

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : E13104-0001
Claimant : State of Connecticut Department of Energy and Environmental Protection
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : ██████████
Amount Requested : \$57,020.62

FACTS:

Oil Spill Incident: The United States Environmental Protection Agency (USEPA) Region I reports that on August 31, 2012, a sheen was reported in Turkey Brook, in an area which is located between two manufacturing facilities. Turkey Brook is a navigable waterway which leads to Steele Brook, which leads to Wattles Brook, which leads to Lake Winnemaug. The sheen was reported to the Connecticut Department of Energy and Environmental Protection (DEEP) who then sent a responder to the scene to gather more information and investigate the potential source of the spill.

Upon arrival at the scene, the DEEP deployed absorbent boom to mitigate further impact from the spill. The DEEP responder and the DEEP Site Assessment and Support Unit performed a subsurface investigation to determine the source of the oil released. They were able to confirm that the oil released was coming from oil floating on top of the groundwater which was migrating from underneath the building occupied by Quality Automatics at 20 McLennan Drive, making the operator of this facility the Responsible Party (RP) under the Oil Pollution Act (OPA). The owner of Quality Automatics assumed responsibility for the release and agreed to implement clean up and remediation actions with DEEP providing agency oversight.

On October 9, 2012, the RP contacted the DEEP, notifying them that it was financially unable to continue clean up actions at the site. DEEP assumed control of the spill cleanup and removal operations.

This incident was reported to the National Response Center via Report #1026857.

Description of removal actions performed: The Claimant, DEEP, assumed control of the response. The Contractor already on-scene, ESI, Inc. (ESI), informed DEEP that approximately 197 gallons of oil had been recovered from the recovery wells installed, along with 70 gallons of impacted water had also been recovered. ESI continued to remediate the release until December, when DEEP authorized the retaining of Alpine Environmental (AI) to continue mitigating and recovering the waste oil. Over the course of the next few months, AI changed out the absorbent boom in the brook as needed, installed recovery wells., installed oil recovery pumps (spill busters). On July 17, 2013, AI was informed to stop performing remedial work and on July 25, 2013, DEEP requested assistance from USEPA Region I, in order for them to assume the ongoing remedial work as oil continued to be recovered. Both the DEEP & EPA OSC walked the site and reviewed the ongoing remedial

work and site conditions and on August 22, 2013, the USEPA initiated remediation actions, and federalized the remaining response. No further DEEP Emergency Response Unit involvement was performed regarding this case. Approximately 200 gallons of oil had been recovered, though the actual amount of oil released remains unknown.

The Claim: On February 26, 2014, DEEP submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$57,020.62 for the services provided from October 2012 through August 21, 2013. 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.

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

APPLICABLE LAW:

"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).

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. FOSC Coordination has been established via US EPA Region I.¹ 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a 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 within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
5. Quality Automatics has been identified as the Responsible Party (RP).
6. 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).

¹ See US EPA Region I POLREP #1, dated 8/26/2013.

DEEP kept the US EPA Region I informed of all actions taken to cleanup and remove the oil from the water. It provided dailies and invoicing of costs from its contractors and subcontractors that were deemed reasonable to accomplish this objective. Additionally, when the Claimant no longer had the means to continue responding to this incident, the USEPA federalized the incident and took over management of the incident by opening a Federal Project under FPN E13104.

The NPFC issued an RP Notification to Quality Automatics on March 6, 2014.² The RP responded to the NPFC via a letter dated March 10, 2014 stating that they are in no financial position to pay the remaining claimed costs and therefore do not know how to proceed since they are doing everything they can to keep the business operating and also no bank will advance them funds to pay the remaining costs.³

Based on the foregoing, the Claims Manager hereby determines that the Claimant did incur \$57,005.00 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E13104-0001. It is important to note that the NPFC has denied \$15.62 in claimed costs as there is no explanation or supporting documentation of said costs. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from October 2012 through August 21, 2013. 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: \$57,005.00

The NPFC hereby determines that the OSLTF will pay \$57,005.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E13104-0001. 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. \$15.62 in claimed costs are denied.

Claim Supervisor: 

Date of Supervisor's review: *4/16/14*

Supervisor Action: *Approved*

Supervisor's Comments:

² See, NPFC RP Notification letter dated March 6, 2014.

³ See, RP letter to NPFC dated March 10, 2014.