

CLAIM SUMMARY / DETERMINATION

Claim Number:	921002-0001
Claimant:	Able Clean-up Technologies, Inc.
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$11,703.00
Action Taken:	Offer in the amount of \$10,503.00

EXECUTIVE SUMMARY:

At approximately 2000 local time on June 8, 2020, Mr. (b) (6) contacted the United States Coast Guard's National Response Center (NRC) to report the spill.¹ Idaho State Communications Center received notification from the National Response Center (NRC) via report # 1279191 stating that on June 8, 2020, oil and diesel fuel was dumped into Sheep Creek, a tributary of St. Marie's River, a navigable waterway of the United States.² Idaho Department of Environmental Quality (IDEQ) in its capacity as the State On Scene Coordinator (SOSC) identified (b) (6) and (b) (6)³ as the responsible parties as defined by the Oil Pollution Act of 1990 (OPA).⁴

Fernwood Fire Department responded to the incident and reported that approximately 2 – 5 gallons of oil was dumped in the creek and boom had been placed around the sheen.⁵ United States Environmental Protection Agency (U.S. EPA), Region 10 was the Federal On-Scene Coordinator (FOSC) for this oil spill incident.⁶ Additionally, the FOSC determined that IDEQ, in its capacity as the State On Scene Coordinator (SOSC), would have lead jurisdiction on the cleanup and agreed that the actions undertaken by Able Clean-up Technologies, Inc. (ACT) are consistent with the National Contingency Plan (NCP)⁷

Able Clean-up Technologies Inc. (ACT) was contracted by the Responsible Party (RP), Mr. (b) (6) (b) (6), to perform cleanup activities.⁸ ACT properly presented its invoice to the RP on November 10, 2020.⁹ The RP made a partial payment in the amount of \$2,000.00.¹⁰ The RP denied the ability to pay additional costs.¹¹ ACT presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$11,703.00.¹² The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$10,503.00 of the requested \$11,703.00 is compensable and offers this amount as full compensation of this claim.¹³

¹ NRC Report # 1279191 dated June 8, 2020.

² NRC Report # 1279191 dated June 8, 2020.

³ Benewah County Valuation Summary Sheet dated November 3, 2020 showing property ownership of property incident originated.

⁴ 33 U.S.C. § 2701(32).

⁵ Idaho State Communications Center Hazmat Report # H-2020-00107.

⁶ USEPA FOSC Coordination Email dated January 19, 2021.

⁷ USEPA FOSC Coordination Email dated January 19, 2021.

⁸ ACT Signed Job Order dated June 11, 2020.

⁹ Email from Claimant to NPFC dated November 10, 2020 Showing Email Presentment of Costs Forwarded to RP on November 10, 2020.

¹⁰ Copy of RP Payment dated August 2, 2020.

¹¹ RP letter to Claimant dated July 13, 2020, denying all Amounts in excess of \$2,000.00.

¹² 33 CFR 136.103(c)(2); Claim Submission Letter dated October 7, 2020 and Signed by (b) (6) and (b) (6).

¹³ 33 CFR 136.115.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On June 8, 2020, Mr. (b) (6) reported to the NRC via report # 1279191 that an individual dumped oil and diesel fuel into Sheep Creek.¹⁴ Sheep Creek is a tributary to the St. Marie's River and is .67 miles from the point of the release.¹⁵ St. Marie's River is a navigable waterway of the United States.

Responsible Party

The Responsible Party (RP) and property owners are Mr. and Mrs. (b) (6) of E Sheep Creek in Santa, Idaho, Benewah County.¹⁶ Idaho Department of Environmental Quality (IDEQ) in its capacity as the State On Scene Coordinator (SOSC) identified (b) (6)¹⁷ as the responsible party for the incident.¹⁸

Recovery Operations

On June 9, 2020, Fernwood Fire Department responded to the incident and reported that approximately 2 – 5 gallons of oil had been dumped in the creek. The fire department placed boom around the sheen until a contractor could respond.¹⁹

On June 11, 2020, ACT was contracted by the RP to perform cleanup activities which began the same day.²⁰ ACT arrived on scene with personnel and equipment on June 11, 2020. ACT deployed petroleum absorbent boom and pads to absorb the oil from the surface of Sheep Creek. ACT performed response activities on June 11, 16, 18, and 24th of 2020.²¹ ACT subcontracted with Northern Wildlife Services to wash 28 domestic geese.²²

ACT also subcontracted with Eurofins Environment Testing America to test the samples taken at the scene.²³ A soil sample was collected from the soil adjacent to the creek, where the spill occurred.²⁴ A second sample was collected from the soil approximately twenty (20) feet north of the spill site and analyzed.²⁵ Absorbent material containing oil and water was taken to a disposal facility in Medical Lake, Washington.²⁶

Clean up was completed to the satisfaction of the SOSC and the FOSC.²⁷

¹⁴ NRC Report # 1279191, dated June 8, 2020.

¹⁵ IDEQ CRO Response HAZMAT Report# 2020 – 00107, dated June 9, 2020 through June 24, 2020.

¹⁶ Benewah County Valuation Summary Sheet dated November 3, 2020 Showing Property Ownership.

¹⁷ Benewah County Valuation Summary Sheet dated November 3, 2020 Showing Property Ownership of Property Incident Originated.

¹⁸ Idaho State Communications Center Hazmat Report # H-2020-00107, Situation Status section.

¹⁹ Idaho State Communications Center Hazmat Report # H-2020-00107.

²⁰ ACT signed Job Order dated June 11, 2020.

²¹ ACT Job Logs dated June 11, 2020 through June 24, 2020.

²² Northern Wildlife Services Invoice# 2020-030 dated June 18, 2020.

²³ Eurofins Invoice # 5900004580 dated July 10, 2020.

²⁴ See, Analytical Results, Sample ID Number TM-C-2, sample date, June 24, 2020.

²⁵ See, Analytical Results, Sample ID Number TM-SAO-1, sample date, June 24, 2020.

²⁶ See, Disposal Ticket # 615662 dated June 26, 2020 and Disposal Ticket # 614771, dated June 17, 2020.

²⁷ USEPA FOSC coordination email dated January 19, 2021.

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁸ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.²⁹

ACT initially “hand delivered” its invoice to Mr. (b) (6).³⁰ ACT’s invoice number 20221 dated June 30, 2020 was delivered to Mr. (b) (6) as referenced in Mr. (b) (6)’ July 13, 2020 letter to ACT.³¹ The letter indicates that Mr. (b) (6) could only pay a maximum of \$2,000.00 toward the invoice 20221, dated June 30, 2020, due to financial hardship.³² On August 2, 2020, ACT received a check in the amount of \$2,000.00 from (b) (6) and (b) (6).³³

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after ninety days of receipt, a claimant may elect to present its claim to the NPFC.³⁴ On October 13, 2020, the NPFC received ACT’s submission for uncompensated removal costs.³⁵ During the review process of ACT’s submission, the NPFC noticed that ACT invoice number 20221, dated June 30, 2020 was not provided within ACT’s submission. Instead, invoice number 20221, dated July 1, 2020 was provided. ACT provided an invoice dated July 1, 2020 in its claim submission to the NPFC. There was no indication that the July 1, 2020 invoice contained in its claim submission to the NPFC had been properly presented to the RP. On October 16, 2020, the NPFC sent a certified letter to ACT explaining that ACT’s invoice 20221 dated June 30, 2020 was missing from its submission to the NPFC.³⁶ The NPFC requested a copy of the June 30, 2020 invoice from ACT.³⁷

On November 10, 2020, ACT forwarded an email to the NPFC which provided proof that ACT presented its invoice 20221 dated July 1, 2020, in the amount of \$11,703.00 to the RP on October 1, 2020.³⁸ The NPFC explained to ACT that they will have to wait 90 days from the date the RP received its July 1, 2020 invoice or upon receipt of a denial from the RP to pay all remaining costs. On January 4, 2021, the NPFC notified ACT that it would move forward to adjudicate its claim submission.³⁹

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).⁴⁰ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained

²⁸ 33 U.S.C. § 2701 *et seq.*

²⁹ 33 CFR 136.103.

³⁰ Email from ACT, to NPFC dated November 16, 2020.

³¹ RP Letter to ACT dated July 13, 2020.

³² RP letter to ACT dated July 13, 2020, page 33 of 50 of ACT’s claim submission.

³³ See, (b) (6) RP check number 1134, in the amount of \$2,000.00, dated August 2, 2020.

³⁴ 33 CFR 136.103.

³⁵ ACT’s submission to the NPFC dated October 7, 2020.

³⁶ NPFC letter to ACT dated October 16, 2020.

³⁷ Email from NPFC to ACT dated November 3, 2020.

³⁸ Email from ACT to NPFC dated November 10, 2020.

³⁹ Email from NPFC to ACT dated January 4, 2021.

⁴⁰ 33 CFR Part 136.

independently by the NPFC, and weighs its probative value when determining the facts of the claim.⁴¹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁴² If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.⁴³ An RP's liability is strict, joint, and several.⁴⁴ When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."⁴⁵ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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."⁴⁶ The term "remove" or "removal" means "containment and removal of oil [...] 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."⁴⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁹ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.⁵⁰

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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;

⁴¹ See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

⁴² See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

⁴³ 33 U.S.C. § 2702(a).

⁴⁴ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁴⁵ *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

⁴⁶ 33 U.S.C. § 2701(31).

⁴⁷ 33 U.S.C. § 2701(30).

⁴⁸ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁹ 33 CFR Part 136.

⁵⁰ 33 CFR 136.105.

- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.⁵¹
- (d) That the removal costs were uncompensated and reasonable.⁵²

The NPFC analyzed each of these factors and determined the majority of the costs incurred by ACT and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC determined all approved costs invoiced were billed in accordance with the rate schedule provided.⁵³ All approved costs were supported by adequate documentation which included invoices, proofs of payment, and were properly coordinated with the SOSC and determined to be reasonable, necessary and consistent with the NCP.⁵⁴

The amount of compensable costs is **\$10,503.00** while \$1,200.00 is deemed not compensable because the claimant invoiced for a spill response report which is its claim submission.⁵⁵ Additionally, the report is not outlined in the rate sheet and the NPFC does not pay for claim preparation.⁵⁶ Therefore, \$1,200.00 in ACT costs are denied.

Overall Denied Costs = \$1,200.00⁵⁷

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Able Clean-up Technologies, INC.'s request for uncompensated removal costs is approved in the amount of **\$10,503.00**

This determination is a settlement offer,⁵⁸ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵⁹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁶⁰ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

⁵¹ The FOSC handed the jurisdictional lead for cleanup oversight to IDEQ as the SOSC.

⁵² 33 CFR 136.203; 33 CFR 136.205.

⁵³ ACT's Equipment and Rate Schedule dated July 1, 2020.

⁵⁴ USEPA FOSC coordination email dated January 19, 2021.

⁵⁵ Email from ACT to NPFC dated January 19, 2021 with ACT Spill Response Report attached.

⁵⁶ 33 CFR Part 136.105(e)(8).

⁵⁷ See, Enclosure 3 NPFC Summary of Costs spreadsheet.

⁵⁸ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

⁵⁹ 33 CFR § 136.115(b).

⁶⁰ 33 CFR § 136.115(b).

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *2/12/2021*

Supervisor Action: *Offer Approved*