CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914050-0001
Claimant	: State of Florida
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [redacted]
Amount Requested	: $188.43

FACTS:

Oil Spill Incident: On October 5, 2012, Florida Department of Environmental Protection (DEP) conducted an inspection of the area around a closed facility located at 1301 Wigmore Street with the City of Jacksonville. A well-weathered sheen was observed in the vicinity of the center portion of the outer bulkhead. A few trace spots of fresher product were also observed near shore. These areas were approximately 100+ yards from where the old plum is located. The entire area was walked and, based on observations, it was not possible to identify a suspected source.

Description of Removal Activities for this claimant: Florida DEP costs are for response only. Norfolk Southern was proactive and hired a local contractor that met DEP on scene. The area on both sides of the bulkhead were hard boomed and attempts were made to recover the weathered oil. Proper notification has been made to the National Response Center as well as the State Watch Office. As the Tanks Program has a history on this site, Emergency Response referred the site to them. No further OER action was required.

The Claim: On March 7, 2014, the Florida Department of Environmental Protection submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel, equipment and administrative costs in the amount of $188.43.

Florida DEP is claiming $124.24 in State personnel expenses, $42.19 in State equipment (vehicle and clothing) expenses and $22.00 in State administrative documentation/photo fees.

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) 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.

Under 33 USC §2713(a) all claims for removal costs or damages, with exceptions not applicable here, shall be presented first to the responsible party or guarantor of the source designated.

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].

Under 33 USC §2715(a) any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other law.

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing 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 136.107,
"(a) The claims of subrogor (e.g., insured) and subrogee (e.g., insurer) for removal costs and damages arising out of the same incident should be presented together and must be signed by all claimants.
(b) A fully subrogated claim is payable only to the subrogee.".

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."

Under 33 CFR 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. This is a de novo review. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the NPFC within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

DETERMINATION OF LOSS:

A. Overview:

1. FOSC Coordination has been established via USCG Sector Jacksonville FOSC MSTC [redacted]

2. 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. In accordance with33 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 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.

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 NPFC confirmed the actions undertaken were reasonable and necessary and billed in accordance with the state's rates. On that basis, the Claims Manager hereby determines that the claimant did in fact incur $188.43 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #914050-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on October 5, 2012. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay $188.43 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 914050-0001. 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.

AMOUNT: $188.43

Claim Supervisor: [redacted]

Date of Supervisor's review: *3/13/14*

Supervisor Action: ***Approved***