

CLAIM SUMMARY / DETERMINATION

Claim Number:	E14425-0001
Claimant:	Florida Department of Environmental Protection
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$62,574.11

FACTS:

Oil Spill Incident: On January 6, 2014, the Florida Department of Environmental Protection, Office of Emergency Response (FDEP) received a report of an oil spill in the waters of South Canal. South Canal drains into Lake Ellenor that drains into Shingle Creek. Shingle Creek is the headwaters to the Everglades and a navigable waterway of the United States.¹

FDEP investigators arrived at 7200 Lake Ellenor Drive in Orlando, FL and observed approximately 1500 gallons of what appeared to be petroleum oil that was poured into South Canal. FDEP investigators determined the incident date was January 1, 2014. FDEP assigned the case # 2014-71-50230.

Federal On-Scene Coordination: [REDACTED] with the US Environmental Protection Agency Region 4 (USEPA) was the acting Federal On Scene Coordinator (FOSC) for this mystery spill. The FOSC was on-scene January 6, 2014 in order to assess the situation and determined the presence of oil and found that a spill was still on-going.

The Claim: On February 6, 2014, the NPFC received the FDEP's claim for uncompensated removal costs totaling \$64,006.49. This sum certain is the balance of FDEP's response costs of \$8,930.08 plus, FDEP's spill contractor costs of \$80,076.41 for a total of \$89,006.49. Also, FDEP subtracted \$25,000 that was paid by a Pollution Removal Funding Authorization (PRFA) leaving a balance of the claimed sum certain at \$64,006.49² (\$89,006.49 - \$25,000 = \$64,006.49).

PRFA: On January 23, 2014, the NPFC assigned Federal Project Number E14425 and issued a Pollution Removal Funding Authorization (PRFA) to USEPA and FDEP in the amount of \$25,000 to pay for the spill response and remediation costs. Initially, the PRFA had a ceiling of \$50,000. FDEP reduced its claim sum certain \$25,000. (See Analysis)

Responsible Party: According to the FOSC, samples of the product were sent to USCG lab, which confirmed that it was "Lube Type" oil.³ However, FDEP investigators were unable to determine the source of the spill.

APPLICABLE LAW:

"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

¹ See USEPA POLREP #1 in admin record

² See PRFA in admin record.

³ See USEPA POLREP #1, Page 2

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 Region 4, [REDACTED] as the FOSC for this incident, determined that the removal actions undertaken by the Claimant were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
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 within the six-year period of limitations for removal costs claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which 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 March 26, 2015, Claims Manager phoned FOSC to confirm Lake Ellenor flows to a navigable waterway and that the FOSC directed the contractor's response and removal actions.

FDEP's direct expenses represent: personnel costs of \$8,154.78, equipment costs of \$775.30 and a \$22 administrative fee for a total of \$8,930.08. Additionally, FDEP hired SWS Environmental Services (SWS) to remove the oil and submitted invoice (#147958) totaling \$80,076.41 for removal activities from January 6, through March 18, 2014. FDEP maintains a contract with SWS Environmental Services.⁴

The Claims Manager created a spreadsheet to reviewed FDEP's personnel hours, equipment and administrative costs and found the total of \$8,930.08. FDEP's Daily Reports mirror the costs on the BER On-Scene Coordinator, Response Information form.⁵ FDEP rates were billed in accordance with the state's rates in place at the time services were provided.

Additionally, the Claims Manager reviewed SWS's invoice and compared it to its Daily Reports and its rate sheet for 2014. All services were from January 1, 2014 through March 18, 2014. SWS deployed about four to five personnel with vacuum trucks, pickup trucks, a stake truck and placed and replaced containment boom, absorbent pads and absorbent boom. SWS included copies of its paid invoices for Aqua Clean Environmental and Clark Environmental along with the waste manifests for each disposal of contaminated water and solids. SWS also provided a copy of a paid invoice from United Rentals for safety equipment.

FDEP submitted a copy of its Monthly Detail for Encumbrances and Expenses as evidence that it paid SWS. The Claims Manager confirmed SWS personnel costs totaled \$33,877.69 and its equipment and disposal costs totaled \$46,196.72. SWS's invoice totals \$80,076.41. Including FDEP costs of \$8,930.08 incident costs total \$89,006.49. FDEP deducted the \$25,000 paid by the PRFA to arrive at its sum certain of \$64,006.49.

However, on April 7, 2015, the NPFC Case Manager reconciled the dollar amount of the PRFA; adding \$1,432.38 to the \$25,000 accounted for by FDEP. This raises the amount of the PRFA to \$26,432.38. Therefore, the NPFC denies the \$1,432.38 of costs claimed by FDEP because FDEP was paid an additional \$1,432.38 under the PRFA reducing its uncompensated claim amount. The NPFC finds FDEP incurred uncompensated removal costs in the amount of \$62,574.11 ($\$89,006.49 - \$26,432.38 = \$62,574.11$).⁶

The Claims Manager determined that all personnel and equipment invoiced were in accordance with the contractor's rates for reimbursement and that all actions were determined by the FOSC to be consistent with the National Contingency Plan (NCP). On that basis, the Claims Manager hereby determines that the Claimant incurred \$62,574.11 in uncompensated removal costs and that this amount is payable by the Oil Spill Liability Trust Fund (OSLTF) as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim E14425-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on January 1, 2014 and are payable by the OSLTF as presented by the claimant.

⁴ See DEP Contract # LE680, Amendment No.2 in the administrative

⁵ See FDEP - BER Response Information report in the administrative record

⁶ See attached NPFC spreadsheet for FDEP costs

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$62,574.11 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E14425-0001. 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: \$62,574.11

Claim Supervisor

Date of Supervisor's review: *April 13, 2015*

Supervisor Action: *Approved*

Supervisor's Comments: