

CLAIM SUMMARY / DETERMINATION FORM

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| Claim Number | 912049-0001 |
| Claimant | State of Connecticut |
| Type of Claimant | State |
| Type of Claim | Removal Costs |
| Claim Manager | [REDACTED] |
| Amount Requested: | \$4,007.33 |

FACTS

On 10 September 2007, a tractor-trailer owned by SSS Transport Company was involved in a motor vehicle accident in the vicinity of Exit 41 along Connecticut Interstate Highway I-84. This motor vehicle accident resulted in damage to the tractor-trailer's saddle tanks which contained number 2-D diesel fuel, of which an estimated 90 gallons leaked onto the highway at the site of the accident. The spill constituted a substantial threat to the catch basin immediately adjacent to the accident site which flows into Trout Brook, Connecticut River and the Long Island Sound, navigable waterways of the United States.

The West Hartford Fire Department reported the incident to the National Response Center (NRC).¹ [REDACTED] tractor-trailer operator, refused to accept financial responsibility for the incident. Connecticut Department of Environmental Protection (CT DEP) contacted tractor-trailer owner, SSS Transport Corporation regarding clean-up of the incident.²

Description of Removal Activities for this Claimant

On September 10, 2007, CTDEP contracted with Environmental Services Inc. who accepted the request to render response services.³ The contractor employed a vacuum truck, spill van and personnel to pump off the leaking diesel fuel as well as motor oil from the tractor-trailer. The cleanup was completed the day of the spill under the oversight of CT DEP as the State On Scene Coordinator (SOSC).

The Claim

On March 28, 2012, the Connecticut Department of Environmental Protection (CT DEP) submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$4007.33.

CT DEP is claiming personnel expenses in the amount of \$2,232.30 and equipment and response expenses in the amount of \$1,775.03, monies paid to Environmental Services, Inc., a state contractor for the response and removal costs associated with this diesel fuel spill.

The claim consists of copies of CT DEP Narrative Supplemental report, Hazardous Materials Spill Reports, financial report authenticated by the CT Bureau of Financial and Support Services, Emergency Incident Report, and the Emergency Incident Field Report for Cost Recovery Cases. Additional supporting information includes the Letters of Collection as sent to the Responsible Party by CTDEP, and paid invoices to Environmental Services, Inc.

The NPFC sent an RP Notification Letter to the Responsible Party dated April 10, 2012 and to date no response has been received.

¹ See, NRC Incident Report #848342.

² See, CT DEP Emergency Incident Report, 10 September 2007.

³ Ibid.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages resulting from that incident. 33 U.S.C. § 2702(b). A responsible party's liability includes "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 "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil" 33 USC § 2701(23).

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."

Pursuant to 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].

Pursuant to 33 USC § 2713(d), "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."

Pursuant to 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.

Pursuant to 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."

Pursuant to 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."

Determination of Loss

Overview

1. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost

claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);

2. The incident involved a discharge of "oil" as defined in OPA 90, 33 USC § 2701 (23), that presented a substantial threat 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 removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable pursuant to OPA 90 and 33 CFR § 136.025 as set forth below.

Analysis

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.

Upon review of the claim submission, the NPFC has determined that the removal costs presented and incurred were billed appropriately and in accordance with the rate schedule that was in place at the time services were rendered. On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$4,007.33 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 #912049-0001.

Determined Amount

The NPFC determines that the OSLTF will pay \$4007.33 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to NPFC under claim # 912049-0001. All costs presented to the OSLTF in this claim are for removal actions as defined in OPA 90 and 33 CFR 136, and are compensable removal costs.

AMOUNT: \$4007.33

Claim Supervisor 

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

Supervisor Action: *Approved*

Supervisor's Comments:

