

CLAIM SUMMARY / DETERMINATION FORM

Date	: 6/8/2011
Claim Number	: 911091-0001
Claimant	: Massachusetts Department of Environmental Protection
Type of Claimant	: State
Type of Claim	: Public Services
Claim Manager	: [REDACTED]
Amount Requested	: \$15,910.50

FACTS:

Oil spill Incident: On July 10, 2010, Coast Guard Station Menemsha's boathouse caught fire and resulted in the damage of several nearby vessels. To date, the USCG reports that there are no known RP's for the incident. The fuel and oil contained within the vessels' tanks posed a substantial threat of discharge. The USCG confirmed that during the initial response efforts, containment boom from the Claimant's response trailers was deployed to surround the area of the pier and the damaged vessels.

The USCG confirmed in a written statement that they were aware the boom was deployed and that the deployment was required by the Federal On Scene Coordinator's Representative (FOSCR). The USCG further confirmed that they would have taken the same action had they had to use response materials.

The Claim: On June 3, 2011, Massachusetts Department of Environmental Protection (MDEP) submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$15,910.50.

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 FOOSC, and (4) whether the costs were adequately documented.

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. FOSC coordination has been provided by MSTC [REDACTED] of Sector Southeastern New England.
2. The incident involved the substantial threat of discharge of “oil” as defined in OPA 90, 33 USC § 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 costs.
4. The claim was submitted on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim. The NPFC worked with the claimant and provided some guidance with respect to the documentation presented. The Claims Manager has spoken with

the FOSCR, MSTC [REDACTED], and has confirmed all actions and activities performed were at the USCG's direction and oversight.

B. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$15,910.50 as full compensation for the reimbursable costs incurred by the claimant and submitted to the NPFC under claim# 911091-0001. All costs deemed compensable are for charges incurred while being retained by the USCG and, are compensable removal and public service costs, payable by the OSLTF as presented by the claimant.

AMOUNT: \$15,910.50

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *6/8/11*

Supervisor Action: *Approved*

Supervisor's Comments: