

CLAIM SUMMARY / DETERMINATION

Claim Number:	913013-0001
Claimant:	State of Connecticut
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$6,874.85

FACTS:

Oil Spill Incident: On February 26, 2008, Connecticut Emergency Response Coordinator (ERC) responded to a report of oil in the Trout Brook, near Asylum Street. The Trout Brook is a tributary to the South Branch Park River and flows underground through Army Corp of Engineering conduit into the Connecticut River, a navigable waterway of the US. No source of the oil was determined.

Description of Removal Activities for this Claimant: Upon arrival on scene by ERC they found that West Hartford Fire Department was taking steps to try to prevent the oil from migrating further down stream. The ERC retained the services of Environmental Services Inc (ESI) to clean up the spilled material. Utilizing a vacuum truck, absorbent booms and pads, the majority of the material was removed. Absorbent booms were left in place (changed out twice) until March 6, 2008.

The Claim: On November 15, 2012, State of Connecticut Department of Energy & Environment Protection (CTDEP), presented a removal cost claim to the National Pollution Funds Center (NDFC) for reimbursement of their uncompensated removal costs in the amount of \$6,874.85.¹

State of Connecticut is claiming labor costs of \$2,975.20, equipment costs of \$2,076.14, material costs of \$948.00 and subcontractor costs of \$875.51.

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].

¹ NPFC Standard Claim Form dated November 1, 2012.

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. FOSC coordination was provided by U.S. EPA, Mr. [REDACTED].²
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 U.S.C. § 2712(h)(2), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were 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.,

² CT Department of Environmental Protection Emergency Incident Field Report March 6, 2012.

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 Claimant is requesting \$490.00 for the day rate cost for the use of Tractor with Liquid Transporter on February 27, 2008. The State Contract with ESI calculates the day rate when a piece of equipment is used in excess of eight hours and it states "the day rate shall be seven (7) times the hourly rate." The contract lists the hourly rate for the Tractor with Liquid Transporter as \$58.00. Seven times \$58.00 equals \$406.00. Therefore, the OPA compensable cost is \$406.00 and the remaining amount of \$84.00 is denied as not billed in accordance with the contracted rates.

The Claimant is requesting \$306.25 for the day rate overage costs for the five extra hours the Tractor with Liquid Transporter was used on February 27, 2008. The State Contract with ESI calculates the day rate overage cost as "for each hour of actual use in excess of eight (8) hours during a day, the contractor shall receive $\frac{1}{8}$ the daily rate." Since NPFC has recalculated the daily rate to be \$406.00 and $\frac{1}{8}$ of \$406.00 equals \$50.75 therefore the day rate overage cost is \$253.75. OPA compensable cost is \$253.75 and the remaining amount of \$52.50 is denied as not billed in accordance with the contracted rates.

All other costs were validated and the NPFC has determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$6,738.35 of uncompensated removal costs and 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 #913013-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on February 26, 2008. 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 \$6,738.35 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913013-0001. 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 Claimants.

AMOUNT: \$6,738.35

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 12/7/12

Supervisor Action: *Approved*

Supervisor's Comments: