

CLAIM SUMMARY / DETERMINATION

Claim Number:	916065-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$768.80

FACTS:

Oil Spill Incident:

On June 10, 2016, the State of Texas General Land Office (TGLO) State On-Scene Coordinator (SOSC), [REDACTED], responded to the report of a tar mat that was found 100 feet north of mile marker 50 on Mustang Island Beach, in Port Aransas, Texas. The tar mat consisted of approximately 120 gallons of crude oil – tar product. The product was 4-feet by 3.5-feet and 6 to 8 inches thick.¹

The SOSC coordinated with the United States Coast Guard (USCG) who authorized that TGLO take the lead in the response.² To date, no Responsible Party (RP) has been identified.

Description of Removal Actions Performed:

The SOSC contacted Port Aransas Beach Operations and requested that a beach maintainer and an operator respond to the incident to break up the tar into recoverable pieces.³ After the tar mat was sampled, recovered, bagged, and secured in the SOSC's truck, the SOSC took the recovered product to Miller Environmental for proper disposal. The recovered product was disposed of at US Ecology Texas, Inc.⁴

On June 15, 2016, the Coast Guard Federal On Scene Coordinator's Representative (FOSCR), inspected the incident scene after the tar mat was removed from the beach and signed off that the actions that were taken by the TGLO were determined to be consistent with the National Contingency Plan (NCP).⁵

Claim:

On August 8, 2016, TGLO submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$768.80 for response and disposal services that were provided on June 10, 2016.

¹ See Texas Oil or Hazardous Substances Discharge or Spill Report # 20161702.

² See signed Texas General Land Office and United States Coast Guard Agreement.

³ See Response Chronology.

⁴ See Invoice # T119921 and Waste manifest # 016091557.

⁵ See Texas General Land Office and United States Coast Guard Agreement.

The Claimant provided Miller Environmental Services, LLC's invoice, in the amount of \$563.09, US Ecology Texas invoice and disposal manifest, and TGLO invoice for personnel and equipment in the amount of \$205.71. The Claimant provided proof of payment for the Miller Environmental Services invoice, via check # 67013. Miller Environmental's invoice is inclusive of the disposal costs.

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".

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. Findings of Facts:

1. FOSC coordination has been established by Sector Corpus Christi. 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. A Responsible Party was not determined. 33 U.S.C. § 2701(32);
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
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 which of the 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

The NPFC Claims Manager 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.

Itemization of Denied Costs by Invoice

Miller Invoice # 67013 - \$7.50 in costs were denied because Miller Environmental’s invoice charged \$80.00 for a Project Manager, however based on the MLCLANT Emergency Response Basic Ordering Agreement: BOA HSCG84-09-A-800004, a Project Manager earns \$75 an hour.

Miller Invoice # 67013 - \$0.01 was denied as an unidentified cost.

The NPFC hereby determines that the NPFC will offer and the OSLTF is available to pay **\$761.29** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim #916065-0001. All of the costs deemed compensable by the Fund have been 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.

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 USC §§2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.205, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan. 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.”

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$761.29 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916065-0001


Claim Supervisor: 
Date of Supervisor's review: <i>8/15/16</i>
Supervisor Action: <i>Approved</i>