

CLAIM SUMMARY / DETERMINATION

Claim Number:	918011-0001
Claimant:	Guilford County Department of Health and Human Services
Type of Claimant:	Local Government
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$2,005.76

FACTS:

Oil Spill Incident: On August 14, 2017, at approximately 9:00 pm local time¹, Guilford County Department of Health & Human Services received a report of an illegal dumping of approximately 15 gallons of used motor oil in the roadway at 1624 West Meadowview Road, Greensboro, NC. The Guilford County Department of Health & Human Services Environmental Health (HERA) hired A&D Environmental Services, Inc. (A&D) to clean up the spill and to prevent contaminants from entering into the storm drain, which empties into a tributary to S. Buffalo Creek, a waterway that feeds a series of creeks that lead to the Haw River, a navigable waterway of the U.S.

Description of Removal Activities for this claimant: On August 14, 2017, Guilford County HERA hired A & D Environmental Services, Inc. to perform oil spill cleanup operations on the roadway.² A&D's response included spreading oil dry on the road and collecting the motor oil for disposal. A&D disposed of 95 gallons of non-hazardous liquid (motor oil), and 1200 lbs of non-hazardous solids (petroleum contaminated oil dry) as indicated on A&D's waste manifest.³

Responsible Party: A Responsible Party was not identified.

The Claim: On November 22, 2017, Guilford County HERA submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of \$2,005.76⁴ in uncompensated removal costs for A&D Environmental Services' contractor costs.

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, NRC Report 1187317

² See, Guilford County Department of Public Health Emergency Response Incident Report.

³ See, Waste Manifest # 18435 dated August 14, 2017.

⁴ See, A&D Environmental Services, Inc Invoice #039459 dated 08/31/2017.

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. Mr. [REDACTED] of United States Environmental Protection Agency provided FOSC coordination in accordance with the National Contingency Plan (NCP). 33 U.S.C. § 2702(b)(1)(B) and 2712(a)(4);⁵
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 C.F.R. § 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 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 that the removal costs presented were for actions in accordance with

⁵ See, Guilford County Emergency Response Incident Report, signed by Mr. [REDACTED] attesting that the response was performed in accordance with the National Contingency Plan.

the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 C.F.R. § 136.205.

B. Analysis:

The NPFC Claims Manager reviewed the documentation provided by the claimant. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 C.F.R. § 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 were directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC confirmed that the claimed costs were necessary and reasonable, were performed in accordance with the NCP, and that the rates under which the contractor charged the Claimant were in accordance with the contractor’s published rates at the time services were rendered. The NPFC also verified that A&D Environmental Services, Inc. was paid by HERA for its services. The Claimant provided evidence to support that its actions were determined by the FOSC to be consistent with the NCP.⁶

The NPFC hereby determines that the OSLTF will pay \$2,005.76 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 918011-0001. 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: \$2,005.76

Claim Supervisor: [REDACTED]
Date of Supervisor’s review: <i>12/11/17</i>
Supervisor Action: <i>Approved</i>
Supervisor’s Comments:

⁶ *Id.*