

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 912010-0001
Claimant : Tweed-New Haven Airport
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$23,381.35

FACTS:

- 1. Oil Spill Incident:** On December 15, 2009, the Claimant discovered a sheen in Morris Creek which leads to the Long Island Sound, a navigable waterway of the US. The Claimant reported the incident to Connecticut Department of Environmental Protection (CTDEP) and to the New Haven Fire Department. The Assistant Airport Manager contacted McVac Environmental to respond to the incident. The New Haven Fire Department contacted Sector Long Island Sound as the Federal On Scene Coordinator (FOSC) for this incident. USCG arrived on scene to investigate. At that point in time, none of the responding agencies could detect the source of the spill therefore all agencies departed once the situation was contained by McVac Environmental. The initial spill was reported to the National Response Center (NRC) on December 15, 2009 via report # 926270.¹

Because the release was intermittent from December 15, 2009 until CTDEP finally detected the source of the continuing spill in April 2010, the Claimant had to hire McVac Environmental to handle cleanup numerous times between December 2009 and April 2010 which is the subject of this claim. On April 9, 2010, the Claimant informed CTDEP that it had expended a significant amount of money to retain the services of McVac Environmental during the four (4) month period following the initial detection of the oil spill on Morris Creek and the Claimant told CTDEP that it no longer had the financial means to continue paying for the services of McVac and at that point, CTDEP took over the cleanup and further investigated the source of the ongoing spill and ultimately identified [REDACTED] as the responsible party (RP) for the incident. The Claimant presented its costs to Ms. [REDACTED] on May 12, 2011. On June 14, 2011, the RP responded to the Claimant advising she did not have the financial means with which to pay for the spill costs.²

- 2. Description of Removal Actions:** McVac Environmental arrived on scene on December 15, 2009 and brought two employees, two vac trucks, one vac trailer, boom, pads, one drum and performed disposal of the oily water liquids from the respective trucks as well as disposal of drums with petroleum contaminated solids. McVac performed similar operations on December 16, 18, 21, 23, 2009; January 4, 6, 12, 2010; February 1, 4, 22, 25, 2010; and April 9 and 23, 2010.
- 3. The Claim:** Tweed New Haven Airport presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$23,381.35. The claim consists of personnel, material and equipment costs as well as disposal costs associated with both solids and oily/water mixture.

¹ See, NRC Report # 926270 dated December 15, 2009.

² See, RP letter dated June 14, 2011.

The claim consists of Optional OSLTF Claim Form; Invoices from McVac Environmental intermittently from December 15, 2009 through April 23, 2010; Tweed-New Haven Airport incident report dated December 15, 2009 and April 9, 2010; New Haven Fire Department incident report for Incident #01-2009-0021324-000; CTDEP Incident Field Report, including the following attachments: (1) CTDEP Limited Subsurface Investigation Report, (2) Copy of spill report to the Response Center, and (3) Property Field Card for 274 Burr Street, New Haven, CT; letter from the RP, Ms. Angela Germe to Hugh Manke, General Counsel to Tweed-New Haven Airport dated June 14, 2011; letter from USCG dated July 9, 2010 in response to Tweed-New Haven Airport FOIA request seeking report of Coast Guard investigation from April 2010 incident and Coast Guard Case Report dated April 9, 2010; letter from USCG dated September 20, 2010 in response to Tweed-New Haven Airport FOIA Request (seeking report of Coast Guard investigation regarding ongoing oil spill into Morris Creek) denying FOIA request and withholding 22 pages of responsive material due to an ongoing investigation; letter from USCG dated January 3, 2011 acknowledging receipt of Tweed-New Haven Airport's FOIA Appeal of the September 20, 2010 denial of Tweed-New Haven Airport's request for the Coast Guard, investigation incident report.

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. Sector Long Island Sound has provided FOSC coordination via MISLE Case # 496309.
2. The incident involved the substantial threat of discharge of “oil” and 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 by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review of the claim submission, the NPFC has determined that the costs presented and incurred were billed in accordance with the rate schedule in place at the time services were rendered. The NPFC also determined that the actions taken by the Claimant and its contractor, McVac Environmental, were reasonable and necessary in order to mitigate the discharge and substantial threat of discharge to the environment.

The disposal manifests corroborate the presence of strictly oil contamination. Proper disposal has been performed and documented by McVac Environmental, who performed the actual disposal. The NPFC contacted the contractor, McVac to confirm their invoices were paid in full by the Claimant. McVac confirmed that Tweed-New Haven Airport has paid all invoices to date. The NPFC also requested a copy of all associated disposal manifests which McVac faxed to the NPFC office on April 30, 2012.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$23,381.35 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #912010-0001.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident between December 15, 2009 and April 23, 2010 when CTDEP took over the financial responsibility of the incident. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$23,381.35 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912010-0001. 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.

Claim Supervisor

Date of Supervisor's review: *5/01/12*

Supervisor Action: *Approved*

Supervisor's Comments: