

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/27/2009
Claim Number	: 909115-001
Claimant	: State of New Jersey
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$754.87

FACTS:

- 1. Oil Spill Incident:** At approximately 0400 hrs on November 6, 2007, the fishing vessel Linda Sea aka Father's Pride, was located four miles off of the Great Egg Inlet when the vessel lost main steering and propulsion. The weather on scene at the time of the incident was winds from the SSW at 20 knots with 5-7 foot seas.

The vessel Captain, Mr. [REDACTED], called in the distress and Shamrock Boat US, a commercial towing company, responded as did the USCG. According to Mr. [REDACTED] from Shamrock Boa US, he stated he met up with the vessel as it was in the surf of the shoals of Great Egg Inlet. The vessel was taken under tow and transited the inlet and was making way towards Sommers Point when Captain [REDACTED] stated that the Linda Sea was taking on water so he then took the vessel out and grounded it at the north end of the Rainbow Islands located south of the bridge. As the vessel was being grounded, the Coast Guard helicopter arrived on scene and the Captain of the vessel jumped into the water. The water depth at that time was about 5-8 feet. The helicopter rescued the Captain and took him to a local hospital where he was treated for hypothermia.

The vessel owner was contacted by the USCG and ordered a salvage plan for the re-floating of the vessel. North Star Sea Tow and Sea Tow Atlantic City were hired by the owner, Mr. [REDACTED] and prepared a salvage plan that included placing boom around the grounded vessel. The vessel was sitting in about 3-4 feet of water and was leaking diesel fuel from the engine compartment. USCG personnel remained on scene and observed the sheen around the vessel.

According to Mr. [REDACTED] of Shamrock Tow, he began re-floating operations contrary to the USCG order and the owner of the vessel because the vessel was listing and fuel was leaking therefore up-righting the vessel would stop the discharge. In the mean time, North Star Sea Tow was on scene deploying boom when the vessel became up-right and was re-floated by Shamrock. They then began towing the vessel to Yank's boat works in Tuckahoe. While the vessel was underway, Shamrock requested that North Star Sea Tow follow the tow to Yank's. At approximately 1700 hrs, the Linda Sea and the Sea Tow vessel arrived at the boat works. The NJDEP investigator who was also on scene, observed no oil sheen or oil in the water although the vessel was damaged quite heavily.

- 2. The Claim:** The claimant jointly responded to the incident which was reported to the National Response Center (NRC) via report number 853727 on November 6, 2007. On September 15, 2009, the New Jersey Department of Environmental Protection

(NJDEP) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs associated with this incident in the amount of \$754.87. The review of the actual cost invoicing and claim package 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 consistent with the NCP or directed by the FOOSC; and (4) whether the costs were adequately documented.

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 December 4, 2008 by ENS ██████████, ENS USCG Sector Delaware Bay.
2. The incident involved the discharge and continuing substantial threat of 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 \$588.82 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# 909115-001. 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.

The Claims Manager has determined the costs are reasonable in accordance with the contracted rate schedule that was in place at the time services were rendered and that determination of reasonableness is consistent with the current claims policy and procedures in place for determining reasonableness of costs.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$588.82 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 909115-001. 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: \$588.82

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: