

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 : [REDACTED]
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. [REDACTED], located at [REDACTED] 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.¹ In response, Mr. [REDACTED] claimed that the property at [REDACTED] was in foreclosure and that he was not the responsible party. Mr. [REDACTED] 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. [REDACTED]'s claim that he did not own the property at the time of the spill.²

The National Response Center was contacted via incident report # 976538.³

The National Pollution Fund Center (NPFC) issued a Responsible Party (RP) Notification letter to Mr. [REDACTED] 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

¹ See, NCDENR Notice of Violation dtd May 23, 2011.

² See, Email dated July 11, 2011 re: Property Ownership – [REDACTED]

³ 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. [REDACTED] via certified mail and was signed for as received by Mr. [REDACTED].

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 # 001570⁵ and Guilford County labor rates.⁶

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.⁷

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

⁴ See, RP signed certified mail receipt.

⁵ A&D Invoice # 001570.

⁶ Guilford County Public Service Cost Calculations.

⁷ 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. [REDACTED] 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 

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

Supervisor Action: **Approved**

Supervisor's Comments: