

CLAIM SUMMARY / DETERMINATION

Claim Number:	913020-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$600.42

FACTS:

Oil Spill Incident: On January 5, 2012, a report was made to the National Response Center (NRC) by the Port of Houston Authority via report # 999705 stating that while conducting bunkering operations, the tank was overfilled on the M/V AMELIA. The report also stated that the product was being transferred from the T/B BUFFALO STAR.¹

United States Coast Guard (USCG) Sector Houston / Galveston investigators responded to the incident upon notification from the NRC. Investigators arrived on scene at approximately 1830 hours and observed the path of discharge and evidence of Heavy Fuel Oil was seen draining down the side of the vessel's hull. USCG reports that approximately 150 gallons of heavy fuel oil 180 entered the Houston Ship Channel, a navigable waterway of the US.

USCG investigators report that upon arrival, there was sorbent boom placed in the water from the barge. After further investigation, USCG reported that the crew of the M/V AMELIA did not take any tank soundings during the bunker transfer as per their safety management system.² The Master of the vessel did not make notification to the vessel's Qualified Individual (QI) to initiate response actions as listed in the Vessel's Response Plan (VRP). The USCG had to open the Vessel Response Plan (VRP) and find who the QI contact was so the agent could make contact and initiate response. The USCG issued a Notice of Federal Interest (NOFI) to the M/V AMELIA via Transship Management B.V.

Description of Removal Activities for this claimant:

Included in the Coast Guard MISLE case were witness statements from Buffalo Star tankermen, as well as the *Amalia's* Chief Engineer's and the Master. The statements from the *Amalia's* crew members indicated that when they became aware of the spill, they stopped what they were doing and took actions to clean up the spill. The witness statements confirmed the type of oil and location of spill.

The Texas General Land Office (TGLO) designated the operator of the vessel, Transship Management, B.V as the Responsible Party for the spill. The response officer coordinated with the responsible party, the USCG, and the cleanup contractor Garner

¹ See NRC Report # 999705.

² See, Witness Statement of MST2 Cody Koch.

Environmental, to ensure that the clean-up was consistent with the National Contingency Plan (NCP). All invoices were sent to the Responsible Party via ECM Maritime Services, but to date no payments have been made to TGLO for their costs incurred.

The Claim: On or about 13 December 2012, TGLO presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$600.42

TGLO is claiming state personnel expenses of \$320.42, and state equipment expenses of \$280.00.

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].

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. FOSC coordination was made by Tyson Muniz, United States Coast Guard, Sector Houston.
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 for removal costs.
5. A Notice of Federal Interest (NOFI) was issued by the U.S. Coast Guard on 5 January 2012 advising the owners of the Vessel of their liabilities and responsibilities under the law.
6. 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.

AMOUNT:

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 claims manager validated the costs incurred and the NPFC determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan as confirmed by the FOSC. The claims manager also determines that the response actions were properly documented in order to support the charged billed. The NPFC sent a Responsible Party Notification Letter to ECM dated January 15, 2013.

The Claims Manager hereby determines that the Claimant did in fact incur \$600.42 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number 913020-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on or about 5 January 2012. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

DETERMINED AMOUNT: \$600.42

Claim Supervisor:



Date of Supervisor's review: *16 January 2013*

Supervisor Action: *Approved*