

CLAIM SUMMARY / DETERMINATION FORM

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| Date | : 10/28/2010 |
| Claim Number | : 911003-0001 |
| Claimant | : Guilford County NC Environmental Health |
| Type of Claimant | : Local Government |
| Type of Claim | : Removal Costs |
| Claim Manager | : ██████████ |
| Amount Requested | : \$8,022.09 |

FACTS:

Oil Spill Incident: On January 20, 2010, the High Point Fire Department notified the claimant, Guilford County Environmental Health, upon discovery of a petroleum sheen on the surface of Boulding Branch near the intersection of E. Farris Avenue and Centennial Street in High Point. The Fire Department personnel tracked the petroleum sheen to 1104 N. Hamilton Street where they discovered a large amount of petroleum contaminated soil. The entire content of the tank's heating oil was released onto the ground which was estimated to be nearly 50 gallons of oil.

Upon further investigation of the oil spill, the police department discovered that the property had been vandalized and the oil tank had been taken by the vandals. The property owner is Mr. ██████████ of Roanoke, Virginia. The ██████████ property is a rental property and was vacant at the time of the incident. An Incident/Investigation Report had been taken by Officer ██████████, T.C. (██████████) of the High Point Police Department.¹

The heating oil entered a storm water inlet in the back yard, approximately ten feet from the location of the tank and discharged into Boulding Branch near 406 E. Farris Avenue. The heating oil flowed through Armstrong Park contaminating approximately one-half mile above High Point Lake, a navigable waterway of the United States² and serves as a source of drinking water for the City of High Point.

Guilford County Environmental Health responded to the location of the discharge to coordinate mitigation and cleanup. According to the claimant, the National Response Center (NRC # 929189) and the EPA, Region 4 in Atlanta were contacted.

It is important to note that Mr. ██████████' insurance Agent is Mr. ██████████, State Farm Insurance, in High Point, NC 27265. State Farm denied Mr. ██████████' claim. The National Pollution Fund Center (NPFC) issued a Responsible Party (RP) Notification Letter to Mr. ██████████ and to date have not received a response.

Description of Removal Activities for this Claimant: Mr. ██████████, contacted A&D Environmental, HMHTTC Response, and Zebra Environmental to ask for estimates to clean up the release. HMHTTC Response and Zebra Environmental responded to the scene and met with Ms. ██████████, Guilford County, Toxic & Health Hazard Specialist to determine the extent of cleanup required. When Mr. ██████████ was advised of the cost to clean up the spill, Mr. ██████████ then

¹ Police Report dated January 20, 2010.

² Google Map

stated that he could not afford the cleanup therefore Guilford County hired HMHTTC and Zebra Environmental for the cleanup.

On January 20, 2010, containment boom was placed around the storm water inlet at [REDACTED] and in Boulding Branch beginning at the discharge point from the storm sewer. Rainfall flushed additional heating oil from the storm sewer into Boulding Branch.

On January 21, 2010, oil soaked boom was removed and replaced. Free product from Boulding Branch was removed.

On January 22, 2010, oil soaked boom was removed and replaced as well as free product had been removed.

On January 25, 2010, the boom was removed from Boulding Branch. The County directed that the contaminated soil needed to be excavated and backfilled. Due to Mr. [REDACTED]'s inability to pay for remediation and cleanup, Guilford County permitted Mr. [REDACTED] to dig up the contaminated soil and handle the disposal of the soil himself.

After Mr. [REDACTED] excavated his property, Ms. [REDACTED] with the State of North Carolina, Department of Environment and Natural Resources, Winston-Salem Regional Office, confirmed 16 ppm diesel range organics remained in the soil at [REDACTED] Street and a "No Further Action" letter was issued to Mr. [REDACTED] on April 19, 2010.³

The Claim: The claimant, Guilford County Environmental Health, presented their costs to Mr. [REDACTED] on March 10, 2010.⁴ The claims manager sent an RP Notification letter to Mr. [REDACTED].⁵

On October 15, 2010 Guilford County Environmental Health submitted a claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs. This claim is for removal costs based on County labor rates, Zebra Environmental & Industrial Services, Inc. Invoice # 10092⁶ and HMHTTC Response, Inc. Invoice # 0006779-IN.⁷

This claim consists of the Standard NPFC Claim Form, Guilford County Emergency Response Incident Report, High Point Police Report, an aerial view map of the area, NCDENR notice of violation sent to Mr. [REDACTED],⁸ NCDENR Notice of No Further Action, Division of Water Quality analysis, sample ID # AB55246, telephone logs, proof of presentment of costs to the RP, UST/AST Leak reporting Form (UST-61), and contractor invoices.

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

³ NCDENR letter dated April 19, 2010

⁴ Claimant's letter to RP dated March 10, 2010

⁵ RP Notification letter dated October 26, 2010

⁶ See, proof of payment, Check # 371652

⁷ See, proof of payment, Check # 366815

⁸ NCDENR Notice of Violation dated February 1, 2010

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. The incident involved the substantial threat of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
2. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all removal costs presented were for actions in accordance with the NCP and the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.
3. The claimant, Guilford County Department of Public Health, communicated with the responsible party in writing. The Claimant has not commenced an action in court to recover costs which were the subject of the claim.
4. To date, Mr. [REDACTED] has not paid the Claimant for costs incurred for the cleanup of the incident.
5. EPA Region 4, Atlanta was contacted on January 21, 2010,

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 “removable 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$8,022.09 of uncompensated removal costs and that the 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 # 911003-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of January 20, 2010, through January 25, 2010 excluding contaminated soil disposal as that activity was handled by the RP in this case. 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 \$8,022.09 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911003-0001. 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 present by the Claimant.

AMOUNT: \$8,022.09

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *11/01/10*

Supervisor Action: *Approved*

Supervisor's Comments: