

CLAIM SUMMARY / DETERMINATION

Claim Number:	914103-0001
Claimant:	Guilford County Department of Public Health
Type of Claimant:	Government
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$10,606.25

FACTS:

Oil Spill Incident

On April 27, 2014, the Greensboro Fire Department responded to a diesel fuel oil spill at 709 North Elam Avenue in Greensboro, NC. Approximately 25 gallons of diesel fuel was spilled from an above ground storage tank that was left for pick-up at the curb. The fuel oil contaminated the soil and flowed downgradient to a gutter and into a stormwater drain that leads to a tributary of North Buffalo Creek, a navigable waterway of the United States.¹

Mr. [REDACTED] owns the residential property and the 275-gallon storage tank. Mr. [REDACTED] hired a contractor who placed the storage tank at the curb for pick-up by another company (Ecoflo) who was to properly remove the fuel and dispose of the tank. However, while the tank was at the curb it was stolen and the remaining fuel oil was poured onto the ground.

Guilford County Department of Public Health (Claimant) responded to the spill. The county has a contract with A&D Environmental Services, Inc. (A&D) to provide spill removal and remediation services. A&D responded the day of the incident.²

The incident was reported to the National Response Center (NRC) by [REDACTED] of Guilford County Department of Public Health. Incident report # 1081111 was generated.³

Police Investigation

Greensboro Police investigated the theft and questioned two suspects. Witness statements identified the pickup truck used by the suspects and placed the suspects at the scene of the spill. Police traced the storage tank to a scrap yard that purchased the storage tank from the suspects. The two suspects confessed that they emptied the fuel oil onto the ground to facilitate getting the tank on the pickup truck. Warrants were issued for [REDACTED] Greensboro, NC [REDACTED]

¹ See, Progress Environmental Initial Abatement Action Report with site map

² See Guilford County's Emergency Response Incident Report

³ See, NRC Incident Report # 1081111

⁴ See Greensboro Police Report NC 0410200

Responsible Party

The potential Responsible Parties for the pollution incident are two suspects identified in a copy of the Greensboro Police Department's case report (OCA) 2014-0427-203.⁵ The investigation was filed by Franklin, C. K. (P16318). Outcome of the criminal charges are not known at this time.

FOSC Coordination

Federal On-Scene Coordinator (FOSC) is [REDACTED] of the United States Environmental Protection Agency, (US EPA Region II) who signed Guilford County's Emergency Response Incident Report and confirmed that the response to this incident was reasonable and necessary and properly coordinated with the FOSC in accordance with the National Contingency Plan (NCP).⁶

Claim

On August 20, 2014, the Claimant presented their removal cost claim to the National Pollution Funds Center (NPFC) for its uncompensated removal costs in the amount of \$10,606.25.

Description of Removal Activities

A&D was hired to remove contaminated soil and residual diesel fuel and as such, they deployed vacuum trucks, absorbent boom and absorbent pads. To excavate contaminated soil, A&D used a mini-excavator and manual labor who dug a 6.5 x 30 foot hole and removed a total of 28.47 tons of contaminated soil from the site. A&D returned on April 28 and May 2, 2014. Additionally, A&D brought dump trucks and a pickup truck and trailer to the scene. The sorbent booms and pads captured oily-water mix from the stormwater catch basin. A&D recovered approximately 235 gallons of free product and petroleum contaminated water and hauled the soil to the waste disposal facility.⁷

Soil samples were taken and delivered to Research and Analytical Laboratories (R&A) for analysis of petroleum content. R&A used EPA methodology. Proper preservation methods and chain of custody procedures were followed.⁸

Claimant submitted A&D's invoice in the amount of \$10,606.25 that includes Progress Environmental's fee and lab costs.⁹

A&D Environmental Services, Inc. included a copy of a non-hazardous disposal manifest.¹⁰

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."

⁵ Ibid

⁶ See, A&D Environmental Services, Inc. Invoice # 020425 dated May 15, 2014

⁷ See, A7D Bill of Lading / Material Manifests

⁸ See, Progress Environmental, Inc. report 1014049.001 dated May 15, 2014

⁹ See, A&D Environmental Services, Inc. Invoice # 020425 dated May 15, 2014

¹⁰ See, Bill of Lading / Material Manifest tracking #16789,16989, 16886, 28917, 28932

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. Findings of Facts

1. FOSC coordination was made by USEPA: 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved 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 Responsible Party has been identified. 33 U.S.C. 2701(32).
5. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim.

B. Analysis

Presentment

In this case both the owner of the home heating oil tank, [REDACTED] and [REDACTED] who intentionally dumped the contents of the home heating oil tank into the storm sewer, are liable for the incident. On May 27, 2014, the Claimant made presentment of costs to the property owner, Mr. [REDACTED].

The Claimant provided evidence to the NPFC that [REDACTED] and [REDACTED] were charged via arrest warrants for Misdemeanor Larceny, Conspiracy to Commit Misdemeanor Larceny and Felony Littering Hazardous Waste.¹²

The NPFC issued an RP Notification Letter to both Ms. [REDACTED] and Mr. [REDACTED] on August 29, 2014. No response has been received to date..

Removal Cost 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.

Upon a review of the facts of the incident and documentation provided by Claimant, the NPFC has determined this claim is compensable. The evidence in the file demonstrates that there was a discharge of oil that flowed from the property where it discharged down gradient to a gutter then to a stormwater drain catch basin that flows to North Buffalo Creek. Claimant provided a geographical map that shows where the spill occurred and shows its proximity to a navigable waterway. Claimant documented the spill cleanup and demonstrated that without continuing soil remediation, the oil would continue to contaminate the navigable water.

The Claims Manager reviewed all removal costs submitted by A&D and finds all labor, equipment and materials on the invoice reflect OPA compensable removal activities. However, A&D's 2010 rate sheet submitted for this incident has several straight time and overtime rates that are lower than the amount A&D invoiced. The Claims Manager finds A&D invoiced its Foreman at \$50 (ST) and \$70 (OT) but, its rate sheet supports \$45 (ST) and \$67.50 (OT). A&D's invoice has Equipment Operator at \$45 (ST) and \$67.50 (OT) but, its rate sheet supports \$40 and \$60, respectively. Additionally, A&D's markup on the geologist is 20% for this subcontractor when A&D's rate sheet provides a 15% markup on subcontractors that are not listed on its pricing schedule (rate sheet).

When the Claims Manager created its cost spreadsheet for the A&D invoice, the total came to \$10,763.75. Claimant paid \$10,606.25. The Claims Manager adjusted the invoice to A&D's rate sheet and finds \$10,429.00 in OPA compensable removal costs. The difference is \$177.25 (\$10,606.25 - \$10,429.00 = \$177.25). The NPFC finds \$10,429.00 is the correct amount based on the supporting documentation submitted by the Claimant.

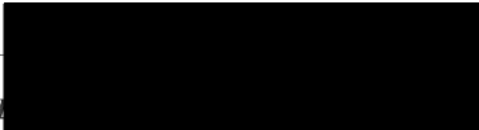
¹¹ See, Ltr from Claimant to Mr. [REDACTED] dated May 27, 2014

¹² See, Greensboro Police Department Statement

AMOUNT: \$10,429.60

DETERMINATION:

The NPFC hereby determines that it will offer to pay \$10,429.60 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 914103-0001.

Claim Supervisor: 

Date of Supervisor's review: *9/10/14*

Supervisor Action: *Approved*

Supervisor's Comments: