

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914101-0001
Claimant	: Kropp Environmental Contractors, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$45,222.85

FACTS:

A. Oil Spill Incident:

The National Response Center (NRC) reports that on November 6, 2013, the tiger loop on a furnace located in the Brushmill by the Waterfall Restaurant caused a release of fuel oil to the Pattaconk Brook, which flows into the Connecticut River, a navigable waterway of the United States. It is estimated that 400 gallons of #2 fuel oil were released from the boiler room at the site, located directly above the Pattaconk Brook, also a navigable waterway immediately downstream of Pattaconk Dam #3. The Connecticut Department of Environmental Protection (CTDEEP) responded and initially placed sorbent padding and boom, then hired Kropp Environmental Contractors, Inc. (KEC) to perform response actions.

This incident was reported to the National Response Center (NRC) via Report # 1065052.¹ The Responsible Party for this incident has been identified as Brush Mill by the Waterfall, LLC. The NPFC issued an RP Notification Letter to the RP on August 13, 2014. To date, no response has been received.²

B. Description of removal actions performed:

The Claimant, KEC, arrived on-scene and immediately applied absorbent compound to the boiler room floor. Over the course of the next few days, they also vacuumed oil/water mixture and oil-coated leaf litter from the surface of the brook; placed several supplemental rows of absorbent booms across the brook; placed absorbent pads along the banks of the brook; removed and replaced spent absorbent materials; containerized spent absorbent materials; and off-loaded oil/water mixture into the frac tank as needed to facilitate continuous removal of oil-water mixture from the brook.

From November 18, 2013 through January 6, 2014, KEC intermittently checked the boom and padding that was in place and replaced it on an as needed basis. Additionally, it removed oily water and debris into drums, where they were transported for disposal. On January 8 and February 6, 2014, KEC cleaned and removed the oily debris and water that was left in the frac tanks for disposal, completing the cleanup and removal activities at this time.

C. The Claim: On February 20, 2014, KEC submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$45,222.85 for the services provided from November 6, 2013 through February 6, 2014. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim file.

¹ See, NRC Report # 1065052.

² See, NPFC RP Notification Letter dated August 13, 2014.

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 FOSC, and (4) whether the costs were adequately documented.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), a 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 is liable for removal costs and damages resulting from such incident.

"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" 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". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

"Claimant" means "any person or government who presents a claim for compensation under this subchapter." 33 USC § 2701(4).

33 USC § 2712(f), which is entitled "Rights of Subrogation," provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

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 136.203, the claimant bears the burden to prove the removal costs 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 NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. 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. A Responsible Party has been identified. 33 U.S.C. § 2701(32).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The USCG Sector Long Island Sound was made aware of the incident via the NRC. Additionally, CTDEEP, in its capacity as the State On Scene Coordinator (SOSC), was present on-scene for the initial and on-going response. KEC provided its dailies, invoicing, CTDEEP Field Reports and pictures detailing the work performed. These were deemed reasonable in order to accomplish the response objective. The contractor rate schedule in place at the time services were rendered were reviewed and cross-checked. Oversight was performed by CTDEEP, who performed investigation activities which are documented under CTDEEP Emergency Incident Field Report Case # 13-05901. Therefore, the work performed has been deemed reasonable, necessary and in accordance with the NCP in order to mitigate the effects of the oil spill.

Based on the evidence in this claim submission for the actions undertaken by KEC, the Claims Manager hereby determines that the Claimant incurred \$43,750.97 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by KEC and submitted to the NPFC under claim #914101-0001. \$1,471.88 in claimed costs are denied due to costs not covered under OPA. These denied costs are reflected in the attached summary of costs spreadsheet for this claim. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from November 6, 2013 through February 6, 2014. KEC represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount: \$43,750.97

The NPFC hereby determines that the OSLTF will pay \$43,750.97 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 914101-0001. 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. \$1,471.88 in claimed costs are denied.

Claim Supervisor:



Date of Supervisor's review: *9/16/14*

Supervisor Action: *Approved*

Supervisor's Comments: