

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E10516-0002
Claimant	: K+S Services, Inc
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$10,011.96

Facts:

On March 30, 2010, the United States Environmental Protection Agency (USEPA) and the Michigan Department of Natural Resources & Environmental (MDNR) contacted the Claimant, K+S Services (K+S or Claimant) to inform them that petroleum oil was identified on their property near the southeast corner of Eureka and Huron Street in Taylor, Michigan. The petroleum was found in the west right-of-way (ROW) drainage ditch, at approximately milepost 5.1-5.2 in the Dearborn Subdivision. The oil moved toward the Frank & Poet Drain which is a nexus to Gibraltar Bay, a navigable waterway of the United States.

The site consists of a small surface water drainage ditch that runs north/south between the address of 20401 Gladwin Avenue, 15200 and 15801 Huron Street and a Canadian National railroad track. Approximately 800 feet of ditch line was affected. The ditch contained open water for approximately 200 feet; then transitioned to a covered drain tile pipe for the remainder of the ditch run until converging with the Frank and Poet Drain upstream of a railroad bridge.¹

Claimant contracted with Arcadis as their Spill Management Team (SMT) and Environmental response Group (ERG) for removal of the petroleum product from the drainage ditch.

Responsible Party:

USEPA determined that the petroleum was a result of illegal dumping and no responsible party was identified. Because the impact was on Claimant's property, the USEPA (OSC) requested Claimant to assume responsibility for the ditch remediation. K+S complied with the USEPA and initiated cleanup efforts with the guidance from the USEPA and MDNRE.

Claimant and Claim Description:

K+S presented this claim to the National Pollution Funds Center (NPFC) on April 2, 2012, seeking reimbursement of their uncompensated removal costs in the amount of \$10,011.96.

K+S provided the following in their original claim submission: Optional OSLTF Claim Form, a summary of the cleanup activities, an American Express invoice to positively show proof of payment to ERG [REDACTED] Legal Services invoices with proof of payment,² an invoice and proof of payment³ from Arcadis Services, an additional witness list, ERG Invoice # 257, ERG Daily Job tickets,⁴ and an ERG Price List effective 8/8/08.

¹ POLREP #1 AND POLREP #2

² Check # 277087

³ Check # 278505

⁴ Ticket # 001026, dated 3/26/10 and Ticket # 001128, dated 3/27/10

Request for Reconsideration:

On July 26, 2012, Claimant requested reconsideration of their claim via email.⁵ As part of the Reconsideration Package submitted by Claimant; a 2009 Arcadis rate schedule was provided as well as a brief narrative as to what actions his Attorney, ██████████ took while an RP was trying to be established. The Arcadis rate schedule was not provided during the initial claim submission. Also, it was unclear at the time of the initial claim as to what the Attorney was actually doing during the response. Claimant's narrative that was provided under Reconsideration explains what actions the Attorney provided to the Claimant while an RP was being determined.⁶

NPFC Removal Costs Determination Reconsideration:

Under 33 CFR 136.105(a) and 136.105(e)(6), Claimant bears the burden of providing the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Further, a request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d). As noted above a claimant must establish the criteria provided in 33 CFR § 136.203 for removal costs claims.

The NPFC's analysis on reconsideration was a *de novo* review of the Claimant's entire claim submission.

Determination of removal Costs on Reconsideration:

A. Findings of Facts:

1. The removal actions were coordinated with the USEPA as evidenced by POLREP #1 and POLREP #2. The FOSC for this incident determined that the actions undertaken by the claimant were deemed consistent with the NCP. 33 U.S.C §§2702(b)(1)(B) and 2712(a)(4);
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. The claim was submitted within the six-year period of limitation for claims. 33 U.S.C. §2712(h)(2);
4. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205. The Claims Manager also identified denied costs and the grounds for denial.

B. Analysis:

The NPFC Claims Manager has reviewed the actual cost documents 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, and (4) whether the costs were adequately documented and reasonable.

⁵ Reconsideration request email dtd July 26, 2012

⁶ See Reconsideration request.

The NPFC has determined on reconsideration that the majority of the removal costs incurred by the Claimant and its associated vendors were reasonable and necessary in order to mitigate the effects of the incident. Upon reconsideration and in consideration of the information provided by the Claimant, the NPFC has determined that the costs billed and presented to the Fund for reimbursement are deemed reasonable and consistent with the NCP except those denied costs indicated below.

Itemization of Denied Costs:

Claimant provided Butzel Long Invoice # 8466898 for services provided by Claimant's Attorney. The first line item on the invoice dated 3/28/10, for calls with regards to oil spill and Clean Water Act research and OPA defenses are not OPA compensable as the Oil Pollution Act does not compensate these type of activities as response costs. Furthermore, a charge for copies in the amount of \$3.96 on the same [REDACTED] invoice are deemed non-OPA compensable charges as OPA does not pay for costs associated with the preparation of the claim. 33 CFR § 136.205(d)(8). Therefore the above listed costs associated with this invoice are hereby denied.⁷

Total Amount Denied = \$439.65

The NPFC hereby determines that \$9,572.31 is payable by the OSLTF as full compensation for reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # E10516-0002. All costs claimed are for charges paid for by Claimant for removal actions as that term is defined in OPA and are compensable removal costs payable by the OSLTF is presented by Claimant.

DETERMINED AMOUNT: \$9,572.31

<p>Claim Supervisor</p>	<p>[REDACTED]</p>
<p>Date of Supervisor's Review: 7/31/12</p>	
<p>Supervisor Action: <i>Reconsideration approved</i></p>	
<p>Supervisor's Comments:</p>	

⁷ [REDACTED] Invoices # 8466898.