

CLAIM SUMMARY / DETERMINATION FORM

Date : 5/27/2011  
Claim Number : 911078-0001  
Claimant : Guilford County Environmental Health  
Type of Claimant : Local Government  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$1177.18

**FACTS:**

- 1. Oil Spill Incident:** The Guilford County Environmental Health (GCEH), reports that on May 21, 2010, an overturned vehicle released an unknown amount (with a potential of fifteen gallons) of gasoline and motor oil into a creek located at 4819 Randleman Road in Greensboro, NC. The affected creek is a tributary of Polecat Creek, a tributary of Deep River, which flows into the Cape Fear River and eventually into the Atlantic Ocean, all navigable waterways of the US.

The incident was reported to the National Response Center (NRC) on May 21, 2010 at approximately 2157 ET via report # 941197 by Mr. Gene Mao with GCEH. The Responsible Party (RP) was determined to be Mr. [REDACTED] owner of the vehicle. At the time of the incident, this vehicle was being operated by Ms. [REDACTED]. When presented with costs for this claim, the RP denied payment, as did his insurer, Peak Property and Casualty of Goldsboro, NC.

- 2. Description of removal actions performed:** The claimant, GCEH, hired out 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 flow of gasoline and motor oil. The spill site was monitored by the contractor until the boom was safely removed on May 24, 2010.
- 3. The Claim:** On May 23, 2011, Guilford County Environmental Health (GCEH) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$1177.18 for the services provided May 21 through May 24, 2010 (\$709.25 in sub-contractor invoicing and \$467.93 in Guilford County Public Service Personnel Costs).

This claim consists of copies of: NRC Report # 941197, the GCEH Pollution Report, the GCEH Emergency Response Incident Report # 052-10, the NC State Highway Patrol Report # 102869972, invoicing, dailies, RP presentment letters, the disposal manifest, proof of payment to A&D, maps, photographs and internal email correspondence.

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 FOOSC, and (4) whether the costs were adequately documented.

## **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. 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 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)(2)
4. A Responsible Party was determined but, to date, has not submitted payment to the claimant. 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).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$1,177.18 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 #911078-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from May 21 through May 24, 2010. 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 \$1,177.18 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 911078-0001. 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: \$1,177.18**

Claim Supervisor

Date of Supervisor's review: *5/25/11*

Supervisor Action: *Approved*

Supervisor's Comments: