

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds
Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite
1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail:
[REDACTED]@uscg.mil
Fax: 703-872-6113

5890
6/21/2012

CERTIFIED MAIL – VIA EMAIL ATTACHMENT

State of Connecticut
ATTN: Bryan Gunning
Department of Environmental Protection
Bureau of Financial & Support Services
79 Elm Street
Hartford, CT 06106-5127

Re: Claim Number 912053-0001

Dear Mr. Gunning:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$35,486.81 is full compensation under OPA for your NPFC claim number 912053-0001.

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 Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.cer.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at [REDACTED]

Sincerely,

[REDACTED]
Mark Erbe
Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

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Fax: 703-872-6113

Claim Number: 912053-0001	Claimant Name: State of Connecticut Department of Environmental Protection Bureau of Financial & Support Services 79 Elm Street Hartford, CT 06106-5127
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I, the undersigned, ACCEPT this settlement offer of \$35,486.81 as full and final compensation for the removal costs identified for services provided to CTDEP. With my signature, I also acknowledge that I accept as final agency action all costs identified in Claim Number 912053-0001 that were denied in this claim determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for Claim Number 912053-0001 as described in the attached claim determination and amounts denied in this determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

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Title of Witness

Date of Signature

Typed or Printed Name of Witness

Signature

TIN

Bank Routing Number

Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912053-0001
Claimant	: State of Connecticut
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Mark Erbe
Amount Requested	: \$35,706.92

FACTS:

- 1. Oil Spill Incident:** On January 27, 2009, Emergency Response Coordinator John Aceto of the Connecticut Department of Environmental Protection (CTDEP) met personnel from the West Haven Fire Department (WHFD) responding to a complaint of oil (#2 diesel-oil) on the street at 111 Mohawk Drive. Fire department personnel had observed a one to two gallon puddle of oil on the street and oily water draining from a subterranean pipe that empties into the gutter in front of 111 Mohawk Drive. Fire department personnel applied Speedy-Dry to remove the oil and to contain it from going into a nearby storm-drain that flows into an unnamed stream that runs through Hubbard Nature Center and empties into Long Island Sound, a navigable waterway of the U.S.

CTDEP's investigator found the resident at 111 Mohawk Drive never used heating oil. The search for the source moved up-gradient from 111 Mohawk Drive to the adjacent, back-yard of 124 Central Avenue where investigators discovered a dark patch of stained grass with a strong oily odor. Investigators met Ms. Geremia, the owner and resident at 124 Central Avenue. Ms. Geremia allowed authorities to inspect her 275-gallon, above-ground, fuel tank in her basement. Investigators questioned Ms. Geremia about the quantity of fuel oil she last purchased and compared that to amount that remained in the tank and determined there was a substantial quantity of oil missing. Investigators suspected the source of the fuel oil leak was a fuel line that was partially embedded in the basement floor. After drilling a couple of holes through the concrete floor, CTDEP concluded the source of the discharge was the fuel line.

Ms. Geremia was given a copy of Connecticut's "Responsibility of the Polluter" that identified her as the responsible party and explained her rights under Connecticut statutes. CTDEP also provided Ms. Geremia a list of licensed environmental contractors but, Ms. Geremia told CTDEP that she could not afford a cleanup contractor.¹ CTDEP assumed all financial responsibility for all removal costs.

- 2. Description of Removal Actions:** CTDEP hired Connecticut Tank Removal (CTR) to excavate Ms. Geremia's property and install oil/water separators to remove the oil from groundwater and prevent further pollution. Removal actions by CTR were periodic and performed as needed from January through September 2009.² CTDEP hired Phoenix Environmental Lab to sample groundwater, analyze it and monitor and report on hydrocarbon levels.³ Groundwater samples confirmed that the highest levels of hydrocarbons were on the Geremia property. Additional groundwater samples were taken

¹ See Field Narrative Report by John Aceto, CTDEP, Emergency Response Coordinator III, Pg. 5, Para 3

² See CTR dailies and invoices Claim submission

³ See Field Narrative Report by John Aceto, CTDEP, Emergency Response Coordinator III, Pg. 5, Para 3

from other properties up-gradient of the Geremia property but these samples had insignificant levels of hydrocarbons.⁴ Non-hazardous waste was transported by CTR for waste disposal at United Industrial Services that invoiced the state directly for each waste disposal manifest with signatures by the facility operator and John Aceto, SOSOC of CTDEP.

3. **The Claim:** CTDEP presented a claim to the the National Pollution Funds Center (NPFC) for its uncompensated removal costs associated with this incident using the Optional OSLTF Claim Form and seeking compensation in the amount of \$37,706.92. CTDEP submitted a Financial Report that is a financial summary with cover letter to the NPFC signed by William L. Evans, Jr. Chief of Financial and Support Services and legal representative for presenting the Claimant, State of Connecticut Department of Energy & Environmental Protection.

Other supporting documentation from the CTDEP includes:

- 1) A copy of the Emergency Incident Report,
- 2) Emergency Incident Field Report (narrative by SOSOC, John Aceto) for Cost Recovery Cases with photos;
- 3) Copy of the National Response Center Incident Report, and
- 4) Copy of USCG Notice of Federal Interest to Ms. Geremia (RP) and a copy of the National Contingency Plan Oil Spill Report Form - State On-Scene Coordinator Information that show that Sector Long Island Sound coordinated with CTDEP.

The Claimant also provided cost documentation referencing spill case #200900410 that outlines each invoice submitted. Each invoice has a Daily Work Ticket or Voucher for services rendered to the CTDEP with a copy of a "Verified & Approved" form signed by a financial officer at DEEP Bureau Financial Services. And, each invoice from CTDEP is classified as personnel, material or equipment costs and waste disposal costs for solids and oily/water mixture. Invoice dates match the SOSOC's report on the cleanup from January 2009 through September 2009.

4. **Federal On-Scene Coordination:** Petty Officer Christie Dixon and MST3 Oscar Straw of Sector Long Island Sound responded to a report from the National Response Center, (report #896097) complaining of a strong chemical odor and sheen at Hubbard Nature Center. Coast Guard personnel met CTDEP personnel at the nature center and were informed of the connection between the spill incident at the nature center and 124 Central Avenue. MST3 Straw went to 124 Central Avenue where he observed removal actions underway and understood that groundwater contamination was the source of oil at Hubbard Nature Center. MST Straw confirmed in an email to the NPFC that he observed the excavation and ongoing monitoring of groundwater at 124 Central Avenue. He stated that he deferred to CTDEP because it already had a removal plan.⁵ MST3 Straw placed a Notice of Federal Interest for an Oil Pollution Incident in Ms. Geremia's mailbox.⁶

⁴ See Field Narrative Report by John Aceto, CTDEP, Emergency Response Coordinator III

⁵ See email reply of April 6, 2012 from MST3 Straw in Part 4 of the admin record

See CTDEP narrative report in admin record that describes meeting with MST3 Straw on January 29, 2009

⁶ See copy of Notice of Federal Interest signed January 29, 2009 in Part 4 of the admin record

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. Sector Long Island Sound has provided FOSC coordination via MISLE Notification #34316.
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 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 cost invoices and dailies to verify that CTDEP incurred costs as 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 NPFC reviewed the actions taken by the Claimant and its contractors: CTR, United Industrial Services and Phoenix Environment Lab and found that the actions taken were in accordance with the NCP and were reasonable and necessary to prevent the further discharge of oil into a navigable waterway.

The NPFC has determined that the costs presented were incurred by the CTDEP and invoiced in accordance with its contract rate schedule that was in effect at the time these services were rendered.⁷

Claimant’s documentation shows that CTDEP hired contractor services of CTR, Phoenix Environmental Lab and United Industrial Services and paid contractors invoices for cleanup, removal and monitoring of the oil spill. The NPFC found that CTDEP retracted one invoice from its summary of paid invoices. Invoice # 23426 for \$220.11 from United Industrial Services did not have supporting documentation. Upon requesting supporting documentation, Bryan Gunning of CTDEP’s Fiscal Administrative Office, confirmed that this invoice number was in error and not to be included in this claim.⁸ The NPFC finds that this explains the missing documentation. All other contractor invoices came with a copy of CTDEP’s voucher

⁷ See rate sheets for each vendor in initial submission from CTDEP docs, Part 3 of Admin Record & in CPS

⁸ See email of June 11, 2012 from Bryan Gunning in Part 3 of Admin Record & in CPS

for the service and CTDEP's Verified and Approved form signed by a CTDEP finance officer.

The Claimant submitted documentation showing proper disposal of the hazardous waste transported from this incident site by submitting copies of waste disposal manifests signed by a representative of the waste treatment facility operated by Universal Industrial Services, Inc.

Claimant represents that all costs claimed are for uncompensated removal costs incurred by the Claimant from the incident on January 27, 2009. CTDEP investigated the source of the discharge and assumed financial responsibility for the cleanup. Claimant represents that all costs submitted were paid by CTDEP as removal costs, and payable by the OSLTF as presented by the Claimant.

Based on the above, the Claims Manager hereby determines that the CTDEP did in fact incur \$35,486.81 in uncompensated removal costs and that this amount is payable by the OSLTF as full compensation for reimbursable removal costs incurred by the CTDEP and presented to the NPFC under claim #912053-0001.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$35,486.81 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912053-0001.

AMOUNT: \$35,486.81

Claim Supervisor: 

Date of Supervisor's review: 6/21/12

Supervisor Action: *Approved*

Supervisor's Comments: