

CLAIM SUMMARY / DETERMINATION FORM

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| Claim Number | 913090-0001 |
| Claimant | State of Connecticut |
| Type of Claimant | State |
| Type of Claim | Removal Costs |
| Claim Manager | [REDACTED] |
| Amount Requested: | \$3,873.76 |

Facts

On October 30, 2012, the State of Connecticut Department of Energy and Environmental Protection (CTDEP) responded to a home heating oil spill at 7 Noyes Road in Old Lyme, Connecticut.¹ Open containers of home heating oil were present in the back yard of the property resulting from the drainage of a home heating oil tank which the owners had removed from the property. Hurricane Sandy affected the town of Old Lyme with significant flooding. The flooding in the area and the exposed containers behind the residence in question posed a substantial threat to the Connecticut River and the Long Island Sound, navigable waterways of the United States.²

Description of Removal Activities for this Claimant

On October 30, 2012, the Old Lyme Fire Department reported to CTDEP that there was a home heating oil spill at 7 Noyes Rd in Old Lyme, CT. CTDEP responded to the property. The owner of the property and responsible party (RP), [REDACTED], was not in residence at the property when state personnel arrived.³ [REDACTED] RP's daughter, advised that she has power of attorney for her mother, and was living at the residence at the time of the spill.⁴ Ms. [REDACTED] indicated she did not have the financial means to retain a cleanup contractor's services. CTDEP then contracted with McVac Environmental who accepted the request to render response services.⁵

The contractor employed a vacuum truck, oil sorbents, and personnel to remove drummed waste and collect spent sorbents from the site. Removal of additional contaminated soil was planned once the storm floodwaters receded and the area dried out.⁶ On November 6, 2012, after the storm floodwaters had receded and the area had dried sufficiently, the remainder of the cleanup was completed under the oversight of CTDEP as the State On Scene Coordinator (SOSC). At that time, an additional 8 tons of contaminated soil was removed from 7 Noyes Road and an additional 2 tons were removed from the neighboring property affected by the spill.⁷ The waste products were accepted by United Oil Recovery, who performed a flash point test upon delivery.⁸

¹ See, OSLTF Claim Form, dated September 24, 2013.

² Ibid.

³ CTDEP Emergency Incident Field Report, dated October 30, 2012.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ See, Email from Claimant to NPFC, dated October 24, 2013.

The Claim

On September 24, 2013, 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 \$3,873.76.

CT DEP claims response expenses in the amount of \$3,873.76, monies paid to McVac Environmental, a state contractor for the response and removal costs associated with this fuel spill.

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 invoices to McVac Environmental, and disposal manifests for removed materials.

Additional supporting documents include photographs of the incident, inclusive of the open containers of home heating oil and proximal areas of damage. As well, proof of payment to McVac Environmental subcontractor United Industrial Services.

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)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the 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.

The NPFC reviewed all documentation and determined that the rates charged by the contractor for the services provided were billed in accordance with the rate schedule in place at the time the services were rendered and therefore deemed reasonable. Additionally, it is important to note that based on a preponderance of the evidence, the product spilled was affirmed to be #2 home heating oil which United Industrial Services later performed a flash point analysis for declaring the waste substance as oil.

McVac billed \$1,894.00 for excavation of the contaminated soil from the subject yard and neighbor's yard, \$758.00 for oil cleanup from tidal surge, and \$665.08 for disposal of contaminated soil. McVac also billed \$556.18 in monies paid to United Industrial Services for speedi-dry and fuel oil disposal, for a total of \$3,873.76 in total costs billed.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$3,873.76 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 #913090-0001.

Determined Amount

The NPFC determines that the OSLTF will pay \$3,873.76 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to NPFC under claim # 913090-0001. 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.

\$3,873.76

Claim Supervisor

Date of Supervisor's review: *10/29/13*

Supervisor Action: *Approved*

Supervisor's Comments: