

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPP23002-URC001
Claimant:	Daniel J. Keating Company
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$8,502.72
Action Taken:	Offer in the amount of \$8,502.72

EXECUTIVE SUMMARY:

On November 29, 2022, at approximately 10:30 local time, (b) (6) from Daniel J. Keating Company (“Claimant”), made a notification to the National Response Center (NRC) of an unknown oil discharging out of a sewer system which leads to the Delaware River, a navigable waterway of the United States.²

At approximately, 1305 local time, United States Coast Guard (USCG) Sector Delaware Bay, in its capacity as the Federal On Scene Coordinator (FOSC) for the incident, received a National Response Center (NRC) notification of an oil discharge into the Delaware River immediately adjacent to a redevelopment construction project.³ Sector Delaware Bay Pollution Responders (PRs) responded to the scene and observed a 6,200 square yard oil sheen.⁴ The oil sheen was emanating from the Fairmount Avenue sewer system outfall into the Delaware River.⁵

Initially, Daniel J. Keating was unsure whether they were considered a responsible party (RP) for the incident and hired response contractor, ACV Enviro, for clean-up efforts.⁶ Once the FOSC determined no RP could be identified, the USCG accessed the Oil Spill Liability Trust Fund (OSLTF) opening Federal Project UCGPP23002 for remaining removal costs.⁷

Daniel J. Keating Company submitted its uncompensated removal cost claim to the National Pollutions Funds Center (NPFC) in the amount of \$8,502.72 on January 30, 2024.⁸ The NPFC

¹ This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant’s rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant’s rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

² NRC Report #1353687 dated November 29, 2022.

³ USCG Pollution Report (POLREP) One and Final, sections 1A and 2A, dated January 11, 2023.

⁴ USCG POLREP One and Final, section 1A, dated January 11, 2023.

⁵ USCG POLREP One and Final, sections 1A and 2D, dated January 11, 2023.

⁶ USCG POLREP One and Final, section 1A, dated January 11, 2023.

⁷ *Id.*

⁸ Daniel J. Keating claim submission dated January 30, 2024, pages 1-2, OSLTF Claim Form.

has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that \$8,502.72 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On November 29, 2022, at approximately 10:30 local time, (b) (6) from Daniel J. Keating Company (“Claimant”), made a notification to the National Response Center (NRC) of an unknown oil discharging out of a sewer system which leads to the Delaware River, a navigable waterway of the United States.⁹

At approximately, 1305 local time, United States Coast Guard (USCG) Sector Delaware Bay, in its capacity as the Federal On Scene Coordinator (FOSC) for the incident, received a National Response Center (NRC) notification of an oil discharge into the Delaware River immediately adjacent to a redevelopment construction project.¹⁰ Sector Delaware Bay Pollution Responders (PRs) responded to the scene and observed a 6,200 square yard oil sheen.¹¹ The oil sheen was emanating from the Fairmount Avenue sewer system outfall into the Delaware River.¹²

Initially, Daniel J. Keating was unsure whether they were considered a responsible party (RP) for the incident and hired response contractor, ACV Enviro, for clean-up efforts.¹³ Once the FOSC determined no RP could be identified, the USCG accessed the Oil Spill Liability Trust Fund (OSLTF) opening Federal Project UCGPP23002 for remaining removal costs.¹⁴

Recovery Operations

The claimant hired ACV Enviro (ACV) for clean-up efforts. On November 29, 2022, ACV deployed containment boom and absorbent materials at the mouth of the river and around the outfall of the sewer system.¹⁵ ACV continued clean up covered under FPN23002 for the remainder of the response. Clean up was completed on December 5, 2022.¹⁶ The FOSC oversaw the response and determined the actions taken were consistent with the National Contingency Plan (NCP).¹⁷

II CLAIMANT AND NPFC:

⁹ NRC Report #1353687 dated November 29, 2022.

¹⁰ USCG Pollution Report (POLREP) One and Final, sections 1A and 2A, dated January 11, 2023.

¹¹ USCG POLREP One and Final, section 1A, dated January 11, 2023.

¹² USCG POLREP One and Final, sections 1A and 2D, dated January 11, 2023.

¹³ USCG POLREP One and Final, section 1A, dated January 11, 2023.

¹⁴ *Id.*

¹⁵ Daniel J. Keating claim submission dated January 30, 2024, ACV Daily Field Log, page 4 of 8.

¹⁶ USCG POLREP One and Final dated January 11, 2023

¹⁷ *See*, Email from the FOSC coordination email from NPFC to FOSC on March 1, 2024 @ 3:09pm.

Daniel J. Keating Company presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$8,502.72.¹⁸ The claim included an OSLTF claim form, ACV Enviro invoice, ACV daily field log, and pay rates for personnel.¹⁹

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁰ 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 independently by the NPFC, and weighs its probative value when determining the facts of the claim.²¹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²² 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.

IV. 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.²³ An RP's liability is strict, joint, and several.²⁴ 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."²⁵ 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."²⁶ The term "remove" or "removal" means "containment and removal of oil [...] from

¹⁸ Daniel J. Keating claim submission dated January 30, 2024, pages 1-2, OSLTF Claim Form.

¹⁹ Daniel J. Keating claim Submission dated January 30, 2024 with all supporting documentation.

²⁰ 33 CFR Part 136.

²¹ 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)).

²² 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).

²³ 33 U.S.C. § 2702(a).

²⁴ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

²⁵ *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).

²⁶ 33 U.S.C. § 2701(31).

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.”²⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁹ 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.³⁰

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;
- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.³¹
- (d) That the removal costs were uncompensated and reasonable.³²

The NPFC analyzed each of these factors and determined that the costs incurred and submitted by Daniel Keating herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rates and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

Based on the location of this incident, the FOSC is the United States Coast Guard Sector Delaware Bay (“Sector Delaware Bay” or “FOSC”).³³ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).³⁴

The amount of compensable removal costs is \$8,502.72.

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Daniel J. Keating request for uncompensated removal costs is approved in the amount of **\$8,502.72**.

²⁷ 33 U.S.C. § 2701(30).

²⁸ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁹ 33 CFR Part 136.

³⁰ 33 CFR 136.105.

³¹ FOSC coordination email from NPFC to FOSCR on March 1, 2024 @ 3:09pm.

³² 33 CFR 136.203; 33 CFR 136.205.

³³ 40 CFR 300.120(a)(2).

³⁴ See, Email from the FOSC coordination email from NPFC to FOSC on March 1, 2024 @ 3:09pm.

This determination is a settlement offer,³⁵ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁶ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁷ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: 4/1/24

Supervisor Action: *Offer Approved*

³⁵ 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).

³⁶ 33 CFR § 136.115(b).

³⁷ 33 CFR § 136.115(b).