

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/20/2010
Claim Number	: 910099-001
Claimant	: Guilford County NC Environmental Health
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$13,267.30

FACTS:

Oil Spill Incident: On December 16, 2009, United States Environmental Protection Agency (USEPA) and Guilford County Environmental Health observed heavy oil on the surface of Payne Creek in High Point, Guilford County, North Carolina, a navigable waterway of the U.S. Guilford County Environmental Health coordinator ██████████ responded and found approximately 1,000 gallons along 1.5 miles of Payne Creek. The response officer coordinated with USEPA Region IV On-Scene Coordinator (OSC) ██████████. The oil was later determined to be diesel. ██████████ of Guilford County Environmental Health hired environmental contractor A&D Environmental, who handled the response. The incident was reported to the National Response Center (NRC) via report # 926369.

Investigation revealed that damage to an above ground heating oil tank at an abandoned warehouse located at 812 Millis Street in High Point, NC resulted in the discharge of a large quantity of heating oil to the ground surface and then flowed across the ground to a storm sewer inlet at the railroad tracks near Markley Street. A contractor for the owner of the building had been doing clearing work around the building and it is believed that the contractor punctured the above ground heating oil tank resulting in the release. The NPFC sent an RP Notification Letter to the potential responsible party.

Description of Removal Activities for this claimant: Guilford County Environmental Health responded to the location of the discharge to coordinate mitigation and cleanup. The cleanup contractor deployed absorbent pads and boom, a vac truck was used to collect the pooled oil.

The Claim: On May 6, 2010 Guilford County Environmental Health submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$13,267.30. The claim consisted of invoices that include state personnel, contractor rate sheets, EPA Region IV POLREP #1, emails between Responsible Party (RP) and state officials, incident reports, removal and disposal invoices, and pictures.

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.”

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. ██████████ of USEPA Region IV provided FOSC coordination.
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 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 on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of 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 CFR § 136.205.

B. Analysis:

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 by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The claims manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan. The NPFC has denied \$4.00 based on a billing discrepancy as the contractor invoiced PVC gloves at a rate of \$4.00 pr when the contractor rate schedule calls for \$3.00 pr therefore the \$1.00 difference over a four day period is denied. On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$13,263.30 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #910099-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on December 16, 2009. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$13,263.30 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 910099-001. All costs claimed are for charges paid for 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 Claimants.

AMOUNT: \$13,263.30

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *5/21/10*

Supervisor Action: *Approved*

Supervisor's Comments: