. EPA FOSC Jordan Gerard attested by signature on 5 Feb 2013 that FL DEP's response actions were properly taken and coordinated with the NCP.<sup>2</sup>

**The Claim:** On March 7, 2014, FL DEP submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$8,731.98.<sup>3</sup>

### 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

<sup>1</sup> See BER Response Information Sheet dated 5 Feb 2013

<sup>2</sup> See FL DEP Emergency Response Incident Report dated 11 Feb 2013

<sup>3</sup> See Optional OSLTF Claim Form from FL DEP dated 7 Mar 2014

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. Mr. [REDACTED] as the EPA Federal On-Scene Coordinator for this incident determined that the actions undertaken by FL DEP personnel were consistent with the NCP as demonstrated by their response and remediation to diesel fuel released into a tributary of Kissimmee River. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were 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.

Upon review of this claim submission, the NPFC confirmed that the actions undertaken by the Claimant are deemed consistent with the NCP. The NPFC also confirmed the rates charged are in accordance with appropriate rate schedules in place at the time services were rendered.

**AMOUNT:** \$8,731.98

**DETERMINATION:** The NPFC hereby determines that the OSLTF will pay \$8,731.98 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 914031-0001. 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: *3/26/2014*

Supervisor Action: *Approved*