

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/15/2009
Claim Number	: 910025-001
Claimant	: State of Florida
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$428.31

### **FACTS:**

***Oil Spill Incident:*** On March 16, 2009, Florida Department of Environmental Protection (FL DEP) received a call from the Venice HazMat team that there was a large diesel spill from a stationary generator used by the City of Venice. An unknown individual broke the lock on the fuel cap, stole an undetermined amount of oil and, by leaving a hose in the tank, allowed diesel fuel to run onto the ground, migrating to a wetlands area. Mr. ██████████, with the Florida Bureau of Emergency Response (BER) responded, conducting an initial investigation. Mr. ██████████ met with the City of Venice, the USCG, the HazMat Chief and Mr. ██████████ from Ardaman & Associates (Ardaman). The City of Venice took responsibility for the spill and hired Ardaman for the cleanup. BER and USCG walked the wetlands area and found rainbow sheens on the surface of the water. Approximately 100 gallons of diesel fuel were released, but only about 20 gallons impacted the surface of the water. BER determined that the Responsible Party (RP) is unknown, but have determined the source.

***Description of Removal Activities for this claimant:*** As the City of Venice hired out Ardaman for cleanup, BER is only claiming assessment costs. However, Ardaman took readings at the site, delineated the stain and planned to place absorbent boom around the shoreline to collect any free product released into the surface water during the removal activity.

***The Claim:*** On October 7, 2009 the FL DEP 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 \$428.31.

FL DEP is claiming \$253.93 in State personnel expenses, \$152.38 in State equipment (vehicle, pads, and clothing) expenses and \$22.00 in State administrative documentation/photo fees.

### **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. FL DEP and the USCG provided FOSC coordination.
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. No RP was identified.
6. 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.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$428.31 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 #910025-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from March 16, 2009 through August 12, 2009. 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 \$428.31 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 910025-001. 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: \$428.31**

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *10/21/09*

Supervisor Action: *Approved*