

# CLAIM SUMMARY / DETERMINATION FORM

Claim Number	912089-0001
Claimant	State of Connecticut
Type of Claimant	State
Type of Claim	Removal Costs
Claim Manager	
Amount Requested	\$2,614.35

## FACTS

On January 14, 2009, the State of Connecticut Department of Energy and Environmental Protection (CTDEP) responded to an unknown source of oil which had entered the Mill River via a catch basin outfall.<sup>1</sup> An up-gradient search was performed in an effort to determine the source of the oil, wherein two properties adjacent to drain pipe man-hole accesses were inspected for potential oil release. The two locations were Auto Tech Auto Sales at 43 West Main Street and the Sacred Heart Parochial School at the corner of Smith and Schuyler Streets. Auto Tech Auto Sales was discovered to have been operating an illegal car wash in which the waste water was permitted to enter storm drains.<sup>2</sup> Sacred Heart Parochial School was discovered to have an illegally abandoned residential underground storage tank.<sup>3</sup> Both locations were ruled out as potential locations from which oil may have leaked through video inspection of underground piping as well as on-premises inspection. Both locations were referred for follow up with CTDEP Materials Management and Compliance Assurance due to their violations or potential environmental problems. No responsible party has been identified for the incident.

## Description of Removal Activities for this Claimant

On January 14, 2009, the Stamford Fire Department Hazardous Materials Division (SFD) deployed sorbent and containment boom at the outfall. CTDEP monitored the site and concluded on February 23, 2009 that no additional oil accumulation had occurred at the site. CTDEP then contracted with Connecticut Tank Removal who accepted the request to render response services.<sup>4</sup> The contractor employed a utility truck, a rolloff truck, and personnel to pull SFD's hard boom and spent sorbents from the site. The hard boom was cleaned and returned to SFD, and the spent sorbents were disposed in accordance with regulation. The cleanup was completed on February 23, 2009 under the oversight of CTDEP as the State On Scene Coordinator (SOSC).

## The Claim

On September 4, 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 \$2,614.35.

CT DEP is claiming response expenses in the amount of \$2,614.35, monies paid to Connecticut Tank, a state contractor for the response and removal costs associated with this fuel spill.

<sup>1</sup> See, OSLTF Claim Form, dated September 4, 2012.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

The claim consists of the OSLTF Claim Form, financial report authenticated by the CT Bureau of Financial and Support Services, Emergency Incident Report, Emergency Incident Field Report for Cost Recovery Cases, NRC Report, paid invoice to Connecticut Tank, and disposal manifests for removed materials.

Additional supporting documents include photographs of the incident, to include imagery of the deployed boom and area proximal to the spill. Two CTDEP Internal Referral forms were included which identify the aforementioned car wash and school for follow up with the CTDEP Materials Management and Compliance Assurance for actions unaffiliated with the incident subject of this claim.

### ***APPLICABLE LAW***

“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)(2);
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 some of the removal costs presented and incurred were billed inappropriately at the time services were rendered.

Connecticut Tank billed personnel time for Equipment Operator Walter Rivera in the amount of \$286.00 for 6.5 hours of work performed. Two of these hours were recorded on two different dailies for the same period of time, and as a result the NPFC denies \$88.00. All other costs and

services were properly documented and billed in accordance with the rate schedule in place at the time services were rendered.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$2,526.35 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 #912089-0001.

***Determined Amount***

The NPFC determines that the OSLTF will pay \$2,526.35 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to NPFC under claim # 912089-0001. 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: \$2,526.35**

Claim Supervisor

Date of Supervisor's review: *10/11/12*

Supervisor Action: *Approved*

Supervisor's Comments:

[illegible]