

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912052-0001
Claimant	: State of Connecticut Department of Energy and Environmental Protection
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$20,313.50

FACTS:

- A. *Oil Spill Incident:*** The United States Coast Guard Sector Long Island Sound reports¹ that on May 2, 2010, along with the State of Connecticut Department of Energy and Environmental Protection (DEEP), it responded to a release of #2 fuel oil from a drainage pipe into Long Island Sound, a navigable waterway of the US. The incident was reported in to the National Response Center (NRC) via report # 938832.² No Responsible Party (RP) could be identified and the incident was deemed a mystery spill.

The oil was traced back to a pipe leading into a catch basin at the corner of Island Heights and Cove Road. Due to the lack of an RP, DEEP authorized the retention of Connecticut Tank Removal, Inc. (CTR). CTR personnel responded and evacuated the affected catch basins and replaced the saturated boom. The following morning, state responders and the assistant engineer for the City of Stamford met on-scene. City maps could not confirm the source leading into the drainage pipe, and oil was still discharging into the catch basin. CTR contractors attempted to push a camera up the pipe, but were unable to do so because of root infiltration.

- B. *Description of removal actions performed:*** DEEP hired CTR to conduct cleanup and removal activities. CTR contractors arrived on-scene on May 2, 2010. Over the course of the next two days, CTR personnel utilized a vacuum truck to excavate the pipe of interest in an attempt to determine the source of the release. During the second day, an area of the pipe was discovered that was not impacted. Further excavation showed no apparent source of the release. After consultation with DEEP personnel, it was determined that the source of the oil had dissipated and was not able to be located. On May 26, 2010, after several heavy rain events with no apparent oil impact, CTR personnel returned to the site and repaired the areas of pipe that were excavated, backfilled the holes and disposed of the soiled boom and absorbent pads.

- C. *The Claim:*** On March 28, 2012, DEEP submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$20,313.50 for the services provided from May 2 through May 26, 2010. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

DEEP's claim to the NPFC includes copies of the following: Cover letters to the NPFC, dated March 16, 2012 and March 20, 2012, respectively; USCG Sector Long Island Sound Case Report # 498853; State of CT Environmental Cleanup Cost Recovery Program

¹ See USCG Sector Long Island Sound Case Report # 498853, opened 5/02/2010.

² See NRC Report # 938832, dated 5/02/2010.

Financial Report for case # 2010-02551; Amended Optional OSLTF Claim Form; DEEP Cost Recovery Tracking form for case # 2010-02551, dated 10/26/2010; DEEP Emergency Incident Report for case # 2010-02551; DEEP Emergency Incident Field Report for case # 2010-02551; maps of the intersection of Weed Ave. and Cove Rd., and their proximity to Long Island Sound; NRC Report # 938832; the waste disposal manifests for this incident; State of CT Comptroller invoice and approval for United Industrial Services (UIS) costs for this incident; UIS invoices for this incident; State of CT Comptroller invoice and approval for CTR costs for this incident; CTR invoices for this incident; Complete Environmental Testing, Inc. (CET) invoice for this incident; CET Analytical Report # 10050148; and internal email correspondence.

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), a responsible party for a vessel or facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident.

"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".

"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". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. § 2713(c)(2).

"Claimant" means "any person or government who presents a claim for compensation under this subchapter." 33 USC § 2701(4).

33 USC § 2712(f), which is entitled "Rights of Subrogation," provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

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 136.203, the claimant bears the burden to prove the removal costs 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. FOSC Coordination has been established via USCG Sector Long Island Sound.³ 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a 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)(2).
5. No RP has been determined for this incident. 33 U.S.C. § 2701(32).
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that 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.

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

³ See USCG Sector Long Island Sound Case Report # 498853, opened 5/02/2010.

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 Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

DEEP had FOSC coordination for all actions taken to cleanup and remove the oil from the water. It provided dailies and invoicing of costs from its contractors and subcontractors that were deemed reasonable to accomplish this objective. Additionally, it did attempt to locate the source of the spill, thus attempting to minimize costs incurred by the state for this incident, but was unsuccessful.

On that basis, the Claims Manager hereby determines that the claimant did incur \$20,313.50 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 #912052-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from May 2 through May 26, 2010. 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: \$20,313.50

The NPFC hereby determines that the OSLTF will pay \$20,313.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 912052-0001. 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:

Supervisor Action: *Approved.*

Supervisor's Comments: