

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 917044-0001
Claimant	: Guilford County Department of Health and Human Services
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$588.00

### **INCIDENT:**

The Guilford County Department of Health and Human Services (Guilford County) received a report on July 5, 2017 of a multi-vehicle accident, where five gallons of gasoline were spilled from one of the cars into the roadway at the intersection of Lees Chapel Road and North Church Street, Greensboro, NC. The gasoline was spilled near a storm drain that leads to a tributary of Buffalo Lake, a navigable waterway of the US.

Because the claimed costs were denied by the insurance for the Responsible Party (RP) (as it determined she was not liable for the spill), Guilford County assumed responsibility of the incident and contracted with A&D Environmental Services for site and removal efforts.

This incident was reported to the National Response Center via NRC Report # 1187955.<sup>1</sup>

### **CLAIM AND CLAIMANT:**

On September 28, 2017, Guilford County presented its removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the total amount of \$588.00 for its response to a spill of oil on July 5, 2017. The Claimant, Guilford County, managed the incident and contracted with A&D Environmental to place speedy dry absorbent material, then placing it in drums and sending it for proper disposal.

### **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".

"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". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

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<sup>1</sup> See, NRC Report # 1187955, opened 7/05/2017.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

“Claimant” means “any person or government who presents a claim for compensation under this subchapter.” 33 USC § 2701(4).

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 136.203, the claimant bears the burden to prove the removal costs 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. No FOSC coordination has been provided for this incident. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
4. A Responsible Party has been determined. 33 U.S.C. § 2701(32).
5. 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.

#### **B. NPFC Analysis:**

The NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review also 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 National Contingency Plan or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review of the claim submission, Guilford County stated in its claim submission that all costs claimed are for uncompensated removal costs incurred for this incident. The Claimant represents that all costs presented to the Fund are compensable removal costs, payable by the OSLTF. The NPFC Claims Manager reviewed Guilford County's actual cost invoicing and dailies to ensure that the Claimant had incurred all costs claimed and that the costs were adequately documented and reasonable. Pursuant to 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.

The Claimant did provide a map depicting the location of the storm drains and accident/spill site,<sup>2</sup> but the map does not however demonstrate that the 5 gallons spilled pose a substantial threat of discharge into the nearby storm drain and navigable waterway when considering current weather conditions, distance, and amount spilled. Upon taking into consideration the weather conditions in the area at the time of the incident, the weather was sunny with temperatures in excess of 90°. The NPFC finds that the Claimant has failed to demonstrate that the small amount of fuel that spilled onto the roadway in such hot clear temps, would substantially threatened the nearby storm drain further threatening a nearby navigable waterway.

Based on a preponderance of the evidence, the claim is denied because (1) the Claimant has not shown its actions were coordinated or ordered by the FOSC in accordance with 33 CFR §136.203 and 205, and (2) the Claimant has failed to show that the spill substantially threatened the tributary/Buffalo Lake. As such, the NPFC is unable to determine whether or not this claim is consistent with the National Contingency Plan.<sup>3</sup> Should Guilford County choose to request reconsideration of its claim, it would need to provide FOSC coordination from the United States Environmental Protection Agency (USEPA) along with a narrative description explain how the spill threatened the navigable waterway.

Based on the foregoing, this claim is denied.

**C. Determined Amount: \$0.00**

Claim Supervisor:	[REDACTED]
Date of Supervisor's review:	10/24/1 [REDACTED]
Supervisor Action:	<i>Denial approved</i> [REDACTED]
Supervisor's Comments:	

<sup>2</sup> See, email from Ms [REDACTED], Guilford County, to Ms [REDACTED], NPFC, sent 10/13/2017.

<sup>3</sup> See, 33 CFR 136.205.