

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/18/2010
Claim Number	: 910079-001
Claimant	: State of New Jersey
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$3,567.34

### **FACTS:**

- 1. Oil Spill Incident:** On August 24, 2008, New Jersey Bureau of Emergency Response (NJ BER) received notification from Union County HazMat responder ██████████ that approximately 5-10 gallons of an unknown petroleum based liquid had been dumped into a storm drain. The down gradient storm drain had been boomed off but assistance was needed in conducting the cleanup as it appeared that the material had been dumped by an unknown source. As a result, NJ BER responders ██████████ and ██████████ deployed to the scene in order to aid Union County HazMat in mitigating the discharge.

The incident was reported to the National Response Center (NRC) on the day of the incident via report # 881654. Investigation revealed no known source of the spill.

- 2. Description of removal actions:** Upon arrival on site, it was determined that approximately 5-10 gallons of black liquid with a petroleum odor had been dumped into the storm drain catch basin with some of it having migrated down the storm pipe. The material was somewhat viscous making it appear to be a mixture of some sort of asphalt based sealant and motor oil. With the material in the storm basin and the likelihood that it would migrate from the spill location, the claimant contacted Region Supervisor ██████████ at approximately 1430 hours in order to obtain authorization to utilize State Spill Fund Resources to conduct a cleanup. Mr. ██████████ agreed and authorized the use of \$5,000.00 of State Spill Fund monies. Having obtained a funding source, the claimant contacted Environmental Products and Services who agreed to handle the response. The contractor arrived on site at approximately 1500 hours.

The contractor worked to empty the catch basin utilizing a drum vac to remove all liquid materials. Soils at the bottom of the catch basin that were contaminated were also removed. The residual staining was removed using sorbent clay. The sorbent pads deployed by Union County HazMat were picked up and disposed of. Sorbent boom was left in each of the catch basins to catch any residual material that may have been trapped in the pipe.

- 3. The Claim:** The NJ BER 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 \$3,567.34. The claim consisted of invoices, proof of payment, BER Report, NRC Report, contractor dailies, EPA FOSC Coordination Letter dated October 6, 2009, BER Emergency Work Authorization, and Disposal Manifest.

## **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. USEPA provided FOSC coordination via a letter dated October 6, 2009.
2. The incident involved the report of a discharge of “oil” and substantial threat 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 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.

The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP). The NPFC has denied \$528.65 which is the State of New Jersey indirect cost associated with the OMB A-87 agreed rate. The NPFC has allowed the 23% derived figure for the state’s labor category although we cannot approve the unsubstantiated indirect cost charged over above the initial 23% as this is considered an improper use of the OSLTF. See 33 CFR §136.105(e)(6).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$3,038.69 of uncompensated removal costs in order to remove and further mitigate the substantial threat of discharge 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 #910079-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on August 24, 2008. 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 \$3,038.69 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 910079-001. 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: \$3,038.69**

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
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5890  
3/18/2010

VIA EMAIL: [REDACTED]@dep.state.nj.us

State of New Jersey  
Dept of Environmental Protection  
Attn: Ms. Marlene Volper  
401 East State St  
P.O. Box 413  
Trenton, NJ 08625-0413

Re: Claim Number 910079-001  
NJ Spill Case # 08-08-24-1322-10

Dear Ms. Volper:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$3,038.69 is full compensation for OPA claim number 910079-001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor