

CLAIM SUMMARY / DETERMINATION

Claim Number:	918012-0001
Claimant:	Guilford County Department of Health and Human Services
Type of Claimant:	Local Government
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$6,888.33

FACTS:

Oil Spill Incident: The Guilford County Department of Public Health, Division of Environmental Health (DPH) reported that a diesel spill occurred on June 20, 2017, at 1:00 pm.¹ The Division of Environmental Health was notified of the incident at 2:03pm.² The North Carolina Department of Environmental Quality (NCDEQ) reported the incident to the National Response Center at approximately 5:37 pm local time.³ NCDEQ reported that oily materials were floating on the surface of flood waters and on a nearby creek. The creek is a tributary of Mile Run Creek that, through a series of other creeks and leads to the Haw River, navigable waterway of the U.S.

The source of the oil was traced back to a ponded area at a former concrete manufacturing facility located at 1020 S. Elm Street, Greensboro, NC. The actual source of the discharge remains unknown, but the Claimant suspects that the release may have discharged from a 15,000 gallon diesel aboveground storage tank.⁴ The Guilford County Department of Health & Human Services Environmental Health (HERA) hired Zebra Environmental and Industrial Services, Inc. to clean up the spill. HERA personnel responded on scene and the United States Environmental Protection Agency (EPA) personnel provided confirmation that the response was performed in accordance with the National Contingency Plan.⁵

Description of Removal Activities for this claimant: Guilford County HERA hired Zebra Environmental and Industrial Services, Inc.(Zebra Environmental) to clean up the site and dispose of the oil. Zebra Environmental's activities included installing booms in the stream and along the property boundary to prevent petroleum product from leaving the site; constructing a sand berm to prevent run-off into the creek; and collecting the oily water for disposal.. In addition, Zebra Environmental disposed of 5,418 gallons of non-hazardous liquids and 300 lbs of non-hazardous solids (soiled boom).⁶

Responsible Party: The Claimant identified the owner of the property as [REDACTED], RMX North Carolina, LLC. On July 5, 2017, HERA contacted Mr. [REDACTED] by email, stating that they believed the source of the oil might be a

¹ Guilford County Department of Public Health Emergency Response Incident Report dated 9/26/2017

² Id.

³ See, NRC Report 1181768

⁴ According to a July 5, 2017 email from [REDACTED] to Mr. [REDACTED] the AST was corroded and had oil staining.

⁵ See, Guilford County DHHS Claim letter page 1.

⁶ See, Guilford County DPH Emergency Response Incident Report.

degrading AST. Mr. ██████████ responded arguing that an environmental investigation revealed no leaks on the site. HERA then presented its claim to the alleged RP on August 1, 2017, but hasn't been paid any costs associated with the oil spill cleanup. Via a letter dated November 28, 2017⁷, the NPFC notified Mr. ██████████ of the pending claim by HERA.

The Claim: On November 22, 2017, HERA submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of \$6,888.33⁸ in uncompensated removal costs for Zebra Environmental's contractor costs.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"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 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."

⁷ See, NPFC RP Notification Letter dated November 28,2017.

⁸ See, Zebra Environmental and Industrial Services, Inc. Invoice #63929 dated 06/20/2017.

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 the 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)⁹;
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 the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 C.F.R. § 136.205.

⁹ See, Guilford County Department of Public Health Emergency Response Incident Report signed by Mr. [REDACTED], attesting to the coordination.



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, were properly documented 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 Zebra Environmental was paid by HERA for its services.

The NPFC hereby determines that the OSLTF will pay \$6,888.33 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 918012-0001. 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: \$6,888.33


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