

CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	921013-0001
<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>	\$10,222.24
<b>Action Taken:</b>	Offer in the amount of \$10,084.24

**EXECUTIVE SUMMARY:**

On July 5, 2020 at approximately 2200 local time, Guilford County Environmental Health made notification to the National Response Center (NRC), via report # 1281211 and reported an illegal dumping of 20 gallons of kerosene into a stream that connects to the North 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 kerosene released into a stream that is contiguous to North Buffalo Creek, a navigable waterway of the United States.<sup>2</sup> Guilford County Environmental Health (“Guilford County” or “Claimant”), contracted Zebra Environmental (Zebra) and monitored the activities of the response contractor. The Greensboro Water Resources Department was unable to find a 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 \$10,222.24 on February 1, 2021.<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 \$10,084.24 is compensable and offers this amount as full and final compensation of this claim.

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

***Incident***

On July 5, 2020, the Greensboro Fire Department responded to an unknown substance found in a stream and upon arrival, a strong smell was noticeable and a considerable amount of product was seen on the surface of the water.<sup>5</sup> After further investigation, Greensboro Water Resources was unable to determine the source of the spill therefore no responsible party has been identified.<sup>6</sup> The Greensboro Fire Department placed booms around the area and created a dam to

<sup>1</sup> NRC Report #1281211 dated July 5, 2020.

<sup>2</sup> NPFC OSLTF Claim Form dated January 21, 2021 and Greensboro Fire Department, Fire Incident Report dated July 6, 2020.

<sup>3</sup> City of Greensboro Water Resources Report dated July 6, 2020.

<sup>4</sup> NPFC OSLTF Claim Form dated January 29, 2021.

<sup>5</sup> Greensboro Fire Department, Fire Incident Report dated July 6, 2020.

<sup>6</sup> City of Greensboro Water Resources Report dated July 6, 2020.

prevent the product from flowing downstream and captured the product.<sup>7</sup> The Greensboro Fire Department took a sample of the product and the results determined it contained “nonane”, a product found in kerosene, diesel and jet fuel.<sup>8</sup> After being contracted by Guilford County, Zebra responded to the incident and vacuumed approximately 7,770 gallons of oily water from the creek and placed booms and spill pads in the creek to absorb the visible sheen.<sup>9</sup> The OSRO used Dawn degreaser along the creek bank to remove the sheen from those areas and utilized booms and pads to recover product after the areas were cleaned.<sup>10</sup> On July 7, 2020, Guilford County contacted the United States Environmental Protection Agency (EPA) Federal On Scene Coordinator (FOSC) and coordinated the removal actions.<sup>11</sup>

### ***Recovery Operations***

On July 6, 2020, Zebra Environmental began recovery and cleanup operations vacuuming the oily water and product from the stream, placed absorbent booms around the bank of the creek and cleaned the remaining product with degreaser.<sup>12</sup> Zebra disposed of the oily water mix and material used in response to the incident.<sup>13</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 were unable to determine the source of the spill after the Water Resources Department investigated.<sup>14</sup>

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

On February 1, 2021, the NPFC received a claim for uncompensated removal costs from Guilford County Health and Human Services dated January 29, 2020. The claim included the NPFC OSLTF Claim Form, Guilford County Emergency Incident Report, NRC Report, incident area photographs, Zebra Environmental and Industrial Services Invoice, Disposal Manifests, Daily work Reports and a Rate Schedule. Additional information submitted to the NPFC included clarification on daily work schedule personnel hours, Zebra Oil Spill Report Summary and names for employees invoiced per job title.

### **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.

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<sup>7</sup> Greensboro Fire Department, Fire Incident Report dated July 6, 2020.

<sup>8</sup> Greensboro Fire Department, Fire Incident Report dated July 6, 2020.

<sup>9</sup> Zebra Environmental Oil Spill Report Job #: 210659 dated July 6, 2020.

<sup>10</sup> Zebra Environmental Oil Spill Report Job #: 210659 dated July 6, 2020.

<sup>11</sup> Guilford County Emergency Incident Report dated July 7, 2020.

<sup>12</sup> Zebra Environmental Oil Spill Report Job #: 210659 dated July 6, 2020.

<sup>13</sup> Disposal Manifests #001, 002, 003, 004 for Job# 201659.

<sup>14</sup> City of Greensboro Water Resources Report dated July 6, 2020.

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 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>15</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>16</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>17</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>18</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>19</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>20</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;

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<sup>15</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>16</sup> 33 U.S.C. § 2701(31).

<sup>17</sup> 33 U.S.C. § 2701(30).

<sup>18</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>19</sup> 33 CFR Part 136.

<sup>20</sup> 33 CFR 136.105.

- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.<sup>21</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>22</sup>

Upon receipt of the claim submission, the NPFC requested additional information and clarification from the claimant on February 2, 2021.<sup>23</sup>

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

During the review and adjudication of costs, the NPFC denies \$138.00 for three hours for a Technician invoiced on July 8, 2020 that is not listed on the daily work ticket showing personnel, materials and equipment. As such, the Technician hours are denied as unsupported by the record.

**Overall Denied Costs** = \$138.00<sup>24</sup>

## **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 **\$10,084.24**.

This determination is a settlement offer,<sup>25</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>26</sup> The NPFC reserves the right to revoke a

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<sup>21</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 Zebra Environmental, the USEPA FOSC opined that the actions taken were consistent with the National Contingency Plan. We agree. Guilford County Emergency Incident Report dated July 9, 2020 and email from FOSC regarding FOSC coordination dated February 10, 2021, the FOSC confirmed actions performed by Zebra Environmental were consistent with the National Contingency Plan.

<sup>22</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>23</sup> Email from NPFC to EPA dated February 2, 2021 and from EPA to NPFC dated February 10, 2021.

<sup>24</sup> NPFC Summary of Costs spreadsheet.

<sup>25</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>26</sup> 33 CFR § 136.115(b).

settlement offer at any time prior to acceptance.<sup>27</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *2/19/2021*

Supervisor Action: *Approved*

Supervisor's Comments:

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<sup>27</sup> 33 CFR § 136.115(b).