

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E15428-0001
Claimant	: Guilford County Department of Health and Human Services
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$27,852.73

FACTS:

1. Oil Spill Incident: The United States Environmental Protection Agency (US EPA) Region IV¹ states that on April 16, 2015, the Guilford County Department of Health and Human Services (Guilford County) reported an illegal dumping incident of approximately 1,000 gallons of oily petroleum waste into a storm drain that migrated into a private pond. This pond has an outfall into Bull Run Creek, which leads into the Deep River, a navigable waterway of the US.

The incident was reported to the National Response Center (NRC) via report # 1113761. On April 17, 2015, a request was made by Guilford County for US EPA Region IV support and, after the Federal On-Scene Coordinator (FOSC) was dispatched to the scene, a Federal Project was opened under FPN # E15428.

At the time of this adjudication, a Responsible Party (RP) has not been identified.

2. Description of removal actions performed: For approximately two and a half days prior to the FPN being opened, the Claimant, Guilford County, hired A&D Environmental Services, Inc. (A&D) to assess and clean up the spill site. A&D placed boom and sorbent pads to contain the spill, as well as to absorb the oily waste. Boom and pads were removed, disposed of and replaced as needed. Due to increasing costs and the large scope of the incident, the Claimant requested support from US EPA Region IV, which, upon dispatching an FOSC to the site, opened an FPN and activated its contractor for the remainder of the cleanup.

3. The Claim: On August 10, 2015, Guilford County Department of Health and Human Services (GC HHS) presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$27,852.73 for the services provided April 16-17, 2015 (\$26,914.50 in subcontractor invoicing and \$938.23 in Guilford County Public Service Personnel Costs).

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

¹ See POLREPS 1-3 for FPN # E15428.

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. FOSC Coordination has been established via US EPA Region IV.²In its capacity as the FOSC for this incident, US EPA determined that the actions undertaken by the Claimant are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
4. A Responsible Party has not been determined. 33 U.S.C. § 2701(32).
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if 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 (NCP).

The Claimant, Guilford County, provided a well-documented claim to demonstrate that the actions it performed were for OPA-related costs and that the work performed mitigated the effects of the oil that was released from the storm drain. Additionally, the US EPA Region IV confirmed the actions performed for this incident. Upon adjudication of the claim, the NPFC

² See US EPA POLREPS 1-3 for FPN E15428.



confirmed that the rates charged were billed in accordance with the published rates for both the Claimant and the contractor and as such, the NPFC has determined that the amount invoiced and paid was reasonable.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$27,852.73 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E15428-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from April 16-17, 2015.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$27,852.73 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E15428-0001. 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 presented by the Claimant.

AMOUNT: \$27,852.73


Claim Supervisor: 
Date of Supervisor's review: <i>8/26/15</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments: