

CLAIM SUMMARY / DETERMINATION

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| Claim Number: | N15019-0002 |
| Claimant: | Texas General Land Office |
| Type of Claimant: | State |
| Type of Claim: | Removal Costs |
| Claim Manager: | Dawn Unglesbee |
| Amount Requested: | \$945.52 |

FACTS:

Oil Spill Incident: On February 27, 2015, the Texas General Land Office (TGLO) was notified of an oil spill in Matagorda Bay, Matagorda County, Texas. TGLO personnel responded and discovered the F/V TWO SISTERS grounded and partially sunk in the Bay, discharging approximately 400 gallons of oil into the Bay, a navigable waterway of the United States. TGLO personnel contacted USCG Sector Corpus Christi who responded and found a second vessel, the F/V CAPTAIN SANG, which also grounded and partially sunk in Matagorda Bay, releasing 300 gallons of oil into the Bay. Coast Guard Personnel offered the vessels owner Mr. Nghia Le, according to the Pollution Report (POLREP) released by Coast Guard Sector Corpus Christi, the opportunity to remove the fuel from his vessels but he declined claiming an inability to fund the response.¹

On June 02, 2015, the NPFC, received an email from MST2 Clarence Rivera, Coast Guard Sector Corpus Christi, stating that Mr. Nghia Le was the owner of the F/V TWO SISTERS and that Mr. Phan Van Sang is the owner of the F/V CAPTAIN SANG. As such, the NPFC mailed an RP Notification letter to both Mr. Le and Mr. Sang on June 02, 2015. Upon receipt of this claim (N15019-0002), the NPFC sent Mr. Sang another RP Notification on June 16, 2015, stating that the Fund is in receipt of this new claim which identifies Mr. Sang as the Responsible Party.

Description of Removal Activities for this Claimant: On March 3, 2015, CG Sector Corpus Christi accessed the Oil Spill Liability Trust Fund (OSLTF) and opened FPN # N15019 to respond to the discharge of oil from both the F/V TWO SISTERS and the F/V CAPTAIN SANG. Coast Guard and TGLO personnel oversaw the deployment of containment boom and a diver who removed fuel from the partially sunken vessels with the use of a diaphragm pump.²

The Claim: On June 1, 2015, TGLO submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel and equipment costs in the amount of \$954.52.

It is important to note that the State equipment expenses that the claimant is requesting reimbursement for are not the same costs that were presented in claim # N15019-0001.

¹ See CG Sector Corpus Christi POLREP 1 dated March 06, 2015.

² Id.

Although the invoice is very similar, these costs are different. The 18 inch containment boom that is being claimed here was used around the F/V CAPTAIN SANG.³

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

³ Email dated 2015 06 16 from TGLO to NPFC states that two separate 200' sections of boom were utilized to surround each of the sunken vessels. In total – between the two cases – 400' of boom was utilized.

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. Coast Guard Sector Corpus Christi provided FOSC coordination 33 U.S.C. § 2702(b)(1)(B) and 2712(a)(4);
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 within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
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.

The NPFC has confirmed that the rates charged by the Claimant are in accordance with the published rates at the time services were rendered. Based on the Federal On Scene Coordinator’s

direction and oversight, the response has been determined to be reasonable, necessary and performed in accordance with the NCP and as such, is approved.

The NPFC hereby determines that the OSLTF will pay **\$945.52** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N15019-0002. 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 Claimant.

AMOUNT: \$945.52



Claim Supervisor: **Donna Hellberg**

Date of Supervisor's review: ***6/23/15***

Supervisor Action: ***Approved***

Supervisor's Comments: