CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/22/2008
Claim Number	: 909029-001
Claimant	: Marion Environmental Inc
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [redacted]
Amount Requested	: $20,268.50

FACTS:

Oil Spill Incident: On June 24, 2008 Marion Environmental Incorporated (MEI) received a request from the Chattanooga Fire Department to respond to a gasoline spill at Erwin Marina in Chattanooga, TN. A pleasure craft owned by Mr. [redacted] of Ringgold, Georgia, had caught fire due to unknown causes; causing a discharge of 120-gallons of gasoline into Lake Chickamauga, a navigable water of the United States.

The National Response Center was notified on June 24, 2008 via report# 875097

Removal Activities: MEI arrived on scene and met with the Fire Department. The spill was isolated by river boom. Absorbent boom and pads were spread over the water to absorb the gasoline. Also, gasoline was recovered by using a skimmer and vacuum truck.

The recovered gasoline and contaminated absorbents were transported to Aqua-Treat Inc. in Chattanooga, TN for disposal in accordance with the NCP.

On June 27, 2008 MEI returned to the river and removed the sorbent and river boom.

The Claim: On November 13, 2008, MEI submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of $20,268.50 for the services they provided regarding the gasoline spill at Erwin Marina.

The claim consists of invoices, daily work logs, disposal manifest and an NRC report. The invoices which are the subject of this claim have been submitted to the RP, Mr. [redacted] The Claims Manager sent an RP Notification letter to Mr. [redacted] on November 24, 2008 and to date, there has been no response from the RP.

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 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. Findings:

1. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation Authority for Determination of Consistency with the National Contingency Plan (NCP) for the payment of uncompensated removal costs claims under section 1012(a)(4), Oil Pollution Act of 1990.

2. The incident involved the discharge of "oil" as defined in OPA 90, 33 USC § 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 on time.

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 as set forth below.

6. The review of the actual costs, invoices, and dailies focused on the evaluation of whether such costs qualify as "Compensation Allowable" under 33 CFR Section 136.205.

B. Determined Amount:

The NPFC determines that the OSLTF will pay $20,268.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909029-001.

Claim Supervisor: [redacted]

Date of Supervisor's review: 1/8/09

Supervisor Action: approved

Supervisor's Comments: