

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/12/2011  
Claim Number : 911111-0001  
Claimant : Guilford County NC Environmental Health  
Type of Claimant : Local Government  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$3,297.41

**FACTS:**

- 1. Oil Spill Incident:** On January 5, 2011, the Guilford County Emergency Management (GCEM) notified the Guilford County Environmental Health Division (GCEH) of a diesel fuel spill due to a motor vehicle accident. A tractor trailer was hit by a car that ran a red light at 7069 Albert Pick Road in Greensboro, Guilford County, North Carolina. Twenty gallons of diesel fuel was released from the saddle tanks of the tractor trailer, and flowed across the paved parking lot of the McDonald's (at the above address), discharging the fuel into the East Fork Deep River. The East Fork Deep River flows into the City of High Point, North Carolina, and is the city's water supply. The East Fork Deep River is a navigable waterway of the United States and is a tributary to High Point Lake, Deep River, Cape Fear River, and the Atlantic Ocean. GCEH contracted Zebra Environmental & Industrial Services, Incorporated (Zebra Environmental) to clean up the diesel fuel spill.
- 2. Description of Removal Activities for this Claimant:** The Greensboro Fire Department contained the spill and Zebra Environmental vacuumed up the spill at the edge of the McDonald's parking lot adjacent to the East Fork Deep River. They flushed and vacuumed the residual fuel; and the remainder of the spill was absorbed and drummed for disposal. For the clean-up, they deployed a foreman and four technicians; a service truck; an emergency response trailer; a vacuum truck; and a power washer. Zebra Environmental also performed disposal activities.
- 3. The Claim:** On August 11, 2011, the Claimant submitted a removal cost/public services claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$3,297.41. The claim consists of the Guilford County Environmental Health Emergency Response Incident report, Guilford County Emergency Response Final Pollution Report, Guilford County Public Service Cost calculations, area maps, Zebra Environmental invoice, a rate schedule, proof of payment to Zebra Environmental and vehicle accident report.

The responsible party (RP) [REDACTED] is the owner and operator of the tractor trailer involved in the motor vehicle accident. On March 28, 2011, Zebra Environmental received a letter from [REDACTED] Litigation Case Manager for Crumley Roberts, Attorneys At Law, informing they represented the RP with regards to his injuries. GCEH forwarded Zebra Environmental's invoice to the RP's insurance policy holder for the tractor trailer, North Carolina Farm Bureau Insurance. Both the RP and his insurance company refused to pay the invoice. The Claimant paid Zebra Environmental. On August 11, 2011, the NPFC mailed a RP Notification Letter to Mr.

██████████ to inform him that a claim had been received from GCEH. As of the date of this determination, Mr. ██████████ has not responded.

**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 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 what 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 #11395 and their rate schedule. Zebra Environmental billed the Claimant for one emergency response trailer for one day at the rate of \$450.00 per day. However, the rate schedule lists the rate of the trailer for one day at \$400.00 per day. The Claimant will be reimbursed at the \$400.00 per day rate, with the \$50.00 difference denied.

Also, the Zebra Environmental invoice billed for an 8% Energy Surcharge of \$213.14. However, their rate schedule notes that a 6% Energy Recovery Surcharge will be added to the invoice total. The Claimant will be reimbursed \$156.86 at the 6% surcharge, with \$56.28 denied.

**C. *Determined Amount:***

The NPFC determines that the OSLTF will pay \$3,191.14 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911111-0001. 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: \$3,191.14**

Claim Supervisor:  D

Date of Supervisor's review: *10/13/11*

Supervisor Action: *Approved*

Supervisor's Comments: