

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 912040-0001
Claimant : Guilford County NC Environmental Health
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$4,278.28

FACTS:

On or about 6 August 2011, the Claimant, Guilford County, North Carolina Environmental Health (the Claimant) was called to 2017 Lynwood Drive in Greensboro, North Carolina to respond to the discharge of approximately 10 gallons of fuel oil into the waters of Lynwood Lake. The discharge occurred as the result of a vehicular accident, where a vehicle ran off the road, and flipped into the waters of the Lake.

CLAIM & CLAIMANT

On 1 March 2012, the Claimant presented a claim to the National Pollution Funds Center (NPFC) for its alleged uncompensated removal costs in the amount of \$4,278.28. The Claimant provided the following:

- (1) a signed OSLTF Optional Claim Form;
- (2) an "NRC Report #985143, dated 6 August 2011;
- (3) "A&D Environmental Services" invoice number 003859, dated 30 October 2011;
- (4) "Standard Pricing Schedule", A&D Environmental, 2010'; and
- (5) Costs for County personnel in the amount of \$283.73.

The "Emergency Response Incident Report" was dated 6 August 2011 but included a signature of the Federal On Scene Coordinator (FOSC), [REDACTED] United States, EPA, Region IV dated 15 March 2012. Evidencing after the fact FOSC coordination for the response actions undertaken. The claim submission consisted of the following documents:

- Standard Pricing Schedule by A & D Environmental;
- Disposal Manifests;
- Proof of payment from A & D for the environmental recovery fee charged;
- Daily field logs;
- Email response from Claimant to NPFC regarding additional information request;
- NRC Report;
- Guilford County Emergency Response Incident Report;
- Signed statement from EPA FOSC dated March 15, 2012;
- Color Maps and Photographs;
- OSLTF Optional Claims Form dated February 23, 2012;
- Copy of Police Report;
- Insurance Company invoice denial to the Claimant;
- Vendor invoice; and
- Itemization of State costs.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"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".

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. 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".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

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, the claimant bears the burden to prove the removal actions 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 was made by the EPA Federal On Scene Coordinator (FOSC) on March 15, 2012.

2. The incident involved a discharge and substantial threat 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 certified no suit had been filed in the court for the claimed costs.
4. The claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable und OPA and 33 CFR § 136.205 as set forth below.

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

Upon review of the claim submission, the NPFC performed independent research associated with whether the incident involved a discharge of oil into a navigable water as required under OPA. The NPFC located numerous maps of the incident site. After a review of this evidence and the evidence submitted by the Claimant, the NPFC made a determination that there was a discharge of oil into a navigable waterway as required by OPA.

The NPFC reviewed the evidence submitted in support of the claimed costs and did not find the initial submission as submitted to be sufficient to support the request for the costs they incurred. On or about 15 May 2012, the NPFC made a request to the NPFC for this additional information as follows:

1. An itemized daily invoice for Guilford County personnel to include rate sheets, narrative for actions taken and an explanation of "training costs";
2. Disposal manifest and evidence they were paid;
3. Itemized invoices for A&D Environmental including an narrative for what actions were taken on 7 September 2011 and 21 September 2011 since those dates were so far after the incident date; and
4. An explanation of the Energy Recovery Fee in the amount of \$495.55

The Claimant provided a response to this inquiry and answered most of the questions. The NPFC reviewed all of the information submitted in support of this claim had determined that the Claimant has incurred OPA compensable costs in the amount of \$3,203.84

The following costs were denied because they were either above the rate permitted in the rate schedule, were not included on the rate schedule, or were for costs not explained in either the submission or subsequent requests for clarification¹:

1. Project Manager,
2. Wooden Stakes,
3. Project Foreman,
4. Service Trucks,
5. Disposal,
6. Ear Plugs,
7. Number of hours for County Personnel not supported by documentation, &
8. "Energy Recovery Fee" not explained in submission.

The total amount denied is \$1,074.44

¹ See, Encl (1) Summary of Costs spreadsheet.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$3,203.84 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 presented to the NPFC under claim #912040-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

DETERMINED AMOUNT: \$3,203.84

Claim Supervisor:

Date of Supervisor's Review: 7/11/12

Supervisor Action: *Approved*

Supervisor's Comments: