

CLAIM SUMMARY / DETERMINATION

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| <b>Claim Number:</b>     | 921003-0001   |
| <b>Claimant:</b>         | Guilford County Department of Health and Human Services |
| <b>Type of Claimant:</b> | Local Government  |
| <b>Type of Claim:</b>    | Removal Costs   |
| <b>Claim Manager:</b>    | (b) (6)   |
| <b>Amount Requested:</b> | \$3,200.82  |
| <b>Action Taken:</b>     | Offer in the amount of \$3,200.82                       |

**EXECUTIVE SUMMARY:**

On December 10, 2020 at approximately 2:00 pm local time, Guilford County Environmental Health made notification to the National Response Center (NRC), via report # 1266047 and reported a mystery discharge of an unknown amount of suspected gasoline, hydraulic oil and diesel fuel on a parking lot at 1201 Merritt Drive that was making its way into a nearby storm water drain that connects to the South Buffalo Creek, a navigable waterway of the United States.<sup>1</sup>

Guilford County Environmental Health and the Greensboro Fire Department, responded to the incident and found the petroleum release in a parking lot area that connected to a storm drain contiguous to the South Buffalo Creek, a navigable waterway of the United States.<sup>2</sup> Guilford County Environmental Health (“Guilford” or “Claimant”), contracted Shamrock Environmental Corporation (Shamrock or OSRO) and monitored the activities of the response contractor. The Fire Department determined there was no responsible party for the incident.<sup>3</sup>

Guilford County Department of Health and Human Services presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$3,200.82 on November 4, 2020.<sup>4</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$3,200.82 is compensable and offers this amount as full and final compensation of this claim.

**I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

***Incident***

On December 10, 2020, the Greensboro Fire Department responded to a gas leak caused by a box truck that broke down at Halifax Road and Patterson St. While responding to the incident, the Fire Department also responded to an incident at 1201 Merritt Dr. at the parking lot of the New Heart Community Church.<sup>5</sup> After further investigation, the Fire Department was unable to link the two incidents as the source of the spill therefore no responsible party has been identified.

<sup>1</sup> NRC Report # 1266047 dated December 10, 2019.

<sup>2</sup> NPFC OSLTF Claim Form dated September 4, 2020 and Greensboro Fire Department, Fire Incident Report dated December 10, 2019.

<sup>3</sup> Greensboro Fire Department, Fire Incident Report dated December 10, 2019.

<sup>4</sup> NPFC OSLTF Claim Form dated September 4, 2020.

<sup>5</sup> Greensboro Fire Department, Fire Incident Report dated December 10, 2019

The rainy conditions caused the spilled petroleum to fall into the nearby storm drain which leads to the South Buffalo Creek.<sup>6</sup> After being contracted by Guilford County, Shamrock responded and placed an absorbent boom around the storm drain to prevent further leakage into the drainage.<sup>7</sup> The OSRO removed all the contaminated leaves, pressure washed the parking lot, and flushed the curb line on the night of the spill.<sup>8</sup>

### ***Recovery Operations***

On December 10, 2019, Shamrock Environmental began recovery and cleanup operations placing an absorbent boom around the storm drain and pressure washed the affected area with hot water and vacuumed oiled water from the area and the affected wetland that connected to South Buffalo Creek.<sup>9</sup> Shamrock disposed of oiled water and material used at the incident.<sup>10</sup>

### **II. CLAIMANT AND RP:**

Claims for removal costs or damages may first be presented to the Fund by the Governor of a State for costs that are incurred by the State. The Greensboro Fire Department and Guilford County HHS were unable to determine the source of the spill after the Fire Department investigated.<sup>11</sup>

### **III. CLAIMANT AND NPFC:**

On November 4, 2020, the NPFC received a claim for uncompensated removal costs from Guilford County Health and Human Services dated September 4, 2020. The claim included the NPFC OSLTF, Guilford County Emergency Incident Report, NRC Report, incident area photographs, Shamrock Environmental Corporation Invoice, Disposal Manifests, Daily work Reports and a Rate Schedule. Additional information submitted to the NPFC included clarification on daily work schedule personnel hours, disposal manifests and explanation how the energy surcharge was calculated.

### **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF). 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. The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities. If there is conflicting evidence in the record, the NPFC

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<sup>6</sup> Guilford County Emergency Incident Report dated December 17, 2019.

<sup>7</sup> Guilford County Emergency Incident Report dated December 17, 2019.

<sup>8</sup> Email from Water Quality Specialist Mr. (b) (6) at City of Greensboro Department of Water Resources dated November 10, 2020.

<sup>9</sup> Guilford County Emergency Incident Report dated December 17, 2019.

<sup>10</sup> Disposal Manifests #53669, 53894 and 53671.

<sup>11</sup> Greensboro Fire Department, Fire Incident Report dated December 10, 2019.

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:

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.”<sup>12</sup> 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.”<sup>13</sup> 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.”<sup>14</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>15</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup>

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<sup>12</sup> *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).

<sup>13</sup> 33 U.S.C. § 2701(31).

<sup>14</sup> 33 U.S.C. § 2701(30).

<sup>15</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>16</sup> 33 CFR Part 136.

<sup>17</sup> 33 CFR 136.105.

<sup>18</sup> There was not an FOSC present at the incident. To ensure that Guilford County Department of Health and Human Services met its burden with respect to this factor, the NPFC coordinated with the regional office of the U.S. Environmental Protection Agency which would have been the FOSC for this incident if one responded. After analyzing the spill and the actions taken by Guilford County and Shamrock Environmental, the USEPA FOSC opined that the actions taken were consistent with the National Contingency Plan. We agree. Guilford County Emergency Incident Report dated December 17 and email from FOSCR regarding FOSC coordination dated

(d) That the removal costs were uncompensated and reasonable.<sup>19</sup>

Upon receipt of the claim submission, the NPFC requested additional information and clarification from the claimant on November 18, 2020.<sup>20</sup>

After a complete review of all documentation and after contacting the FOSC, the NPFC was able to corroborate the actions undertaken by the Claimant and its OSRO were reasonable, necessary and consistent with the NCP. The FOSC confirmed that Shamrock Environmental's actions were consistent with the NCP. The NPFC has determined that the invoiced costs were billed in accordance with the contract and rate schedule in place at the time services were rendered.

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Guilford County Department of Health and Human Services request for uncompensated removal costs is approved in the amount of **\$3,200.82**.

This determination is a settlement offer,<sup>21</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>22</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>23</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

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| <p>(b) (6)</p> <p>Claim Supervisor: (b) (6)</p> <p>Date of Supervisor's review: <i>12/9/2020</i></p> <p>Supervisor Action: <i>Approved</i></p> <p>Supervisor's Comments:</p> |
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November 16, 2020, the FOSCR confirmed actions performed by Shamrock Environmental Corporation were consistent with the National Contingency Plan.

<sup>19</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>20</sup> Email from Guilford County Department of Health and Human Services to NPFC dated November 25, 2020.

<sup>21</sup> Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

<sup>22</sup> 33 CFR § 136.115(b).

<sup>23</sup> 33 CFR § 136.115(b).