CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914025-0001
Claimant	: State of Connecticut – DEEP
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Mark Erbe
Amount Requested	: $3,652.50

FACTS:

1. ***Oil Spill Incident:*** On August 27, 2013, Emergency Response Coordinator Ken LeClerc of the State of Connecticut Department of Environmental Protection (CTDEP) was dispatched to the scene of a jackknifed tractor-trailer on Interstate 84 in Waterbury, CT. Mr. LeClerc observed a discharge of approximately 50 gallons of diesel fuel from the tractor's saddle tanks on the highway and flowing into three storm-water catch basins. The catch basins drain into the Naugatuck River, a tributary of Long Island Sound and a navigable waterway of the United States.

2. CTDEP reported the incident to the National Response Center #1058308. The Connecticut State Police (CPT) informed Mr. LeClerc that Augustine Rodriquez of Elmwood, NJ, who operated the tractor-truck, was taken to a nearby hospital. CTDEP then hired McVac Environmental Services, Inc., of Hartford, CT to remove the diesel fuel and assigned CTDEP case #2013-04545 to the incident.

3. ***Responsible Party:*** All Piers Trans, Inc., of Elizabeth, NJ was identified by the Connecticut State Police as the registered owner of the vehicle.[1] On January 7, 2014, CTDEP sent a certified Letter of Collection, to All Piers Trans, Inc., notifying All Piers Trans, Inc., that it is a responsible party for the incident. CTDEP informed All Piers Trans, Inc., of the state's uncompensated removal claim and included supporting cost documentation. Also, on January 7, 2014, CTDEP sent a certified Letter of Collection to Mr. Rodriquez that designated him a responsible party and included CTDEP's cost documentation. At this time neither party has contacted CTDEP.

4. ***Description of Removal Actions:*** To prevent the diesel fuel from entering the Naugatuck River, three McVac field technicians removed the residual diesel fuel from the saddle tanks and applied Speedi-Dry to absorb the fuel. CT Department of Transportation (DOT) placed dirt to stop the flow of fuel into the catch basins. The diesel saturated Speedi-Dry and dirt mixture was swept up by a DOT street-sweeper. The DOT vehicle was taken to a nearby DOT parking lot where McVac removed the mixture from the sweeper's container and decontaminated it. McVac transported the diesel waste mixture to Tradebe Treatment & Recycling of Bridgeport, LLC where it was disposed.

5. ***The Claim:*** On February 26, 2014, the National Pollution Funds Center (NPFC) received CTDEP's claim for uncompensated removal costs in sum certain of $3,652.50. CTDEP submitted documentation showing that it had to hire McVac Environmental Services, Inc., to prevent the discharge of oil into a navigable waterway. CTDEP submitted supporting documentation for its costs to remove the diesel fuel from the road and catch basins including waste disposal costs.

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[1] See CT State Police Summary CFS#1300537734

Documents submitted by CTDEP include its Emergency Incident Field Report with narrative, an aerial map showing the proximity of the accident to the Naugatuck River along with some photos of the accident. CTDEP submitted its Cost Recovery Case Tracking Forms, along with invoices, a daily and a Bill of Lading. CTDEP included an invoice for disposal of 250 gallons of waste oil mixture. CTDEP submits as proof of payment its Voucher for Goods or Services Rendered and Verified & Approved form showing that it hired and paid McVac Environmental's invoice #2577810 for $ 3,652.50 to remove of the oil spill. A copy of Tradebe Treatment & Recycling of Bridgeport invoice #137412 for $627.50 shows disposal costs of 250 gallons of mixed diesel and Speedi-Dry. The two invoices total $3,652.00. CTDET submitted a copy of its Financial Report signed by Mark DeCaprio, Director of the Emergency Response and Spill Prevention Division of CTDEP certifying that all cost were incurred and paid by the state. Also, there is a copy of the CT State Police Accident Summary and a copy of the National Response Center Incident Report (#1058308).

Additionally, CTDEP submitted copies of two certified letters dated January 7, 2014. One was sent to All Piers Trans, Inc., as the owner of the vehicle and designating it as a responsible party. The second letter was sent to Mr. Rodriquez, the operator, notifying him that he is a responsible party for the incident. CTDEP provided copies of invoices and proof of payment.

6. ***Federal On-Scene Coordination:*** Page two of CTDEP's Emergency Incident Field Report indicates coordination was made with the US Environmental Protection Agency. Mr. Pasquerella of the EPA verbally coordinated CTDEP's actions were consistent with the National Contingency Plan (NCP).[2]

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

[2] See CTDEP Emergency Field Report Pg 2 under FOSC Coordination checked Yes

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. NPFC CA reviewed the cost invoices and dailies to verify that CTDEP incurred costs as 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.

2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters. 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.

3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)

4. 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 cost invoices and dailies to verify that CTDEP incurred costs as 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.

Upon review of the claim submission, the NPFC determined the costs presented were incurred and billed in accordance with the rate schedule in effect at the time the services.[3] The NPFC Claims Manager reviewed the documentation submitted by CTDEP and finds that the actions taken by the Claimant and its contractors, were reasonable and necessary in order to prevent the further discharge of diesel fuel into a navigable waterway.

The Claimant submitted a waste disposal manifest documenting proper disposal of the hazardous waste.[4]

Claimant represents that all costs claimed are for uncompensated removal costs that were incurred by the Claimant from the incident on August 27, 2013. Because the responsible party was in the hospital the CTDEP investigated the source of the discharge and assumed financial responsibility for the cleanup. Claimant represents that all costs submitted were paid by CTDEP as removal costs, and payable by the Oil Spill Liability Trust Fund (Fund) as presented by the Claimant.

Based on the above, the Claims Manager hereby determines that the CTDEP did in fact incur $3,652.50 in uncompensated removal costs and that this amount is payable by the Fund as full compensation for reimbursable removal costs incurred by the CTDEP and presented to the NPFC under claim #914025-0001.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay $3,652.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 914205-0001. All costs claimed and presented by the CTDEP are costs paid by the CTDEP for removal actions as defined under OPA and, are compensable removal costs payable by the OSLTF.

AMOUNT: $3,652.00

Claim Supervisor: Donn[redacted]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

[3] Copy of McVac rates are on CTDEP website

[4] See copies of Tradebe waste manifest and lab analysis in admin record