

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 912010-0002
Claimant : State of Connecticut
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$26,404.77

FACTS:

1. ***Oil Spill Incident:*** On December 15, 2009, a sheen was discovered by Tweed-New Haven Airport (Tweed) in Morris Creek which leads to the Long Island Sound, a navigable waterway of the US. Tweed 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, Tweed had to hire McVac Environmental to handle cleanup numerous times between December 2009 and April 2010. On April 9, 2010, Tweed 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 Tweed told CTDEP that it no longer had the financial means to continue paying for the services of McVac. 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. CTDEP hired Connecticut Tank Removal (CTR) to handle all response actions. CTDEP coordinated its efforts with Sector Long Island Sound who authorized the State to take the lead for this incident. The Claimant presented its costs to Ms. [REDACTED] on October 25, 2011. On November 23, 2011, the RP responded to the Claimant advising she did not have the financial means with which to pay for the spill costs.²

The NPFC issued an RP Notification letter to Ms. [REDACTED] on April 12, 2012.³

2. ***Description of Removal Actions:*** On April 9, 2010, CTDEP dispatched to the Airport location to discuss the ongoing intermittent response work the Airport was funding since December 2009 associated with Morris Creek. The Airport informed CTDEP that they simply could not continue funding response as they had spent a significant amount of money to date. CTDEP agreed to step up and take the lead to identify the source and to fund ongoing cleanup efforts. CTDEP contacted their response contractor, Connecticut Tank Removal (CTR) who agreed to arrive on site effective April 12, 2010. CTDEP took a two pronged approach once they

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

² See, RP response letter to CTDEP dated November 23, 2011.

³ See, NPFC RP Letter dated April 12, 2012.

took over. CTDEP began RP identification and response to mitigate the ongoing intermittent oil spill. CTDEP started the RP identification by hiring subcontractors to video the storm drainage systems and they also began confined space entry into certain manholes to locate traces of petroleum contamination. After much work CTDEP was ultimately able to track to incident back to [REDACTED] who resides at [REDACTED] Ms. [REDACTED] informed CTDEP that she did not have the financial means to pay for the response that was associated with a ruptured underground fuel oil line that was discovered. CTDEP and its associated contractor were on scene from April 12, 2010 through April 29, 2010 and finally on September 17, 2010, CTDEP returned to the site to oversee the removal of any and all remaining sorbents and determined at that time that no further action was warranted at this location and the case was closed.

- 3. The Claim:** State of Connecticut Department of Environmental Protection (CTDEP) presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$26,404.77. The claim consists of personnel, material and equipment costs as well as subcontractor costs associated with activities to identify the source of the incident, including but not limited to, video surveys in assisting to identify the source of the incident within the drainage system and via confined space entry into certain manholes looking for petroleum contamination.

The claim consists of cover letter dated March 16, 2012, CTDEP signed Financial Report supporting claim reimbursement, OSLTF Claim Form, CTDEP Spill Prevention Division Reports generated from field dailies, CTDEP Emergency Incident Report, National Response Center in-take form, letters of collection sent to the RP and copies of the RP's response, Contractor invoices and associated dailies, disposal manifests, third party receipts, photographs, maps, and confirmation of payments made to date.

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, Connecticut Tank Removal (CTR) and associated subcontractors, were reasonable and necessary in order to mitigate the discharge and substantial threat of discharge to the environment as well as to determine the source of the oil spill. The disposal manifests corroborate the presence of strictly oil contamination. Proper disposal has been performed and documented via disposal manifests.

The NPFC confirmed via the Coast Guard MISLE case, that the FOSC coordinated the response actions and handed the oversight role to CTDEP as the State On Scene Coordinator (SOSC).⁴

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$26,404.77 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 #912010-0002.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident between April 12, 2010 and September 17, 2010 when CTDEP determined the site clean and closed the case. 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 \$26,404.77 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912010-0002. 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:

⁴ See, Coast Guard MISLE Case # 496309.