

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/5/2009
Claim Number	: 909066-001
Claimant	: State of Connecticut
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$4,961.03

FACTS:

1. Oil Spill Incident: On May 7, 2005, Connecticut Department of Environmental Protection (CT DEP) Response Officers were dispatched to Rt. 5 and Rt. 140 in East Windsor, CT for a release of diesel fuel from a tractor-trailer truck that struck a curb, damaging a fitting on the fuel tank. The truck proceeded up Rt. 140, leaving a trail of diesel along the roadway surface and subsequently impacting a storm drain. CT DEP determined that there was a need to hire a contractor since the subject truck was from an out-of-state company and the owner/passenger, [REDACTED], seemed to be giving inconsistent information to the police officer that were on scene. CT DEP obtained approval to hire Environmental Services, Inc. (ESI) for the emergency cleanup. CT DEP made proper notification to the National Response Center (NRC) via report # 758031. Due to the proximity of the accident site to the Connecticut River, a navigable waterway of the US, immediate notification to the Federal On Scene Coordinator (FOSC) was made as a follow up to the NRC notification. CT DEP presented the bills to both the carrier and owner. To date, no payments have been made.

2. Description of removal actions: ESI, cleanup contractor, arrived on scene at approximately 1930 hrs. The contractor evacuated both saddle tanks on the tractor-trailer (approximately 125-gallons in each tank) so that it could be safely towed from the accident scene. The driver side fuel tank had struck the curbing when the driver attempted to pull into a Burger King restaurant. A fitting on the bottom of the tank snapped off causing the release of diesel fuel. ESI evacuated the diesel and water from the impacted catch basin and then used the turbo vac to remove as much sludge as possible to eliminate any amount of diesel residue trapped in the basin. They then swept up and removed approximately 2 yards of sand deployed earlier to contain the spill.

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 \$4,961.03 for the services. 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, and EPA FOSC 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 via a log entry dated 12/7/07 and verbally at the time of the incident.
2. The incident involved the discharge and 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 prior to the submission of the claim. The NPFC also made presentment of costs to the RP.
6. 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 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.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$4,961.03 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# 909066-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident. 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 \$4,961.03 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 909066-001. 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: \$4,961.03

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: