

CLAIM SUMMARY / DETERMINATION

Claim Number:	92001-0001
Claimant:	Guilford County
Type of Claimant:	Local Government
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$1,466.34
Action Taken:	Denial

EXECUTIVE SUMMARY:

On January 20, 2019 at approximately 2:50 am, the City of Greensboro Fire Department received an alarm notification that a tractor trailer's saddle tank was leaking fuel at the Greensboro Coliseum VIP parking lot located at 1921 Westgate Drive in Greensboro, North Carolina. The Fire Department arrived on scene at approximately 2:56 am. The fire report indicates that unit E8 responded and Haz Mat unit 71 assisted and contained the spill at approximately 3:25 am. Unit E8 confined the spill using a catch pool. The report states that unit 71 assisted with the containment and clean up and both units departed the scene at 4:25 am.¹ The incident was not reported to the National Response Center (NRC) until approximately 3:55pm via NRC report # 1235779 on January 22, 2019 by Guilford County Environmental Health.² The Greensboro Fire Department reported that Mr. (b) (6) was identified as the responsible party (RP) for the incident.³

Guilford County Department of Health and Human Services ("claimant" or "GCDHHS) received a report of the diesel release at the Greensboro Coliseum on January 20, 2019 at approximately 3:34 pm but did not report the incident to the NRC until two (2) days later.⁴ It is asserted by the claimant that Mr. (b) (6) informed the City of Greensboro Fire Department that his company did not have the funds to secure a cleanup company and that the company was having trouble with their insurance.⁵ On January 22, 2019, Guilford County hired ECOFLO to perform cleanup.⁶ Guilford County attempted to make presentment of its costs to the RP via certified mail on May 16, 2019; May 28, 2019; and again on June 6, 2019.⁷ The clamant provided copies of the USPS tracking for the May 28th and June 6th, 2019 certified letters which indicate notices were left but mail was never obtained by the recipient. The claimant notified the United States Environmental Protection Agency (USEPA) of the incident although the exact date of that communication is not known. The Guilford County Emergency Incident Report is signed by an USEPA duty officer on September 16, 2019 (almost eight months after the incident).⁸

Having not received payment from the RP,⁹ Guilford County presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$1,466.34 on October 10, 2019.¹⁰ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that the claim is denied on the basis that

¹ City of Greensboro Fire Report #19-0120020 dated January 20, 2019.

² NRC Report # 1235779 dated January 22, 2019 and reported by Guilford County Environmental Health.

³ City of Greensboro Fire Report #19-0120020 dated January 20, 2019, section entitled Person/Entity Involved.

⁴ Guilford County Emergency Response Incident Report, undated.

⁵ Optional OSLTF Claim Form signed by (b) (6) dated September 30, 2019

⁶ Guilford County Emergency Response Incident Report, undated.

⁷ Guilford County demand for payment to RP dated May 16th, 28th and June 6th, 2019.

⁸ Guilford County Emergency Response Incident Report, undated.

⁹ A claimant must first present a claim for uncompensated removal costs to the RP. After ninety day, if the RP has not settled the claim, the claimant may present it claim to the NPFC. 33 CFR 136.103(c).

¹⁰ 33 CFR 136.103(c)(2).; Optional OSLTF Claim Form signed by (b) (6) dated September 30, 2019.

no evidence of a substantial threat of discharge into a navigable waterway was proven or that the Federal On Scene Coordinator (FOSC) coordinated the actions undertaken by the claimant's contractor. The FOSC has not determined that the actions performed by the claimant's response contractor were determined to be consistent with the National Contingency Plan (NCP).¹¹

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On January 22, 2019, the United States Coast Guard's National Response Center (NRC) received notification from Guilford County Environmental Health that a tractor trailer's saddle tank leaked oil in the Greensboro Coliseum VIP parking lot on January 20, 2019.¹² Guilford County Department of Environmental Health estimated that between 25 and 30 gallons of oil discharged onto the parking lot.¹³

Responsible Party

(b) (6) is listed as the owner and operator of the tractor trailer that leaked fuel from its saddle tank at the time of the incident.¹⁴ The RP told the claimant that they did not have the funds to secure a cleanup company and were having problems with insurance.¹⁵

On October 16, 2019, the NPFC sent a Responsible Party Notification Letter to Mr. (b) (6), via certified mail, at the address provided on the City of Greensboro Fire Report.¹⁶ On January 23, 2020, the NPFC sent another Responsible Party Notification Letter to Mr. (b) (6) at a Florida address.¹⁷

Upon further research performed by the NPFC in January 2020 regarding the RP, NPFC found that Mr. (b) (6) was listed as the owner and operator of the company, ARI Quality Logistics Incorporated, with an incorporation date of January 26, 2018 and a dissolution date of May 31, 2019. The RP provided the name of his company to the Greensboro Fire Department as CB Logistics. ARI Quality Logistics Incorporated was listed with the same address as the Company name provided at the time of the incident.¹⁸ It is unclear if the RP worked for CB Logistics at the same time he was listed as a principle of ARI Quality Logistics Incorporated.

Recovery Operations

On January 20, 2019, the City of Greensboro Fire Department responded to an estimated 25-30 gallons of diesel fuel leaking from a tractor trailer's saddle tank and confined the fuel with a catch pool.¹⁹ The claimant's OSLTF claim form dated September 30, 2019, states that fuel contaminated the storm drain and outfall to South Buffalo Creek.²⁰ The Greensboro Fire Department used oil dry absorbent in the parking area and placed containment boom at the storm drain and at the creek outfall.²¹

¹¹ 33 CFR 136.203 and 205.

¹² National Response Center Report #1235779 dated January 22, 2019.

¹³ Guilford County Emergency Response Incident Report, undated.

¹⁴ City of Greensboro Fire Department Incident Report, undated.

¹⁵ Optional OSLTF Claim Form signed by (b) (6) dated September 30, 2019.

¹⁶ NPFC RP Notification Letter to (b) (6) in dated October 16, 2019.

¹⁷ NPFC RP Notification Letter to (b) (6) dated January 23, 2020.

¹⁸ Open Corporates website information re RP and ARI Quality Logistics Incorporated.

¹⁹ City of Greensboro Fire Department Incident Report, undated.

²⁰ OSLTF Claim Form signed by (b) (6) dated September 30, 2019.

²¹ Guilford County Emergency Response Incident Report, undated.

The claimant's incident report states that on January 21, 2019, a follow-up site visit was performed late in the morning and a sheen was discovered on South Buffalo Creek.²² The claimant contracted with ECOFLO to remediate the remaining oil that spilled in the parking lot area with oil dry and additional boom replacement for the sheen on surface water.²³ The Federal On-Scene Coordinator (FOSC), (b) (6) of the United States Environmental Protection Agency (USEPA) Region 4 and the National Response Center were notified of the incident on January 22, 2019.²⁴ According to ECOFLO's documentation, the cleanup was completed on January 25, 2019.²⁵ The FOSC signed the Guilford County Emergency Response Incident Report on September 16, 2019.²⁶

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁷ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from NPFC.²⁸

The claimant initially submitted their invoice to the RP, Mr. (b) (6), on May 16, 2019, May 28, 2019, and June 6, 2019 via certified mail, respectively. To date, the claimant has received no response from the RP.²⁹

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after 90 days, a claimant may elect to present its claim to the NPFC.³⁰ On October 10, 2019, the NPFC received a claim for uncompensated removal costs from the claimant dated September 30, 2019. The claim included an invoice from the response contractor, ECOFLO, for their labor, equipment, disposal, and supplies totaling \$1,466.34.³¹ The claimant has requested compensation for \$1,466.34, which was paid in full to ECOFLO on June 27, 2019.³²

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³³ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.³⁴

²² Guilford County Emergency Response Incident Report, undated.

²³ Guilford County Emergency Response Incident Report, undated.

²⁴ National Response Center Report #1235779 dated January 22, 2019.

²⁵ ECOFLO daily field logs provided in the claim submission.

²⁶ Guilford County Emergency Response Incident Report, undated.

²⁷ 33 U.S.C. § 2701 *et seq.*

²⁸ 33 CFR 136.103.

²⁹ OSLTF Claim Form signed by (b) (6) dated September 30, 2019.

³⁰ 33 CFR 136.103.

³¹ Guilford County claim submission and supporting documentation dated September 30, 2019.

³² OSLTF Claim submittal from Guilford County received October 10, 2019.

³³ 33 CFR Part 136.

³⁴ *See, e.g., Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁵ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.³⁶ An RP's liability is strict, joint, and several.³⁷ When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."³⁸ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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."³⁹ The term "remove" or "removal" means "containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches."⁴⁰

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴² The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.⁴³

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.
- (d) That the removal costs were uncompensated and reasonable.⁴⁴

³⁵ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

³⁶ 33 U.S.C. § 2702(a).

³⁷ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁸ *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (*citing* S. Rep. No. 101-94 (1989), *reprinted in* 1990 U.S.C.C.A.N. 722).

³⁹ 33 U.S.C. § 2701(31).

⁴⁰ 33 U.S.C. § 2701(30).

⁴¹ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴² 33 CFR Part 136.

⁴³ 33 CFR 136.105.

⁴⁴ 33 CFR 136.203; 33 CFR 136.205.

During the adjudication of the claim, the NPFC made a public information documents request to the Greensboro NC County Records seeking the Greensboro Fire Report.⁴⁵ On October 24, 2019, the NPFC received an email acknowledgment of the records request and the request number was provided.⁴⁶ The NPFC received a copy of the Greensboro Fire Report via email on November 1, 2019.⁴⁷

After review and consideration of the fire report, it appears that the majority of all response work was performed by the Greensboro Fire Department and upon their arrival on site, the incident was mitigated. The Greensboro fire report makes no mention that fuel made its way into the storm drain as asserted by the claimant but rather that they installed a catch pool to capture any escaping fuel from the saddle tank and deployed boom by the storm drain to prevent any possible substantial threat of discharge into a navigable waterway, and laid down oil dry absorbent material.⁴⁸

Upon review of the Claimant's undated incident report, the report states that oil from the RP's saddle tank made its way into South Buffalo Creek via the storm drain outfall although no other corroboration or disposal of oily water mix was provided in the claim documentation to support the assertion. Evidence that disposal of the oil dry absorbent material was provided via ECOFLO invoice documentation.⁴⁹

Additionally it is important to note that no lab analysis was performed in order to demonstrate any oil that may have been on the surface waters, while not recovered by the response contractor, was in fact the same oil that discharged from the RP's saddle tank vice run-off resulting from recent rains in the area. Since weather conditions were less than perfect, if there had been oil in a navigable waterway, which has yet to be substantiated, the evidence as presented does not demonstrate it was identified as coming from the incident in question and not run-off unrelated to the incident but rather related to the weather conditions.

On February 6, 2020, a Lead Claims Manager from the NPFC, (b) (6), called the FOSC, Mr. (b) (6), of USEPA Region 4 regarding the details of the incident and regarding FOSC coordination for the incident. The FOSC confirmed that he was not on-scene at the time of the incident but rather the telephone duty officer manning the USEPA report line and only took the verbal report. The FOSC confirmed in an email to the NPFC dated February 6, 2020, that he signed the Guilford County Emergency Response Incident Report eight months after the incident. Mr. (b) (6) could not confirm that the spill posed a substantial threat since he was not able to oversee the response and he does not recall being provided actual response photos.⁵⁰

Based on the foregoing, the NPFC has determined that the claimant has failed to meet its burden in (1) demonstrating the sheen on the surface water existed and is associated with the incident in question as opposed to a non-recoverable sheening resulting from run-off due to the current weather conditions, (2) the claimant has not provided evidence that the incident that occurred in the Greensboro Coliseum VIP parking, in fact posed a substantial threat of discharge or actual discharge into South Buffalo Creek as asserted, and (3) the claimant has not been able to provide FOSC coordination for the response actions undertaken by the claimant's response contractor, ECOFLO.

VI. CONCLUSION:

⁴⁵ October 24, 2019 NPFC email records request to Guilford County NC.

⁴⁶ Email from (b) (6) of the City of Greensboro to NPFC dated October 24, 2019.

⁴⁷ Email from (b) (6) of the City of Greensboro to NPFC dated November 1, 2019, providing the Greensboro Fire Report.

⁴⁸ City of Greensboro Fire Department Incident Report, undated.

⁴⁹ ECOFLO invoice documentation dated January 31, 2019.

⁵⁰ February 6, 2020 from (b) (6) (b) (6), NPFC Claims Manager, providing a phone record summary of the discussion with the FOSC.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the Guilford County Department of Health & Human Services request for compensation is denied.

Should the Claimant decide to request reconsideration, it will need to demonstrate that the incident in fact posed a substantial threat of discharge or an actual discharge into South Buffalo Creek and will need to obtain FOSC coordination for all actions undertaken by its response contractor. Since no on-water response actions were undertaken, the record does not provide evidence that oil made it to the waterway or that the sheen was in fact oil from the RP's saddle tank since there is no lab analysis connecting the sheen to the oil leaking from the tractor trailer saddle tank.

Claim Supervisor: (b) (6)

(b) (6)

Date of Supervisor's review: *2/20/2020*

Supervisor Action: *Denial Approved*

Supervisor's Comments: