

CLAIM SUMMARY / DETERMINATION FORM

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| Date | : 4/29/2010 |
| Claim Number | : 910074-001 |
| Claimant | : McVac Environmental Services, Inc |
| Type of Claimant | : OSRO |
| Type of Claim | : Removal Costs |
| Claim Manager | : ██████████ |
| Amount Requested | : \$38,839.05 |

FACTS:

- 1. Oil Spill Incident:** On Wednesday, November 25, 2009, at 236 Forest Road in West Haven, Connecticut, Budget Transmission Center (Budget) moved a partially full 330 gallon waste oil tank from their former location due to a fire that made the property unfit to occupy. Budget's owner, ██████████, had two of his employees move the tank from the building onto his flatbed truck to transfer the tank to his current place of business. While moving the tank, it rolled over, causing oil to discharge onto the roadways, driveways and several catch basins in the area. It was determined that between 100 to 150 gallons of oil were discharged. The oil flowed down the storm drain that leads to Horseshoe Lagoon. Horseshoe Lagoon is a direct tributary to the West Haven River. The West Haven River runs into the Long Island Sound, a navigable waterway of the United States.

The West Haven Fire Department (WHFD) reported the incident to the Connecticut Department of Environmental Protection (CTDEP). The State On-Scene Coordinator (SOSC), ██████████, coordinated with WHFD Fire Chief ██████████. Fire Chief Massaro informed the SOSC that a witness observed Budget employees directing the discharged oil from the roadway into the catch basin at the intersection of David Street and Forest Road. The SOSC and Chief ██████████ called the West Haven Police Department (WHPD), the Connecticut Department of Transportation (CTDOT), and the City of West Haven Department of Public Works (WHDPW) in the incident. Mr. ██████████ arrived at the site and informed the SOSC that he had contracted McVac Environmental Services, Incorporated (McVac) for the cleanup, as they had been hired by Mr. ██████████ and property owner ██████████ one month earlier for cleanup after the fire. Mr. ██████████ declined to assume any financial responsibility for the cleanup.

CTDOT, WHDPW and ██████████ arrived on site and received their scope of work from the SOSC. The scope of work for CTDOT and WHDPW was to sand and sweep the affected road surfaces of Forest Road, Davis Street and Hugo Street. ██████████'s scope of work included assisting CTDOT and WHDPW, as well as deploying sorbent boom, oil removal and cleanup.

When the SOSC determined that the spill had been contained, he requested ██████████ return to the site at 8:00 am on Wednesday, November 26, 2009 to inspect the Horseshoe Lagoon and replace any sorbent materials as needed. On November 26, 2009, ██████████ informed the SOSC that the spill had been contained and that several sections of the sorbent boom needed replacing. The SOSC requested ██████████ return to the incident site on November 27, 2009 to inspect the outfall, as inclement weather was pending.

On Thursday, November 27, 2009, the National Response Center was notified that a discharge into Horseshoe Lagoon occurred from the moving of a waste oil tank on Wednesday, November 25, 2009 and that boom had been deployed, but rainfall had made the boom ineffective.¹ The United States Coast Guard Pollution Investigators (PIs) MST1 [REDACTED] and MST3 [REDACTED] from Sector Long Island arrived at the incident site and found [REDACTED] conducting the cleanup under the direction of CTDEP. The PIs investigated the incident and issued a Notice of Federal Interest (NOFI) to Mr. [REDACTED] before leaving the incident site. Mr. [REDACTED] refused to sign the NOFI when it was presented to him, as documented by MST3 [REDACTED] and witnessed by MST1 [REDACTED].

The SOSC and Fire Chief inspected both the outfall and the drainage swale in the location before the West River. They discovered approximately fifty gallons of waste oil that appeared to be contained. When they inspected the location down gradient of the drainage swale, they discovered a petroleum sheen on the surface waters of the West River. The SOSC requested that [REDACTED] contain the discharge in the drainage swell; deploy additional sorbent boom; and that they return to the site on November 28, 2009 to inspect the areas. The SOSC also advised [REDACTED] that the sorbent and containment boom needed to stay in place for several rain events or until no further discharge or sheen was observed in the Horseshoe Lagoon.

The SOSC was contacted by the Federal On-Scene Coordinator (FOSC), [REDACTED], of the United States Environmental Protection Agency (USEPA) regarding the incident. He updated the FOSC as to the scope of work for the cleanup of the incident. The SOSC was advised by the FOSC that the scope of work was consistent with the National Contingency Plan (NCP).

On November 28, 2009 the SOSC returned to the Horseshoe Lagoon outfall and discovered a petroleum sheen discharging from the outfall pipe. He determined that [REDACTED] would be required to monitor the site for several rainfalls, until there was no further discharge of petroleum.

On December 17, 2009, [REDACTED] informed the SOSC that all sorbent boom and containment boom had been removed from Horseshoe Lagoon and that the discharge was gone.

Description of Removal Activities for this Claim: On November 25, 2009, [REDACTED] arrived on site at the former location of Budget Transmission for cleanup of the oil spill. [REDACTED]'s scope of work was to assist CTDOT and WHDPW collect waste oil saturated sand from the road; assist WHDPW deploy sorbent boom at the Horseshoe Lagoon outfall; empty all remaining oil from the tank on the rear of the flatbed truck; remove oil from impacted catch basins at the intersection of Forest Road and David Street, and from Hugo Street; deploy speedi dri to the asphalt parking areas affected by the spill on the Budget property; and use sorbent pads to clean the surface of the Budget flatbed truck to remove any residual oil.

On November 26, 2009, [REDACTED] replaced several sections of sorbent boom. The SOSC requested [REDACTED] return to the incident site on November 27, 2009 to inspect the outfall, as inclement weather was pending.

¹ See NRC Report #924705.

On November 27, 2009, ██████ was already on-scene to inspect the outfall and had deployed containment boom at the outfall of Horseshoe Lagoon in the area before the West River, due to the inclement weather and tide depth fluctuations.

On November 28, 2009, by requirement of the SOSC, ██████ began monitoring the outfall of Horseshoe Lagoon for several rainfalls until no further discharge was detected.

On December 17, 2010 ██████ removed all sorbent and containment boom from the incident site. No further discharge was detected.

2. **The Claim:** On February 17, 2010, ██████ submitted a removal cost claim to the NPFC, for reimbursement of their uncompensated removal costs in the amount of \$38,839.05.

The claim consists of the Connecticut Emergency Response and Spill Prevention Division Emergency Incident Report; the Connecticut Department of Environmental Protection Bureau of Materials Management & Compliance Assurance Emergency Incident Field Report; Extended Spill Summary Report regarding NRC Report #924705; NRC Report #924705; MISLE Case History Report; 11/27/09 NOFI to RP; 11/25/09 West Haven Fire Department report from the National Fire Incident Reporting System (NFIRS); 11/27/09 West Haven Fire Department report from NFIRS; a statement from Claimant regarding RP's refusal of invoice on 12/21/09; daily work logs (dailies); and invoices for third party services.

On March 11, 2010, after receiving his RP Notification Letter, ██████ called and stated that the claimant left the tank in the building after the fire cleanup. CTDEP told him the tank must be removed from the fire damaged building. He assumed that the tank was empty, but it was not, and the oil spilled. He stated that the claimant did clean up the spill, but he assumed the claimant was responsible for the costs because they left the tank in the building.

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 coordination was provided by ██████████ of the United States Environmental Protection Agency Region - I.
2. The incident involved the 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. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that some 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 as set forth below.
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as “Compensation Allowable” under 33 CFR§ 136.205.

B. Analysis:

The NPFC Claims Manager has 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 FOOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager also review additional documentation retrieved from the Coast Guard database, MISLE.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$38,839.05 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 #910074-001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on November 25, 2009. 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 determines that the OSLTF will pay \$38,839.05 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 910074-001. 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 Claimant.

AMOUNT: \$38,839.05

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *6/10/10*

Supervisor Action: *Approved*

Supervisor’s Comments: