CLAIM SUMMARY / DETERMINATION

Claim Number:	B13025-0001
Claimant:	New Bedford Fire Department
Type of Claimant:	Private
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$2,500.00

FACTS:

Oil Spill Incident: On August 29, 2013, United States Coast Guard (USCG) Marine Safety Detachment (MSD) New Bedford was notified by the New Bedford Fire Department of a 500 gallon red dyed diesel fuel spill in the vicinity of Pier 3 in the New Bedford Harbor, a navigable waterway of the United States. The initial report was received by CG MSD New Bedford at 0750.[1]

USCG MSD New Bedford personnel responded and observed that the New Bedford Fire Department had responded with an Engine Company truck, Heavy Rescue ladder truck and Marine Unit 31 and deployed 500 feet of containment boom, 200 feet of sorbent boom and several absorbent pads onto the diesel fuel spill in an attempt to prevent it from spreading throughout the New Bedford Harbor. As a responsible party wasn't immediately identified, Federal Project Number B13025 was opened by MSD New Bedford to hire a cleanup contractor to conduct cleanup operations and disposal of the diesel fuel spill.

Description of Removal Activities for this Claimant:. On August 29, 2013, Frank Corporation was hired by MSD New Bedford under FPN B13025 to conduct cleanup operations of the 500 gallon red dyed diesel fuel spill. On August 30, 2013, and at the conclusion of the spill cleanup, Frank Corporation personnel cleaned the 500 feet of containment boom and replaced the 200 feet of sorbent boom and sorbent pads initially deployed by the New Bedford Fire Department and as such, the Claimant is not requesting reimbursement of those items from the OSLTF.

The Claim: On December 4, 2013, the New Bedford Fire Department presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs for use of their response equipment in the total amount of $2,500.00.[2]

[1] See NRC Report # 1058570 sated August 29, 2013.
[2] NFPC Standard Claim Form dated December 4, 2013.

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 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. CG MSD New Bedford, as the Federal On-Scene Coordinator for this incident, determined that the actions undertaken by New Bedford Fire Department were consistent with the NCP.[3] 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 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 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 invoice 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 has determined that all of the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or contractual agreements in place at the time the services were rendered and were determined by the FOSC and determined to be consistent with the NCP.[4]

AMOUNT: $2500.00

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[3] See email from MST[redacted] to NPFC dated December 5, 2013.
[4] Id

DETERMINATION:

The NPFC hereby determines that the OSLTF will pay $2,500.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #B13025-0001. 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.

Claim Supervi[redacted]

Date of Supervisor's review: ***12/16/13***

Supervisor Action: ***Approved***

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