

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/27/2009
Claim Number	: 909114-001
Claimant	: State of New Jersey
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$898.94

FACTS:

- 1. Oil Spill Incident:** At approximately 0930 hrs on February 20, 2008, USCG Station Atlantic City personnel observed an oil sheen in the vicinity of the Atlantic City State Marina. The USCG traced the sheen back to the F/V *Errant Venture*. The USCH conducted a boarding and discovered that there was a variegated hose entering the water. Sheen was observed around this area. In addition to the hose, the USCG observed the Captain of the vessel hosing down the deck with detergent. Once the USCG was onboard, they observed a bag of oil saturated sorbents that were leaking on the deck. Water and oil mixed with the detergent flowed readily into the water. The USCG team traced the hose into the starboard side deck hatch on the wheel house and down into the engine room. The hose was connected to a sump pump in the bilges that had water and waste engine oil.

USCG Petty Officer BM3 [REDACTED] asked the Master of the vessel, Mr. [REDACTED] if he was aware of the oil sheen in the water coming from his vessel and he replied that he was aware and that he had bagged oil filters and sorbents and had forgotten about them when his wife came aboard. Later, when he did notice the oil running out a scupper, he applied detergent and hosed the area down into the water.

USCG Pollution Team from Sector Philadelphia arrived on scene and inspected the vessel. A Notice of Federal Interest (NOFI) was issued to the Master of the vessel. Due to the minimal amount of oil and the weather conditions, it was determined that the spill was not recoverable from the waterway. The incident was reported to the National Response Center (NRC) via report number 862884 on February 20, 2008 at 1517 hrs. The USCG referred this case to New Jersey Department of Environmental Protection (NJDEP) for enforcement action.

- 2. Description of response actions:** NJDEP reported the incident to the NRC on behalf of all interested parties. The claimant performed a joint investigation with the USCG which revealed no response action was needed. The claimant is requesting personnel time associated with their response to this incident.
- 3. The Claim:** On September 15, 2009, the New Jersey Department of Environmental Protection, Bureau of Emergency Response (NJDEP BER) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$898.94 for the services provided in response to the F/V *Errant Venture* incident on February 20, 2008.

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. Overview:

1. The FOSC has provided FOSC coordination. A coordination statement has been provided via a written statement dated January 23, 2008 by ENS [REDACTED], ENS USCG Sector Delaware Bay.
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 on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 with the exception of the following: the State of New Jersey charges an administrative fee, which is actually their OMB A-87 agreed rate. Although we are allowing the 23% derived figure for the state’s labor category, we cannot approve unsubstantiated indirect cost per line item as charged in this claim, as this is considered an improper use of the OSLTF. See 33 CFR §136.105(e)(6).

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.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$566.85 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# 909114-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident. 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 \$566.85 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 909114-001. 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: \$566.85

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: