

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 202-493-6843  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
10/11/2011

Sent Via Email:  
[REDACTED]@co.guilford.nc.us

Guilford County NC Environmental Health  
ATTN: Mr. John Nantz  
Department of Public Health  
400 West Market Street, Suite 300  
Greensboro, NC 27405

Re: Claim Number 912002-0001

Dear Mr. Nantz:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$3,198.62 is full compensation for OPA claim number 912002-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at [www.ccr.gov](http://www.ccr.gov). Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6843.

Sincerely,

[REDACTED]  
Dawn Unglesbee  
Claims Manager  
United States Coast Guard

ENCL: Claim Summary / Determination Form  
Acceptance/Release Form

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|                           |  |
|---------------------------|--|
| Claim Number: 912002-0001 | Claimant Name: Guilford County NC Environmental Health<br>ATTN: John Nantz<br>Department of Public Health<br>400 West Market Street, Suite 300<br>Greensboro, NC 27405 |
|---------------------------|--|

I, the undersigned, ACCEPT the determination of \$3,198.62 as full compensation for the all removal costs incurred by Claimant for services provided for this incident and claimed to the Oil Spill Liability Trust Fund (Fund) under Claim Number 912002-0001.

This acceptance and the determination and offer on which it is based, is for the payment of uncompensated amounts claimed by the Claimant against the Fund under claim number 912002-0001 and the Oil Pollution Act of 21990, at 33 U.S.C. 2708, and 2712(a)(4) and 2713, and is a full and final release and satisfaction of the amounts claimed. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

|  |                   |
|--|-------------------|
| _____  | _____             |
| Title of Person Signing  | Date of Signature |
| _____  | _____             |
| Typed or Printed Name of Claimant or Name of Authorized Representative | Signature         |

|                                  |                   |
|----------------------------------|-------------------|
| _____                            | _____             |
| Title of Witness                 | Date of Signature |
| _____                            | _____             |
| Typed or Printed Name of Witness | Signature         |

|                          |                     |                     |
|--------------------------|---------------------|---------------------|
| _____                    | _____               | _____               |
| TIN Required for Payment | Bank Routing Number | Bank Account Number |

## CLAIM SUMMARY / DETERMINATION FORM

|                  |   |
|------------------|---|
| Date             | : 10/11/2011                              |
| Claim Number     | : 912002-0001                             |
| Claimant         | : Guilford County NC Environmental Health |
| Type of Claimant | : Local Government                        |
| Type of Claim    | : Removal Costs                           |
| Claim Manager    | : Dawn Unglesbee                          |
| Amount Requested | : \$3,198.62                              |

### **FACTS:**

***Oil Spill Incident:*** On May 17, 2011, Greensboro Water Resources Department notified Guilford County Environmental Health (Guilford County) of a discovery of a heating oil spill behind a vacant residence, owned by Mr. Howard Froelich, located at 1500 Plymouth Street in Greensboro, North Carolina.

Vandals cut the copper tubing from the above ground storage tank behind the residence leaving the home heating oil in the tank to drain out. The oil saturated the soil at the base of the tank and flowed into a wet weather ditch that was full of rain which leads to a tributary to South Buffalo Creek which feeds into Buffalo Creek, then to Reedy Fork Creek, then to Haw River, then to Cape Fear River, a navigable waterway of the United States.

The total storage capacity of the tank is 275 gallons. It is unknown how long the oil had been discharging from the tank, however the tank was empty upon discovery. The amount of heating oil found in the foundation drain and flowing in the wet weather ditch was estimated to be anywhere between 50 – 275 gallons.

Guilford County issued a Notice of Violation of the Oil Pollution and Hazardous Substances Control Act requiring that the home owner remove any contaminated soil remaining in place at the residence as a result of the spill.<sup>1</sup> In response, Mr. Froelich claimed that the property at 1500 Plymouth Street was in foreclosure and that he was not the responsible party. Mr. Froelich submitted copies of unsigned documents as his support. Since the documents were unsigned, they were presented to the Guilford County Attorney's office for investigation. The Guilford County Attorney conducted a title search and a foreclosure search and could not find any evidence to support Mr. Froelich's claim that he did not own the property at the time of the spill.<sup>2</sup>

The National Response Center was contacted via incident report # 976538.<sup>3</sup>

The National Pollution Fund Center (NPFC) issued a Responsible Party (RP) Notification letter to Mr. Froelich to his address in Kansas via certified mail.

***Description of Removal Activities for this Claimant:*** Guilford County contracted with A&D Environmental Services, Incorporated, to respond to the incident for cleanup. The foundation

<sup>1</sup> See, NCDENR Notice of Violation dtd May 23, 2011.

<sup>2</sup> See, Email dated July 11, 2011 re: Property Ownership – Howard Froelich

<sup>3</sup> See, NRC report # 976538

drain and contaminated soil were excavated. The wet weather ditch was boomed and then excavated as well.

Claimant presented the cleanup costs to Mr. Froelich via certified mail and was signed for as received by Mr. Froelich.<sup>4</sup>

**The Claim:** On October 4, 2011 Guilford County submitted a claim to the NPFC for reimbursement of their uncompensated removal and public services costs. This claim is for removal costs based on A&D Environmental Services, Inc. invoice # 001570<sup>5</sup> and Guilford County labor rates.<sup>6</sup>

This claim consists of the Standard NPFC Claim form, Guilford County Final Pollution Report, A&D Invoice, Claimant's presentment to RP, Notice of Violation to RP, and proof payment.<sup>7</sup>

### **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

<sup>4</sup> See, RP signed certified mail receipt.

<sup>5</sup> A&D Invoice # 001570.

<sup>6</sup> Guilford County Public Service Cost Calculations.

<sup>7</sup> Guilford County check # 421237 dtd 7/28/11.

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 NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. 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.
3. 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.
4. The Claimant, Guilford County Environmental Health, communicated with the responsible party in writing.
5. Claimant has not commenced an action in court to recover costs which were the subject of the claim.
6. To date, Mr. Froelich has not paid the Claimant for costs incurred for the cleanup of the incident.

#### *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 \$3,198.62 of uncompensated removal and public service costs and that the amount is payable by the OSLTF as full compensation for the reimbursable removal and public services costs incurred by the Claimant and submitted to the NPFC under claim # 912002-0001 based on the rate schedule in place at the time the services were rendered.

*C. Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$3,198.62 as full compensation for the reimbursable removal costs incurred by Claimant and submitted to the NPFC under claim # 912002-0001. All costs claimed are for charges paid for by Claimant for removal and public services as that term is defined in OPA and are compensable removal costs payable by the OSLTF as presented by the claimant.

**Amount: \$3,198.62**

Claim Supervisor: *Donna Heiberg*

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

Supervisor Action: *Approved*

Supervisor's Comments: