

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/14/2009
Claim Number	: N06059-001
Claimant	: State of Texas
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$4,841.49

### **FACTS:**

***Oil Spill Incident:*** On August 11, 2006, MSU Port Arthur received a call from a vessel Captain that crewmembers onboard the UTV Mam Lere were under the influence of drugs and were carrying drugs on the vessel. The UTV Mama Lere was pushing 4 barges ahead, 2 steel and 2 sugar hoppers. At about 1000, the Captain contacted the MSU again to report that the vessel was taking on water while being moored at mile marker 289 on the Gulf Intracoastal Waterway, a navigable waterway of the US. A pump was in place to dewater the engine room. The UTV Mama Lere was boarded about 1100 by a Coast Guard Boarding Team, Investigating Officers, and the Jefferson County Sheriff's Department, where a search for drugs and/or drug paraphernalia was conducted. During the boarding, the Boarding Team found that the vessel was too unsafe for all persons to remain onboard, and all crewmembers and Coast Guard personnel were ordered to abandon ship. The vessel began sinking while it was tied to 4 accompanying barges. Cleanup and salvage efforts immediately began to mitigate any pollution and recover the vessel. The submersion of the UTV Mama Lere allowed the vessel's fuel tanks to discharge an estimated 10,000 gallons of fuel into the Gulf Intracoastal Waterway. The discharge caused a large slick of oil in the water.

On the day of the incident, MSU Port [REDACTED] advised the NPFC that the managing owner, Mr. [REDACTED] of K.P., Inc. advised the Coast Guard that he did not have the financial resources to conduct removal operations therefore the USCG opened a Federal Project Number and hired the necessary contractors to handle cleanup and response. The claimant responded jointly with the USCG and deployed boom and monitored the actions of the responders. TGLO billed the responsible party and tried to collect administrative penalties but no payments were ever received. The responsible party, Mr. [REDACTED] requested a hearing with TGLO, however, in a follow-up conversation, the President of K.P., Inc., Mr. [REDACTED], advised TGLO that the company was no longer in business. The NPFC sent Mr. [REDACTED] an RP Notification letter advising a claim has been made for reimbursement of their uncompensated removal costs.

***Description of Removal Activities for this claimant:*** TGLO conducted initial and follow up response. Invoices include state personnel, equipment (vehicle) and indirect expenses.

***The Claim:*** On January 7, 2009, TGLO submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$4,841.49.

TGLO is claiming State personnel expenses of \$1,435.57 and State equipment expenses of \$2,790.35, and indirect expenses of \$615.57.

**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. MST2 [REDACTED] provided FOSC coordination.
2. The incident involved the 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 on time.
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 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. It is important to note that the condition of the abandoned drums was poor, open, and deteriorated.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$4,841.49 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #N06059-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on August 11, 2006 through August 16, 2006. 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 \$4,841.49 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N06059-001. 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 Claimants.

**AMOUNT: \$4,841.49**

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: