

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/8/2010
Claim Number	: 910086-001
Claimant	: State of New Jersey
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$10,388.91

### **FACTS:**

- 1. Oil Spill Incident:** On December 27, 2008, New Jersey Bureau of Emergency Response (BER) received notification from Nutley Fire Department responder ██████████ that a 55-gallon drum was abandoned at the corner of 40<sup>th</sup> and Prospect Avenue in Irvington, Essex County. The notification stated that 40 gallons of oil had spilled onto the roadway. BER responders ██████████ were deployed to the incident location. Initial investigation revealed that the roadway was saturated with oil so sand was spread onto the roadway to help with absorption. Additionally, it was noted that the bulk of the oil entered two storm drain basins that were present at the intersection. BER contacted Irvington Department of Public Works to determine where the outfall for the storm sewers was. The outfall was identified as being in the vicinity of Stuyvesant Avenue and 40<sup>th</sup> Street. BER responder ██████████ deployed with Nutley HazMat to identify the outfall and place sorbent boom and sweep in order to contain the spill.

The incident was reported to the National Response Center (NRC) on December 27, 2008 via report # 893475. Investigation revealed no known source of the spill.

- 2. Description of Removal Actions:** BER contacted Region Supervisor ██████████ who authorized the use of \$10,000.00 of State Spill Fund monies. The claimant contacted Allstate Power Vac/Environmental Products & Services (EPS) supervisor ██████████, who agreed to handle the response.

On December 27, 2008 the remaining sand was swept up and the vacuum truck was used to empty the storm basins of oil. Additional Speed Dry was applied to the roadway, making it safe for passage. The manhole in the middle of 40<sup>th</sup> Street was cleaned and EPS personnel re-deployed to the outfall, where contaminated sorbent boom was removed and new deployed.

On December 28, 2008 BER responders ██████████ conducted a follow-up investigation at the outfall and it was noted that a heavy sheen was still present but was contained by the sorbent booms previously deployed. Emulsified oil was noted within the sorbent boom and subsequently removed with sorbent pads.

On December 29, 2008 BER responder ██████████ deployed to see if any residual oil was on the sorbent lines and a minimal amount was noted. BER decided to allow the oil to accumulate for one more day.

On December 30, 2008 BER responders ██████████ deployed to see if any additional oil had accumulated on the boom lines. The additional oil accumulated was cleaned up by BER. The sorbents were left in place due to minimal amounts of sheen still reaching the outfall.

On January 15, 2009 BER re-deployed to the scene in order to gauge the status of the stream and boom lines as a snow event and minor thaw occurred the previous week. It was noted that additional roadway runoff and what appeared to be used motor oil had reached the sorbent lines. Despite the additional oil on the roadway, it was noted that no additional sheen was found to be discharging from the outfall and response was concluded.

- 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 \$10,388.91. The claim consisted of invoices, proof of payment, BER Report, NRC Report, contractor dailies, EPA FOSC Coordination Letter Region 2 dated October 6, 2009, BER Emergency Work Authorization, contractor rate schedule, 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 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 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 \$1,975.49 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 \$8,413.42 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 #910086-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on December 27, 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 \$8,413.42 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim 910086-001. 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: \$8,413.42**

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: