

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 916022-0001
Claimant	: Guilford County Department of Health and Human Services Guilford County Environmental Health
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$361.00

**INCIDENT:**

The Guilford County Department of Health and Human Services (Guilford County) reports that on November 5, 2015, a small release of hydraulic fluid from a vehicle carrier owned by Motivated Transport (the Responsible Party (RP)) was discovered impacting a nearby waterway at Yanceyville Sreet and Lindsay Street. Being unable to contact the RP, Guilford County assumed responsibility of the incident and contracted with A&D Environmental Services for site and removal efforts.

The RP, Motivated Transport, was notified by the Claimant but to date has not paid the costs for which it is responsible.

**CLAIM AND CLAIMANT:**

The Claimant, Guilford County, managed incident and contracted with A&D Environmental to remove free product and absorbent booms and pads that were placed by Greensboro Fire Department. Guilford County claims it paid \$361.00 to have pads removed and disposed of properly.

On January 4, 2016, Guilford County presented its removal cost claim to the National Pollution Funds Center (NPFCC), for reimbursement of its uncompensated removal costs in the total amount of \$361.00 for its response to a spill of oil on November 5, 2015.

**APPLICABLE LAW:**

"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".

"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". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFCC, 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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

“Claimant” means “any person or government who presents a claim for compensation under this subchapter.” 33 USC § 2701(4).

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 136.203, the claimant bears the burden to prove the removal costs 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. No FOSC coordination has been provided for this incident. 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 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.

**B. NPFC Analysis:**

Guilford County states in its claim submission that all costs claimed are for uncompensated removal costs incurred for this incident. It represents that all costs presented to the Fund are compensable removal costs, payable by the OSLTF.

The NPFC Claims Manager reviewed Guilford County's actual cost invoicing and dailies to ensure that the Claimant had incurred all costs claimed and that the costs were adequately documented and reasonable. Pursuant to 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.

Based on a preponderance of the evidence, the claim is denied because (1) the Claimant has not shown it was able to obtain coordination from the FOSC and (2) it has not provided documentation showing that the storm drain/Muddy Creek are nexuses to a navigable waterway. The Claimant was asked to provide the above,<sup>1</sup> but has failed to respond and furnish the requested information. As such, the NPFC is unable to determine whether or not this claim is consistent with the National Contingency Plan.<sup>2</sup>

Should Guilford County choose to request reconsideration of its claim, it would need to provide FOSC coordination, as well as provide proof that the incident discharged in or threatened a navigable waterway. Based on the foregoing, this claim is denied.

**C. Determined Amount: \$0.00**

The NPFC hereby determines this claim is denied because (1) the Claimant failed to obtain coordination from the FOSC in accordance with the governing claims regulations found at 33 CFR §136.203 and 205 and (2) it has not provided documentation showing that the storm drain/Muddy Creek are nexuses to a navigable waterway and that this incident either substantially threatened a navigable waterway or discharged directly into a navigable waterway.

Claim Supervisor: [REDACTED]
Date of Supervisor's review: <i>4/8/16</i> <span style="float: right;">U</span>
Supervisor Action: <i>Denial approved</i>
Supervisor's Comments:

<sup>1</sup> See emails from the NPFC to Mr. [REDACTED] dated 3/02/2016 and 3/24/2016.

<sup>2</sup> See 33 CFR 136.205.