CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 913040-0001
Claimant	: State of Connecticut Department of Energy and Environmental Protection
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [redacted]
Amount Requested	: $4,945.25

FACTS:

A. ***Oil Spill Incident:*** The USCG National Response Center (NRC) received a report[1] that on April 17, 2007, approximately 25 gallons of home heating oil had released when the line from the tank to the furnace had failed. The location of the incident was at 533 Brook Street, Bristol, CT 06010, where the basement sump had pumped the oil into Copper Mine Brook, a tributary of the Farmington River, which flows into the Connecticut River and eventually into Long Island Sound (all of which are navigable waterways of the US).

The Responsible Party (RP) Ms. [redacted], was notified by the Connecticut Department of Energy and Environmental Protection (DEEP) in letters postmarked October 19, 2012 and December 4, 2012, but they were returned unopened and undeliverable.

B. ***Description of removal actions performed:*** The Claimant, DEEP, hired Connecticut Tank Removal, Inc. (CTR) and Baron Consulting (Baron) for cleanup and disposal of the oil. Actions included applying sorbents, containing and removing the oil and then disposing of the waste properly.[2] The waste was disposed of on April 18, 2007.[3]

C. ***The Claim:*** On March 08, 2013, DEEP submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of $4,945.25 for the services provided on April 17, 2007. 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 file.

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

[1] See NRC Report # 832578, dated 4/18/2007.
[2] See DEEP Emergency Incident Field Report case # 07-02333, dated 1/15/2007 and submitted to the NPFC by the claimant on 3/08/2013.
[3] See Non-Hazardous Waste Manifest, dated 4/18/2007, and submitted to the NPFC by the claimant on 3/08/2013.

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. 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).The incident involved the report of a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
2. 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.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party was determined but, to date, has not submitted payment to the claimant. 33 U.S.C. § 2701(32).
5. 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 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 informed the USCG National Response Center (NRC) and the United States Environmental Protection Agency District 1 of the incident and actions performed.[4] It

[4] See DEEP Emergency Incident Field Report case # 07-02333, dated 1/15/2007 and submitted to the NPFC by the claimant on 3/08/2013.

provided dailies and invoicing of costs from its contractors and subcontractors that were deemed reasonable to accomplish this objective. Additionally, it did attempt to collect from the RP multiple times, but was unsuccessful. The NPFC confirmed the rates were billed in accordance with the rate schedule in place at the time services were rendered and that the actions were consistent with the NCP. The NPFC also confirmed payment of all invoices and that disposal was performed in accordance with the NCP.

On that basis, the Claims Manager hereby determines that the claimant did incur $4,945.25 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 #913040-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on April 17, 2013. 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: $4,945.25*

The NPFC hereby determines that the OSLTF will pay $4,945.25 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 913040-0001. 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: [redacted]

Date of Supervisor's review: ***3/20/13***

Supervisor Action: ***Approved***

Supervisor's Comments: