

Claim Number:	918042-0001
Claimant:	Guilford County Department of Health and Human Services
Type of Claimant:	Local Government
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$5,769.01

FACTS:

Oil Spill Incident: On June 5, 2018, the Guilford County Department of Health and Human Services (GDHS) was notified of the dumping of approximately 20 gallons of motor oil into a tributary of North Buffalo Creek in Greensboro, North Carolina. GDHS’s Emergency Response Incident Report stated that a sheen was reported coming from the stormwater outfall.¹ GDHS met with the City of Greensboro Fire Department and the City of Greensboro Water Resources Stormwater Division at the spill incident site. GDHS discovered the released product had adversely impacted the stream bank up to one half mile downstream. The responsible party (RP) for the dumping could not be identified.²

Description of Removal Activities for this claimant: The GDHS subdivision Guilford County Environmental Health (HERA) contracted with A&D Environmental Services, Inc. (A&D) for cleanup on June 5, 2018. On June 6, 2018, A&D personnel and equipment arrived at the spill site and began cleanup. A&D performed removal activities at the spill site until June 31, 2018, and submitted all relative costs to HERA who paid the A&D costs in full on August 10, 2018 in the total amount of \$5,769.01.³ A&D’s invoicing indicates that they brought a vacuum truck to the site in order to remove the product off of the water’s surface as well as boom to contain the product to mitigate further damages.⁴

The Claim: On September 13, 2018, the National Pollution Fund Center (NPFC) received a removal cost claim by GDHS for reimbursement of their uncompensated removal costs which consisted of personnel, materials, and equipment costs in the total amount of \$5,769.01.⁵

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

¹ See Guilford County Emergency Resonse Incident Report dated June 5, 2018.

² *Id.*

³ See Guilford County Finance Dept. Payment Advice #131536 dated August 10, 2018.

⁴ See A&D Environmental Services invoice # SVC003447 dated June 29, 2018.

⁵ See Guilford County Department of Health and Human Services Claim Package dated August 31, 2018.

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.”

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. A Federal On-Scene Coordinator (FOSC) did not direct the response for this incident, nor did one determine the actions undertaken by the Claimant were consistent with the National Contingency Plan (NCP). 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The NPFC has not been able to confirm that the product for this 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 within the six year period to file claims. 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 not for actions in accordance with the NCP, and the costs for these actions were neither reasonable nor allowable under OPA and 33 CFR § 136.203.



B. Analysis:

The 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 to be consistent with the NCP in accordance with the NPFC delegation of authority for determination of consistency, and (4) whether the costs were adequately documented and reasonable.

Upon review and adjudication of the subject claim, the NPFC has determined that none of the costs incurred by the Claimant and presented to the NPFC under claim # 918042-0001 are payable by the OSLTF as presented by the Claimant. All costs are for charges paid for by the Claimant for response actions undertaken by A & D to mitigate the effects of the incident. However, no proof of Federal On Scene Coordinator (FOOSC) and/or State On Scene Coordinator (SOSC) direction, oversight, and monitoring of the response have been provided. It is also important to note that no evidence has been presented to substantiate that the response was reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

Based on the foregoing, the NPFC hereby denies the claim on the basis that (1) no FOOSC coordination has been performed in accordance with 33 CFR 136.203 & 205 and (2) no sample analysis has been provided to demonstrate that the product recovered is an OPA compensable oil as defined under 33 USC § 2701(23).

Should the Claimant request reconsideration, it will need to provide evidence of Federal On Scene coordination as cited under 33 CFR 136.203 & 205 and evidence that the product recovered was an OPA oil.


Claim Supervisor: 
Date of Supervisor's review: <i>9/19/18</i>
Supervisor Action: <i>Denial approved</i>
Supervisor's Comments: