

CLAIM SUMMARY / DETERMINATION

Claim Number:	917002-0001
Claimant:	Guilford County Department of Health and Human Services
Type of Claimant:	Government
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$4,655.40

FACTS:

On August 19, 2016, the Greensboro, North Carolina Fire Department notified Guilford County Environmental Health of a discharge of used motor oil into a residential neighborhood creek. About five gallons of motor oil affected the creek's embankment and extended about 150 feet downstream in the creek.¹ The creek is a tributary to South Buffalo Creek,² a navigable waterway of the United States. The identity of the person who illegally dumped the oil is not known. The Claimant took responsibility for cleaning up the oil and coordinated its response with the United States Environmental Protection Agency (USEPA) Federal On-Scene Coordinator (FOSC).³

CLAIMANT AND THE CLAIM:

The Claimant is the County Health Department, Guilford County Department of Health and Human Services. The Fire Department and the Claimant responded to the incident since the responsible party was unknown. The Claimant took financial responsibility for the cleanup and hired A&D Environmental Services to remove the oil and dispose of it.⁴ The Claimant seeks reimbursement of \$512.50 paid to the Greensboro Fire Department for its services, and \$4,142.90 paid to A&D Environmental for its response services.⁵

NPFC issued its initial decision on November 9, 2016, offering to pay \$3,685.40 and denying \$970.00 in undocumented costs. The Claimant requested reconsideration on January 9, 2017, supplying documentation of the items denied in the first decision.

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".

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

¹ See OSLTF Claim Form

² See NRC incident report #1156803

³ See OSLTF Claim Form

⁴ Id.

⁵ See County Finance Department records provided by Claimant

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:

A. Overview:

1. The EPA FOSC confirmed that the response was coordinated with him and was consistent with the National Contingency Plan (NCP). 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the 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 that it has not filed an action in court for the claimed costs;
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the 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 cost invoices and supporting documentation to confirm that the claimant had incurred the 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.

With its reconsideration request, the Claimant provided documentation to support payment of the previously denied boom and pads. The Claimant provided an email from A&D explaining that it provided the fire department with the 3 packs of pads and 14 sections of boom that were invoiced, but not itemized on the daily reports. A&D restocked the fire department with the items that were placed prior to A&D's arrival on scene. The fire department provided a letter verifying this fact. The NPFC confirmed that the actions undertaken were reasonable and necessary and that the services were billed in accordance with the appropriate rate schedules and work records. The NPFC also received verification that the response was coordinated with the FOOSC and that the actions undertaken were consistent with the NCP.⁶

On that basis, the Claimant has proven that all the claimed costs are reimbursable. The Claims Manager hereby determines that the Claimant may be reimbursed the full \$4,142.90 of claimed uncompensated removal costs paid to A&D Environmental. The Claimant may also be reimbursed the full \$512.50 paid to the Greensboro Fire Department.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will offer \$4,655.40 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 917002-0001. All costs offered are for charges incurred 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.

Claim Supervisor:

Date of Supervisor's review: *1/10/17*

Supervisor Action: *Reconsideration Approved*

Supervisor's Comments:

⁶ See Guilford County Department of Public Health Emergency Response Incident Report