

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 911092-0001  
Claimant : Guilford County NC Environmental Health  
Type of Claimant : Local Government  
Type of Claim : Removal Costs  
Claim Manager : XXXXXXXXXX  
Amount Requested : \$4,175.32

### **FACTS:**

1. ***Oil Spill Incident:*** On March 16, 2011, the Guilford County Environmental Health Division reported to the National Response Center (NRC) that an estimated 100 gallons of diesel fuel oil was discharged on the eastbound on ramp of Interstate 85 at the interchange of North Carolina Highway 61 in Whitsett, North Carolina, in Guilford County.<sup>1</sup> The discharge was thought to be caused by an unidentified tractor trailer that recently fueled without fastening its saddle tank cap, parked on the side of the ramp at the incline. The discharge flowed downhill to a storm drain that drops directly into a tributary of Lake Mackintosh, the public water supply of Burlington, North Carolina. Lake Mackintosh, a navigable waterway of the United States, is a tributary to Big Alamance Creek, Haw River, Cape Fear, and the Atlantic Ocean. The Whitsett Fire Department contained the spill and Guilford County Environmental Health Division contracted Zebra Environmental & Industrial Services, Incorporated (Zebra Environmental) to remove the diesel fuel and contaminated soil.
2. ***Description of Removal Activities for this Claimant:*** Zebra Environmental removed the contaminated soil from the incident site; took soil samples; and disposed of 44 tons of contaminated soil. For the clean-up, they deployed a service truck; a dump truck with a trailer; a dump truck (without a trailer); a mini trackhoe; and a bobcat.
3. ***The Claim:*** On June 14, 2011, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$4,175.32. The claim consists of the Guilford County Environmental Health Emergency Response Incident report, NRC Report, area map, Zebra Environmental invoice, a rate schedule and soil sample results. The responsible party (RP) remains unknown.

### **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."

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."

<sup>1</sup> See NRC Report #970336.

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 National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. 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.
4. The claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

##### **B. Analysis:**

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

Upon review, the Claims Manager hereby determines that there are discrepancies among Zebra Environmental Invoice #11682, their rate schedule, and the cost documentation provided. First, the straw bale was billed as two bales at \$6.00 each on the invoice. However, the receipt for the bales shows the actual cost for each bale was \$4.36 each. Per the rate schedule, with the 25% mark-up, each bale was \$5.45 for a total cost of \$10.90. Claimant will be reimbursed \$10.90 for the bales and the difference is denied.


Also, the stone was billed at the rate of \$20.57 per ton on the invoice. Zebra Environmental provided the receipt to the Claimant for the 14.3 tons of stone, showing that the stone was purchased by Zebra Environmental at the rate of \$16.45 per ton. The 14.3 tons, at the rate of \$16.45 per ton is \$235.24, plus the 25% mark-up of \$58.81, is \$294.04. Claimant will be reimbursed \$294.04 and the difference is also denied.

Finally, the Zebra Environmental invoice billed for an 8% Energy Surcharge of \$289.69. However, their rate schedule notes that a 6% Energy Recovery Surcharge will be added to the invoice total. NPFC's invoice total of the removal costs is \$3,619.94, with the 6% mark-up of \$217.20, totals \$3,837.14. The invoice total, along with the Guilford County materials tech costs of \$264.48, yields a total of \$4,101.61.

**C. Determined Amount:**

The NPFC determines that the OSLTF will pay \$4,101.61 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911092-0001. 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 Claimant.

**AMOUNT: \$4,101.61**

Claim Supervisor: 

Date of Supervisor's review: 9/14/11

Supervisor Action: *Determination approved*

Supervisor's Comments: