

CLAIM SUMMARY / DETERMINATION

Claim Number:	916049-0001
Claimant:	RI Department of Environmental Management
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$6,511.97

FACTS:

Oil Spill Incident: On February 16, 2016, United States Coast Guard (USCG) personnel notified the Rhode Island Department of Environmental Management (RI DEM) of an approximately 300 yards long by 30 yards wide oil sheen of unknown origin present on Point Judith Pond, located in Narragansett, Rhode Island. Point Judith Pond is a body of water situated behind the barrier beaches of Point Judith Harbor, a tributary to the Atlantic Ocean. Specifically, the sheen was situated near the Block Island Ferry dock USCG Boat Station. The RI DEM Harbor Manager responded to the scene, deploying containment boom along the headwall next to the dock. The USCG Federal On-Scene Coordinator (FOSC) determined that RI DEM would take the lead for coordinating and overseeing that all response actions were performed in accordance with the National Contingency Plan (NCP). RI DEM hired Newton B. Washburn, LLC, to respond and conduct all additional removal activities.¹

Description of Removal Activities for this Claimant: On February 16, 2016, Newton B. Washburn, LLC (NBW) personnel responded under the supervision of RI DEM. NBW deployed a vacuum truck to skim oil trapped under the dock and placed absorbent materials around the spill area.² In total, NBW skimmed approximately 580 gallons of oily water along the bulkhead. Prior to leaving the scene, NBW secured the existing area of containment boom and placed additional sorbents under the pier. Both the skimmed oil and oiled sorbents were brought to the NBW facility for storage and proper disposal.

Under the direction of the RI DEM, NBW returned to the spill site the following day, February 17, 2016, and removed all remaining containment and absorbent materials. In total, 585 gallons of oil and 5 drums of oiled sorbents were generated.³

The Claim: On April 27, 2016, RI DEM submitted an uncompensated pollution removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated pollution removal costs of personnel, equipment, supplies and disposal costs in the amount of \$6,511.97.⁴

¹ See email from MST1 [REDACTED], CG Sector SE New England to Ms. [REDACTED], NPFC dated April 13, 2016.

² See DEM Emergency Response Report, dated February 19, 2016.

³ See DEM Emergency Response Report, dated February 19, 2016.

⁴ See claim submitted by RI DEM, dated April 27, 2016.

Specifically, the \$5,003.48 NBW billed to Rhode Island DEM was for all costs associated with their removal actions and also consisted of \$1,508.49 in RI DEM costs.

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 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. MST1 [REDACTED], CG Sector Southeast New England, in his capacity as the Federal On-Scene Coordinator’s representative (FOSCR) for this incident, determined that the actions undertaken by Rhode Island Department of Environmental Management were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);⁵
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 statute of limitations. 33 U.S.C. § 2712(h)(1);
5. 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 to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that all of the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule in place at the time the services were rendered and were determined to be consistent with the NCP. The NPFC spoke at length with the FOSCR when obtaining the coordination for the response actions undertaken.

The NPFC therefore determines that the OSLTF will pay \$6,511.97 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916049-0001. All costs claimed are for charges paid for by the Claimant for removal actions as

⁵ See email from MST1 [REDACTED], CG Sector SE New England to Ms. [REDACTED], NPFC dated April 13, 2016.

that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

AMOUNT: \$6,511.97

<p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor's review: <i>6/09/16</i></p> <p>Supervisor Action: <i>Approved</i></p> <p>Supervisor's Comments:</p>
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