

CLAIM SUMMARY / DETERMINATION

Claim Number:	917033-0001
Claimant:	Guilford County Department of Health and Human Services
Type of Claimant:	Local Government
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$1,818.60

FACTS:

Oil Spill Incident: On July 06, 2017, Guilford County Department of Health and Human Services was notified by the City of Greensboro, NC of a discharge of motor oil into a storm drain along S. Benbow Street. The oil made its way into an outfall that flows into S. Buffalo Creek, a tributary to the Cape Fear River, a navigable waterway of the United States.¹ Guilford County notified the National Response Center (NRC)² and hired A&D Environmental Services to conduct removal actions.

Description of Removal Activities for this claimant: A&D Environmental Services personnel responded and conducted removal actions on July 06, 2017. The response concentrated on removing oil from the outfall using a vacuum truck, oil sorbent boom, sorbent pads, and personnel.³

The Claim: On August 14, 2017, the NPFC received a removal cost claim from Guilford County for reimbursement of their uncompensated removal costs in the amount of \$1,818.60.⁴ The claim is based on invoice #038362 from A&D Environmental Services in the amount of \$1,818.60.⁵

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".

¹ See Claimant's OSLTF claim submission received by NPFC on August 14, 2017.

² See NRC Report # 1183284

³ See Contractor daily.

⁴ See Claimant's OSLTF claim submission received by NPFC on August 14, 2017.

⁵ See A&D Environmental Services invoice 038362 dated July 14, 2017.

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. ██████████, USEPA, was the Federal On-Scene Coordinator (FOSC) for this incident and has determined that the actions undertaken by A&D were consistent with the NCP⁶ for the payment of uncompensated removal costs claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);⁷
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 has certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted to the Fund within the six year period of limitations for removal costs claims. 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 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.

In reviewing the claim, the NPFC considered the Claimant’s evidence which consisted of proof of payment, A&D Environmental Services invoice, daily field log, rate schedule of prices for A&D Environmental Services, photos, and disposal manifests. The NPFC requested additional information and explanation of costs and actions throughout the adjudication process.

Based on its review, the NPFC has determined that the costs incurred by Claimant are compensable under the OPA. The costs were reasonable and necessary to mitigate the effects of the incident and were determined by the FOSC to be consistent with the NCP. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the contractor rate schedule at the time the services were rendered. Disposal of contaminated materials was conducted in accordance with all applicable laws and regulations.

⁶ See, email from ██████████, USEPA to ██████████, NPFC dated August 15, 2017.

⁷ See Claimant’s OSLTF claim submission received by NPFC on August 14, 2017.

The NPFC hereby determines that the OSLTF will pay \$1,818.60 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 917033-0001. All costs claimed 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.

AMOUNT: \$1,818.60

Claim Supervisor:

Date of Supervisor's review: *8/25/17*

Supervisor Action: *Approved*