

CLAIM SUMMARY / DETERMINATION

Claim Number:	915015-0001
Claimant:	Connecticut Tank Removal, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$48,210.35

FACTS:

Oil Spill Incident:

On April 2, 2014, a fire broke out on-board the Motor Yacht GRAND CREW at the Avalon Marina, Stamford, CT. The fire spread from the GRAND CREW onto a 2nd vessel, resulting in both vessels sinking at the dock and discharging diesel fuel and oil into Stamford Harbor, a navigable waterway of the United States. The Stamford Fire Department was the first on-scene and placed hard boom around both sunken vessels. [REDACTED] owner of the GRAND CREW accepted responsibility for the discharge of oil and hired Connecticut Tank Removal, Inc (CTR) to respond and perform pollution removal activities from the surface of the harbor.¹

On April 3, 2014, [REDACTED], signed an Agreement for Emergency Services with CTR, acknowledging CTR's standard rates and agreeing to pay for CTR's services and response to the spill.²

The Claim and the Claimant:

On November 12, 2014, CTR presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs as represented by CTR invoice #123797 in the amount of \$53,210.35. This was for work completed from April 3, 2014 – April 21, 2014. This invoice was originally presented to the owner of the GRAND CREW, [REDACTED] on May 14, 2014.³ Upon review of the claim by the NPFC claims manager, it was determined that CTR had received a \$5,000.00 deposit from [REDACTED] on April 3, 2014, as a down payment for services to be provided. However, this \$5,000.00 was never credited on CTR invoice #123797 and shouldn't have been included in CTR's uncompensated removal cost claim. CTR was notified and responded that they were aware of the mistake but based upon previous claims with the NPFC, had submitted the extra costs as the NPFC typically shortened cleanup contractors for their market rates. CTR was notified by the claims manager that the \$5,000.00 was not a valid uncompensated removal cost and instructed them to request a reduction to their sum certain. On November 25, 2014, CTR sent an email to the claims manager requesting their sum certain be reduced by

¹ See CT Emergency Incident Field Report submitted by [REDACTED] CT Emergency Response Unit, dated April 2, 2014.

² See Connecticut Tank Removal Agreement for Emergency Services signed by [REDACTED] representative of [REDACTED] dated April 3, 2014.

³ See NPFC Standard Claim Form dated November 12, 2014.

\$5,000.00, making their new sum certain \$48,210.35.⁴

Description of Claimant's Removal Activities:

Pursuant to the CTR Agreement for Emergency Services signed by [REDACTED] [REDACTED] CTR initiated removal activities on April 3, 2014. Sorbent boom was placed inside of the Fire Department's hard boom and the discharge of oil from the sunken vessels was managed with the use of a vacuum truck and sorbent materials. CTR attended the spill site on numerous occasions and completed their removal activities, to include total demobilization of all of their equipment and the return of the Fire Department's hard boom on April 21, 2014.⁵

US Coast Guard Sector Long Island Sound attended removal activities sporadically during the tenure of the cleanup and determined that the removal actions were consistent with the National Contingency Plan.⁶

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), each 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 navigable waters or adjoining shorelines or the exclusive economic zone is liable for removal costs and damages specified in subsection (b) of this section that result from such incident.

"Incident" means "any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil." 33 USC § 2701(14).

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".

"Removal costs" means "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 such an incident." 33 USC § 2701(31).

"Remove" or "removal" means "containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines and beaches." 33 USC § 2701(30).

⁴ See email from [REDACTED] CTR to [REDACTED] NPFC Claims Manager dated November 25, 2014.

⁵ See NPFC Standard Claim Form dated November 12, 2014.

⁶ See email from [REDACTED] Sector Long Island Sound to [REDACTED], NPFC Claims Manager dated November 20, 2014.

The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this Act against the Fund. 33 USC § 2713(e). The Claims Regulations are found at 33 CFR Part 136.

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.

Except as provided in subsection (b) of this section, all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714(a) of this title 33 USC § 2713(a).

If the claim is presented in accordance with subsection (a) of this section and the claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was pursuant to section 2714(b) of this title, whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund. 33 USC § 2713(c)(2).

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. Findings of Fact:

1. CG Sector Long Island Sound provided sporadic oversight for the removal activities and has confirmed that the removal activities were conducted in accordance with the National Contingency Plan.⁷ 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 to “navigable waters.”
3. The claim was properly presented to the responsible party, who has denied the claim.
4. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed costs.
5. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.
6. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP and that the removal costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

The 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 National Contingency Plan or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident as directed by the FOSC. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or contractual agreements in place at the time the services were rendered and were determined by the FOSC to be consistent with the NCP. The only costs denied by the NPFC were for erroneous overtime charges billed by the Claimant.⁸

There were additional disposal costs incurred by the Claimant that were never billed to [REDACTED] that were identified during the NPFC’s request for additional information. The Claimant states that these transportation and disposal costs were incurred on April 11, 2014, and total approximately \$927.57 (not including markup and insurance/fuel surcharge).⁹ The Acceptance/Release

⁷See email from [REDACTED] Sector Long Island Sound to [REDACTED], NPFC Claims Manager dated November 20, 2014.

⁸ See NPFC Summary of Costs spreadsheet.

⁹ See email from [REDACTED] CTR to [REDACTED] NPFC dated December 1, 2014.

Agreement has been amended to carve out the additional costs in the event the Claimant is unsuccessful in recovering these transportation and disposal costs from the RP and decides to submit a supplemental claim.

DETERMINATION AMOUNT:

The NPFC hereby determines that it will offer \$48,099.10 as full compensation for the removal costs incurred by the Claimant and submitted to the NPFC under claim 915015-0001. All costs claimed are for uncompensated 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 Claimants.

AMOUNT: \$48,099.10

Claim Supervisor:

Date of Supervisor's review: *December 2, 2014*

Supervisor Action: *Approved*

Supervisor's Comments: