

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/24/2009
Claim Number	: 908102-002
Claimant	: State of Connecticut
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$210,929.77

FACTS:

1. Oil Spill Incident: On May 25, 2007, the claimant, Connecticut Department of Environmental Protection (CT DEP) was notified of a gasoline odor in the vicinity of Main Street in Terryville, CT and was requested to respond by the local Fire Department. Connecticut DEP responded to the scene and the source of the gasoline odor was identified by the Fire Dept. Connecticut DEP reported the incident to the National Response Center (NRC) via report # 836537. It was observed and reported that gasoline was breaking out of the riverbank from an adjacent property identified as Mayfair Garage, 142 Main Street, Terryville, CT. The source location was confirmed by representatives of Connecticut DEP. Connecticut DEP approached the property and conducted a site investigation. As a result of the investigation, it was found that gasoline was observed under the dispensers at the full service island. The submersible sump pump pit for the regular system was observed to have product in it. When the cover was removed, the pit was full. The owner of the garage was immediately directed to shut down the system.

The owner was advised that a spill contractor would have to be retained to contain the gasoline in the river and to evacuate the dispenser sumps and submersible sump. Clean Harbors, Inc. was retained by the owner and responded to the incident. Boom was deployed in the river and sumps were evacuated. Approximately 165 gallons of gasoline were recovered from the sumps. On May 30, 2007, Smith & LaMountain, Inc., a pump and tank company was retained by the owner of the garage and on site to determine the cause of the leak. It was found that the supply line from the regular system that was coming off the submersible sump pump was leaking at a coupling. Upon further investigation, it was observed that an 'O' ring gasket was faulty. When the pump was turned on, the leak was visible. The technician with Smith & LaMountain, Inc. stated that the leak was in excess of 9 gallons per hour and therefore he classified it as a significant leak. Clean Harbors arrived on site and changed out the sorbents in the river.

On June 1, 2007, Clean Harbors, Inc. installed a recovery trench and well. Product was observed during the excavation process. The monitoring wells in the tank grave area were sampled and found to have product in them also. One well had approximately 9" of product in it and the other well had approximately 12" of product in it. To date, the total amount of product recovered from the wells was approximately 1,600 gallons. On June 5, 2007, Connecticut DEP was on site geoprobing to determine the extent of oil contamination at the site location. The case remains under the direction of the Emergency Response Unit of CT DEP. On June 6, 2007, Connecticut DEP had installed 11 monitoring wells with the well on the southern side of the property, closest to RT. 6, showing approximately 2.5' of product in it. Clean Harbors has recovered approximately 2,400 gallons of product from the underground storage tank monitoring wells and the dispenser sumps.

On June 8, 2007, Connecticut DEP geoprobed across the street from the incident location on RT.6, in front of Grella Well Drilling, where three wells were installed. No indication of product was found in those wells. On June 11, 2007, a site meeting was held at the incident location. Present at the meeting were Connecticut DEP reps, the supervisor for Clean Harbors, and the owner of the site. Subsurface recovery and installation was discussed at this meeting. Mr. [REDACTED], owner of the site, was advised that the second phase of recovery would proceed and he was asked if he was committed to his financial responsibility. He then requested a proposal of costs from Clean Harbors and once that was given, he would decide if he was financially committed. On June 13, 2007, Mr. [REDACTED] advised Connecticut DEP that he would not accept financial responsibility in order to proceed with the cleanup.

At this point, the claimant, Connecticut DEP, assumed financial responsibility for the cleanup and hired their contractor to handle the on-going response. Connecticut Tank Removal (CT Tank) was notified at approximately 1615 hrs on June 13, 2007 and the contractor was requested to be on site on June 14, 2007 at 0900 by the claimant. On June 14, 2007, CT Tank arrived on site and began immediate response work which consisted of pumping out the 18" recovery well with a vac truck and discussions of the installation of a recovery system began.

On June 18, 2007, Mr. [REDACTED] of Connecticut DEP contacted Mr. [REDACTED] of the United States Environmental Protection Agency (USEPA), Federal On Scene Coordinator (FOSC) for the incident location and advised that they were taking over the response activities at the site location because the responsible party has stated that he could no longer fund cleanup costs. Later, at the request of FOSC [REDACTED], Mr. [REDACTED] of USEPA contacted the claimant on June 19, 2007 to further coordinate the cleanup activities at the site. Connecticut DEP informed the FOSC that the release occurred from the supply line of an underground storage tank which migrated into the ground and subsequently into the abutting Pequabuck River, a navigable waterway of the US.

The National Pollution Funds Center (NPFC) notified the responsible party, Mr. [REDACTED] via a letter dated March 19, 2009, advising Mr. [REDACTED] that a claim has been submitted for reimbursement and to provide any circumstances, explanations, or justifications he wants considered before the adjudication is completed. To date, the responsible party has not responded to the notification letter.

2. Description of removal activities: On June 13, 2007, CT Tank was hired as the primary contractor for Connecticut DEP to handle the response activities associated with this incident. The contractor's response activities include but are not limited to, vacuuming monitoring wells, performing sample analysis, operation of a portable system to pump and treat contaminated water that continues to threaten the Pequabuck River, a navigable waterway of the US, maintain boom as needed, perform proper disposal when necessary, and inspect the system periodically. This claim submission is for the second phase of this response and covers the period of January 1, 2008 through September 4, 2008.

3. The Claim: On February 2, 2009, Connecticut DEP submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$210,929.77 for the services provided to Mr. [REDACTED], owner of Mayfair Garage from January 1, 2008 through September 4, 2008. This claim is for removal costs based on the contracted rate schedule in place with Connecticut DEP at the time services were provided.

This claim consists of copies of the invoicing and associated dailies, disposal manifests, contracted rate schedules, Connecticut DEP Spill Summary Report, NRC report, sample analysis

and associated results and EPA FOOSC coordination. 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 FOOSC, and (4) whether the costs were adequately documented.

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. The FOSC has provided FOSC coordination. A coordination statement has been provided via email dated March 19, 2009 from Mr. [REDACTED]. (See, Enclosure 1).
2. The incident involved the discharge and continuing substantial threat of 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 on time.
5. Presentment of costs to the RP was made on November 28, 2007, prior to the submission of the claim. The NPFC also made presentment of costs to the RP on March 19, 2009.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of 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 with the exception of the following: (See, Enclosure 2 – Summary of Vendors)
 - a. United Industrial Service invoice # 322077, on 2/27/08, deny \$667.30 as FOSC states that the work performed was not within the time period of response;
 - b. United Industrial Service invoice # 322819, on 2/29/08, deny \$852.60 as FOSC states the work performed was not within the time period of response;
 - c. United Industrial Services invoice # 317041, on 11/30/07, deny \$318.10 as FOSC states the work performed was not within the time period of response;
 - d. CT Tank invoice # 111977, on 2/5/08, deny \$119.00 as improper labor category was billed –operator should have been a technician; on 2/11/08, deny \$126.00 as improper labor category was billed –operator should have been a technician; on 2/27/08, deny \$126.00 as improper labor category was billed –operator should have been a technician;
 - e. CT Tank invoice # 112119, on 3/19/08, deny \$206.50 x 3 for [REDACTED] and [REDACTED] were billed improperly as operators when they should have been billed as technicians; on 3/20/08, deny \$63.00 as improper labor category was billed – operator

should have been a technician; on 3/21/08, deny \$91.00 as improper labor category was billed – operator should have been a technician;

f. CT Tank invoice # 112579, on 7/3/08, deny \$119.00 as improper labor category billed – operator should have been a technician;

g. CT Tank invoice # 112393, on 5/8/08, deny \$63.00 as improper labor category billed – operator should have been a technician;

h. CT Tank invoice # 112219, on 4/2/08, deny \$98.00 as improper labor category billed – operator should have been a technician;

i. CT Tank invoice # 112777, on 9/4/08, deny \$112.00 as improper labor category billed – operator should have been a technician;

j. Ct Tank invoice # 111851, on 1/11/08 - \$92.00 as improper labor category billed - Operator should have been Tech; on 1/23/08 - \$84.00 as improper labor category billed - Operator should have been Tech; on 1/28/08 - \$35.00 as improper labor category billed - Operator should have been Tech; on 1/22/08 - \$70.00 as improper labor category billed - Operator should have been Tech; on 1/22/08 - \$269.50 as improper labor category billed for ██████████ - Operator should have been Tech; on 1/22/08 - \$164.00 as improper labor category billed for ██████████ - Operator should have been Tech; on 1/22/08 - \$630.04 improper charge for utility truck - equipment was not on site

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.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$206,077.23 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# 908102-002. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of, January 1, 2008 through September 4, 2008. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

During the adjudication process and prior to the actual claim submission, the Claims Manager worked with the claimant and the EPA FOSC in order to discuss the actions performed since the EPA FOSC never actually went to the spill location but rather was kept informed verbally as the response continued. Prior to the claim being officially submitted to the NPFC, the claimant sent a full claim package to the EPA FOSC for review of the actions and services rendered. The EPA FOSC spoke with the Claims Manager on several occasions and advised that he concurs that the long term response actions associated with the operation and maintenance of the treatment system that was installed, was in fact necessary to mitigate the ongoing threat of contamination to the nearby waterway.

The Claims Manager and the EPA FOSC has determined that the long term operation and maintenance of the temporary treatment system that is currently in place is reasonable and necessary to continue mitigating the substantial threat. The claimant has substantiated the need for the ongoing response action by way of sample analysis which demonstrates the continuing presence of oil at an actionable level.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$206,077.23 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 908102-002. 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.

AMOUNT: \$206,077.23

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: