

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/13/2009
Claim Number	: 908102-001
Claimant	: State of Connecticut
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$742,227.08

### **FACTS:**

**1. Oil Spill Incident:** On May 25, 2007, the claimant, Connecticut Department of Environmental Protection (CT DEP) was notified of a gasoline odor in the vicinity of Main Street in Terryville, CT and was requested to respond by the local Fire Department. Connecticut DEP responded to the scene and the source of the gasoline odor was identified by the Fire Dept. Connecticut DEP reported the incident to the National Response Center (NRC) via report # 836537. It was observed and reported that gasoline was breaking out of the riverbank from an adjacent property identified as Mayfair Garage, 142 Main Street, Terryville, CT. The source location was confirmed by representatives of Connecticut DEP. Connecticut DEP approached the property and conducted a site investigation. As a result of the investigation, it was found that gasoline was observed under the dispensers at the full service island. The submersible sump pump pit for the regular system was observed to have product in it. When the cover was removed, the pit was full. The owner of the garage was immediately directed to shut down the system.

The owner was advised that a spill contractor would have to be retained to contain the gasoline in the river and to evacuate the dispenser sumps and submersible sump. Clean Harbors, Inc. was retained by the owner and responded to the incident. Boom was deployed in the river and sumps were evacuated. Approximately 165 gallons of gasoline were recovered from the sumps. On May 30, 2007, Smith & LaMountain, Inc., a pump and tank company was retained by the owner of the garage and on site to determine the cause of the leak. It was found that the supply line from the regular system that was coming off the submersible sump pump was leaking at a coupling. Upon further investigation, it was observed that an 'O' ring gasket was faulty. When the pump was turned on, the leak was visible. The technician with Smith & LaMountain, Inc. stated that the leak was in excess of 9 gallons per hour and therefore he classified it as a significant leak. Clean Harbors arrived on site and changed out the sorbents in the river.

On June 1, 2007, Clean Harbors, Inc. installed a recovery trench and well. Product was observed during the excavation process. The monitoring wells in the tank grave area were sampled and found to have product in them also. One well had approximately 9" of product in it and the other well had approximately 12" of product in it. To date, the total amount of product recovered from the wells was approximately 1,600 gallons. On June 5, 2007, Connecticut DEP was on site geoprobing to determine the extent of oil contamination at the site location. The case remains under the direction of the Emergency Response Unit of CT DEP. On June 6, 2007, Connecticut DEP had installed 11 monitoring wells with the well on the southern side of the property, closest to RT. 6, showing approximately 2.5' of product in it. Clean Harbors has recovered approximately 2,400 gallons of product from the underground storage tank monitoring wells and the dispenser sumps.

On June 8, 2007, Connecticut DEP geoprobed across the street from the incident location on RT.6, in front of Grella Well Drilling, where three wells were installed. No indication of product was found in those wells. On June 11, 2007, a site meeting was held at the incident location. Present at the meeting were Connecticut DEP reps, the supervisor for Clean Harbors, and the owner of the site. Subsurface recovery and installation was discussed at this meeting. Mr. Frank Fuller, owner of the site, was advised that the second phase of recovery would proceed and he was asked if he was committed to his financial responsibility. He then requested a proposal of costs from Clean Harbors and once that was given, he would decide if he was financially committed. On June 13, 2007, Mr. Frank Fuller advised Connecticut DEP that he would not accept financial responsibility in order to proceed with the cleanup.

At this point, the claimant, Connecticut DEP, assumed financial responsibility for the cleanup and hired their contractor to handle the on-going response. Connecticut Tank Removal (CT Tank) was notified at approximately 1615 hrs on June 13, 2007 and the contractor was requested to be on site on June 14, 2007 at 0900 by the claimant. On June 14, 2007, CT Tank arrived on site and began immediate response work which consisted of pumping out the 18" recovery well with a vac truck and discussions of the installation of a recovery system began.

On June 18, 2007, Mr. Capuano of Connecticut DEP contacted Mr. Mike Nalipinski of the United States Environmental Protection Agency (USEPA), Federal On Scene Coordinator (FOSC) for the incident location and advised that they were taking over the response activities at the site location because the responsible party has stated that he could no longer fund cleanup costs. Later, at the request of FOSC Nalipinski, Mr. Chau of USEPA contacted the claimant on June 19, 2007 to further coordinate the cleanup activities at the site. Connecticut DEP informed the FOSC that the release occurred from the supply line of an underground storage tank which migrated into the ground and subsequently into the abutting Pequabuck River, a navigable waterway of the US.

The National Pollution Funds Center (NPFC) notified the responsible party, Mr. Frank Fuller via a certified letter dated October 8, 2008, advising Mr. Fuller that a claim has been submitted for reimbursement and to provide any circumstances, explanations, or justifications he wants considered before the adjudication is completed. To date, the responsible party has not responded to the notification letter.

**2. Description of removal activities:** On June 13, 2007, CT Tank was hired as the primary contractor for Connecticut DEP to handle the response activities associated with this incident. The contractor's response activities include but are not limited to, installing monitoring wells, performing sample analysis, installation and operation of a portable system to pump and treat contaminated water that continues to threaten the Pequabuck River, a navigable waterway of the US, maintain boom as needed, perform proper disposal when necessary, and inspect the system periodically.

**3. The Claim:** On August 4, 2008, Connecticut DEP submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$742,227.08 for the services provided to Mr. Frank Fuller, owner of Mayfair Garage from June 13, 2007 through December 28, 2007. This claim is for removal costs based on the contracted rate schedule in place with Connecticut DEP at the time services were provided.

This claim consists of copies of the invoicing and associated dailies, disposal manifests, contracted rate schedules, Connecticut DEP Spill Summary Report, NRC report, sample analysis and associated results and EPA FOSC coordination. 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 FOSC, and (4) whether the costs were adequately documented.

**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. The FOSC has provided FOSC coordination. A coordination statement has been provided via email dated February 5, 2009 and December 4, 2008 from Mr. Tom Condon. (See, Enclosure 1).
2. The incident involved the discharge and continuing substantial threat of 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. Presentment of costs to the RP was made on November 28, 2007, prior to the submission of the claim. The NPFC also made presentment of costs to the RP on October 08, 2008.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of all 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 with the exception of the following: (See, Enclosure 2 – Summary of Vendors)
  - a. CT Tank invoice # 111727, on 12/28/07, deny \$617.50 as FOSC states incorrect equipment billed. EPA states the equipment should be interface probe;
  - b. CT Tank invoice # 110906, on 6/20/07, deny \$236.00 charge as there is no supporting documentation for the charge; On 6/23/07, deny utility truck (2) @ \$39.38 x 2 = \$78.76 because the equipment hours billed exceed the labor hours billed; deny backhoe charge of \$39.38 because the equipment hours billed exceed the labor hours billed; deny bobcat charge of \$30.63 as the equipment hours billed exceed the labor hours billed; and deny plate compactor charge of \$21.88 as the equipment hours charged exceed the labor hours charged;
  - c. United Industrial Services invoice # 312562 – deny \$350.17 as this invoice was not provided but rather a different invoice for \$988.60;

#### 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 that basis, the Claims Manager hereby determines that the claimant did in fact incur \$740,852.78 of uncompensated removal costs 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# 908102-001. The claimant states that all costs claimed are for uncompensated removal costs incurred and submitted by the claimant for this incident for the time period of, June 13, 2007 through December 28, 2007. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

During the adjudication process and prior to the actual claim submission, the Claims Manager worked with the claimant and the EPA FOSC in order to discuss the actions performed since the EPA FOSC never actually went to the spill location but rather was kept informed verbally as the response continued. Prior to the claim being officially submitted to the NPFC, the claimant sent a full claim package to the EPA FOSC for review of the actions and services rendered. The EPA FOSC spoke with the Claims Manager on several occasions and advised that he concurs that the long term response actions associated with the operation and maintenance of the treatment system that was installed, was in fact necessary to mitigate the ongoing threat of contamination to the nearby waterway. The EPA FOSC however did note that the cost of the boom rental charges, while they appear legitimate, is many times the replacement cost of the boom. Upon review, the Claims Manager has determined that the costs for boom rental are reasonable and in accordance with the contracted rate schedule that was in place at the time services were rendered.

The Claims Manager and the EPA FOSC has determined that the long term operation and maintenance of the temporary treatment system that is currently in place is reasonable and necessary to continue mitigating the substantial threat. The claimant has substantiated the need for the ongoing response action by way of sample analysis which demonstrates the continuing presence of oil at an actionable level.

*C. Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$740,852.78 as full compensation for the reimbursable removal costs submitted by the Claimant and submitted to the NPFC under claim # 908102-001. 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 Claimants.

**AMOUNT: \$740,852.78**

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

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  
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5890  
2/12/2009

VIA EMAIL: [REDACTED]@ct.gov

State of Connecticut  
Department of Environmental Protection  
79 Elm Street  
Hartford, CT 06106-5127

Re: Claim Number 908102-001  
CT DEP Spill # 200703288

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 \$740,852.78 is full compensation for OPA claim number 908102-001.

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.ccr.gov](http://www.ccr.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]  
Claims Manager

ENCL: Claim Summary / Determination Form

Acceptance/Release Form

(1) EPA FOISC email coordination dated December 4, 2008

(2) Summary of Vendors spreadsheet of costs

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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Staff Symbol: (CA)  
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E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

Claim Number: 908102-001	Claimant Name: State of Connecticut Department of Environmental Protection 79 Elm Street Hartford, CT 06106-5127
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I, the undersigned, ACCEPT the determination of \$740,852.78 as full compensation for all removal costs and damages paid or incurred by Claimant for services provided by the various vendors listed in the Mayfair Garage Claim #1- Summary of Vendors and Detailed Summary by Vendor (attached hereto and incorporated by reference as if fully set forth herein), and claimed to the Oil Spill Liability Trust Fund (Fund) under Claim Number 908102-001. These costs resulted from the below-described incident.

Date: 25 May 2007  
Location: 142 Main Street, Terryville, CT  
Subject: Mayfair Garage Oil Spill

This determination represents full and final release and satisfaction of all removal costs and damages paid or incurred by the claimant for services provided by the various vendors listed in the Mayfair Garage Claim #1 – Summary of Vendors and Detailed Summary by Vendor (attached hereto and incorporated by reference as if fully set forth herein), and claimed to the Oil Spill Liability Trust Fund (Fund) under Claim Number 908102-001 under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)). This determination is not an admission of liability by any party. 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 loss. 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 the incident. 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 costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

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 any compensation received from any other source for the same claim, 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

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
TIN Required for Payment	Bank Routing Number	Bank Account Number