

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/5/2009
Claim Number	: P07005-001
Claimant	: State of New Jersey
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$14,379.23

FACTS:

1. Oil Spill Incident: On July 31, 2007, the vessel Rough Seas was traveling south from New York to Cape May when it ran aground on the shoals off Beach Haven/Little Egg Inlet, a navigable waterway of the US. Initial response by Sea Tow to remove the vessel was unsuccessful. The USCG and NJ Marine Police became involved after the owner/operator became hospitalized during the attempt to remove the vessel. The owner stated to USCG personnel that he had no money or insurance and refused to enter into an agreement with Sea Tow. The status at the time the claimant, New Jersey Department of Environmental Protection (NJ DEP) was requested by the NJ Marine Police at approximately 1644 hours was that the vessel was hard aground; listing 30° to Port was full of water and discharging a sheen. The vessel was reported to have 1500 gallons of fuel in the tanks below and drums on deck.

NJDEP communicated with USCG Philadelphia and at approximately 1950 hours the incident was federalized and someone from the Sector was enroute to the scene. USCG Senior Chief Converse arrived on scene at approximately 2300 hours. The situation was discussed between

2. The Claim: On 14 January 2009, the State of New Jersey submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$14,379.23 for the services they provided from 31 July 2007 through 31 August 2007. This claim is for NJ DEP personnel costs associated with the joint response and oversight performed in conjunction with the USCG.

This claim consists of copies of the invoicing and associated dailies, disposal manifests, and USCG Case Report, USCG FOSC coordination statement dated 10 December 2008, NRC Report and claimant field log/report. The review of the actual cost invoicing and dailies 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 FOSC, 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. FOSC coordination was provided by Sector Delaware Bay via a written statement dated 10 December 2008 and signed by [REDACTED], ENS USCG.
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) and we have also denied all personnel costs billed on 17 August 2007 as that time is attributed to discussion on the salvage of this vessel which the oil removal action had already been completed therefore these discussions are not directly related to oil removal. The actual response ended on 4 August 2008.

B. Determined Amount:

The NPFC determines that the OSLTF will pay \$7,540.75 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# P07005-001.

AMOUNT: \$7,540.75

Claim Supervisor: [REDACTED]

Date of Supervisor’s review:

Supervisor Action:

Supervisor’s Comments: