

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912053-0001
Claimant	: State of Connecticut
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$35,706.92

FACTS:

- 1. Oil Spill Incident:** On January 27, 2009, Emergency Response Coordinator [REDACTED] of the Connecticut Department of Environmental Protection (CTDEP) met personnel from the West Haven Fire Department (WHFD) responding to a complaint of oil (#2 diesel-oil) on the street at 111 Mohawk Drive. Fire department personnel had observed a one to two gallon puddle of oil on the street and oily water draining from a subterranean pipe that empties into the gutter in front of 111 Mohawk Drive. Fire department personnel applied Speedy-Dry to remove the oil and to contain it from going into a nearby storm-drain that flows into an unnamed stream that runs through Hubbard Nature Center and empties into Long Island Sound, a navigable waterway of the U.S.

CTDEP's investigator found the resident at 111 Mohawk Drive never used heating oil. The search for the source moved up-gradient from 111 Mohawk Drive to the adjacent, back-yard of [REDACTED] where investigators discovered a dark patch of stained grass with a strong oily odor. Investigators met Ms. [REDACTED] the owner and resident at [REDACTED]. Ms. [REDACTED] allowed authorities to inspect her 275-gallon, above-ground, fuel tank in her basement. Investigators questioned Ms. [REDACTED] about the quantity of fuel oil she last purchased and compared that to amount that remained in the tank and determined there was a substantial quantity of oil missing. Investigators suspected the source of the fuel oil leak was a fuel line that was partially embedded in the basement floor. After drilling a couple of holes through the concrete floor, CTDEP concluded the source of the discharge was the fuel line.

Ms. [REDACTED] was given a copy of Connecticut's "Responsibility of the Polluter" that identified her as the responsible party and explained her rights under Connecticut statutes. CTDEP also provided Ms. [REDACTED] a list of licensed environmental contractors but, Ms. [REDACTED] told CTDEP that she could not afford a cleanup contractor.¹ CTDEP assumed all financial responsibility for all removal costs.

- 2. Description of Removal Actions:** CTDEP hired Connecticut Tank Removal (CTR) to excavate Ms. [REDACTED]'s property and install oil/water separators to remove the oil from groundwater and prevent further pollution. Removal actions by CTR were periodic and performed as needed from January through September 2009.² CTDEP hired Phoenix Environmental Lab to sample groundwater, analyze it and monitor and report on hydrocarbon levels.³ Groundwater samples confirmed that the highest levels of hydrocarbons were on the [REDACTED] property. Additional groundwater samples were taken

¹ See Field Narrative Report by [REDACTED] CTDEP, Emergency Response Coordinator III, Pg. 5, Para 3

² See CTR dailies and invoices. Claim submission

³ See Field Narrative Report by [REDACTED] CTDEP, Emergency Response Coordinator III, Pg. 5, Para 3

from other properties up-gradient of the [REDACTED] property but these samples had insignificant levels of hydrocarbons.⁴ Non-hazardous waste was transported by CTR for waste disposal at United Industrial Services that invoiced the state directly for each waste disposal manifest with signatures by the facility operator and [REDACTED] SOSC of CTDEP.

3. **The Claim:** CTDEP presented a claim to the the National Pollution Funds Center (NPFC) for its uncompensated removal costs associated with this incident using the Optional OSLTF Claim Form and seeking compensation in the amount of \$37,706.92. CTDEP submitted a Financial Report that is a financial summary with cover letter to the NPFC signed by [REDACTED] Chief of Financial and Support Services and legal representative for presenting the Claimant, State of Connecticut Department of Energy & Environmental Protection.

Other supporting documentation from the CTDEP includes:

- 1) A copy of the Emergency Incident Report,
- 2) Emergency Incident Field Report (narrative by SOSC [REDACTED]) for Cost Recovery Cases with photos;
- 3) Copy of the National Response Center Incident Report, and
- 4) Copy of USCG Notice of Federal Interest to Ms. [REDACTED] (RP) and a copy of the National Contingency Plan Oil Spill Report Form - State On-Scene Coordinator Information that show that Sector Long Island Sound coordinated with CTDEP.

The Claimant also provided cost documentation referencing spill case #200900410 that outlines each invoice submitted. Each invoice has a Daily Work Ticket or Voucher for services rendered to the CTDEP with a copy of a "Verified & Approved" form signed by a financial officer at DEEP Bureau Financial Services. And, each invoice from CTDEP is classified as personnel, material or equipment costs and waste disposal costs for solids and oily/water mixture. Invoice dates match the SOSC's report on the cleanup from January 2009 through September 2009.

4. **Federal On-Scene Coordination:** Petty Officer [REDACTED] and MST3 [REDACTED] of Sector Long Island Sound responded to a report from the National Response Center, (report #896097) complaining of a strong chemical odor and sheen at Hubbard Nature Center. Coast Guard personnel met CTDEP personnel at the nature center and were informed of the connection between the spill incident at the nature center and 124 Central Avenue. MST3 [REDACTED] went to [REDACTED] where he observed removal actions underway and understood that groundwater contamination was the source of oil at Hubbard Nature Center. MST3 [REDACTED] confirmed in an email to the NPFC that he observed the excavation and ongoing monitoring of groundwater at [REDACTED]. He stated that he deferred to CTDEP because it already had a removal plan.⁵ MST3 [REDACTED] placed a Notice of Federal Interest for an Oil Pollution Incident in Ms. [REDACTED] mailbox.⁶

⁴ See Field Narrative Report by [REDACTED], CTDEP, Emergency Response Coordinator III

⁵ See email reply of April 6, 2012 from MST3 [REDACTED] in Part 4 of the admin record

See CTDEP narrative report in admin record that describes meeting with MST3 [REDACTED] on January 29, 2009

⁶ See copy of Notice of Federal Interest signed January 29, 2009 in Part 4 of the admin record

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. Sector Long Island Sound has provided FOSC coordination via MISLE Notification #34316.
2. The incident involved the 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 majority of 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 cost invoices and dailies to verify that CTDEP incurred costs as 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.

The NPFC reviewed the actions taken by the Claimant and its contractors: CTR, United Industrial Services and Phoenix Environment Lab and found that the actions taken were in accordance with the NCP and were reasonable and necessary to prevent the further discharge of oil into a navigable waterway.

The NPFC has determined that the costs presented were incurred by the CTDEP and invoiced in accordance with its contract rate schedule that was in effect at the time these services were rendered.⁷

Claimant’s documentation shows that CTDEP hired contractor services of CTR, Phoenix Environmental Lab and United Industrial Services and paid contractors invoices for cleanup, removal and monitoring of the oil spill. The NPFC found that CTDEP retracted one invoice from its summary of paid invoices. Invoice # 23426 for \$220.11 from United Industrial Services did not have supporting documentation. Upon requesting supporting documentation, [REDACTED] of CTDEP’s Fiscal Administrative Office, confirmed that this invoice number was in error and not to be included in this claim.⁸ The NPFC finds that this explains the missing documentation. All other contractor invoices came with a copy of CTDEP’s voucher

⁷ See rate sheets for each vendor in initial submission from CTDEP docs, Part 3 of Admin Record & in CPS

⁸ See email of June 11, 2012 from [REDACTED] in Part 3 of Admin Record & in CPS

for the service and CTDEP's Verified and Approved form signed by a CTDEP finance officer.

The Claimant submitted documentation showing proper disposal of the hazardous waste transported from this incident site by submitting copies of waste disposal manifests signed by a representative of the waste treatment facility operated by Universal Industrial Services, Inc.


Claimant represents that all costs claimed are for uncompensated removal costs incurred by the Claimant from the incident on January 27, 2009. CTDEP investigated the source of the discharge and assumed financial responsibility for the cleanup. Claimant represents that all costs submitted were paid by CTDEP as removal costs, and payable by the OSLTF as presented by the Claimant.

Based on the above, the Claims Manager hereby determines that the CTDEP did in fact incur \$35,486.81 in uncompensated removal costs and that this amount is payable by the OSLTF as full compensation for reimbursable removal costs incurred by the CTDEP and presented to the NPFC under claim #912053-0001.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$35,486.81 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912053-0001.

AMOUNT: \$35,486.81

Claim Supervisor: 

Date of Supervisor's review: 6/21/12

Supervisor Action: *Approved*

Supervisor's Comments: