

CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	N12037-0001
<b>Claimant:</b>	Texas General Land Office
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$341.94 [REDACTED]

**FACTS:**

***Oil Spill Incident:*** On or about 9 May 2012, the United States Coast Guard (USCG) Marine Safety Unit (MSU) Port Arthur received notification from the National Response Center (NRC) that there was an unknown amount of oil discharge at the Gabby Docks near Sabine Pass, Texas. MSU Port Arthur Pollution Investigators arrived on scene and found two pockets of waste oil estimated to be approximately 10 – 15 gallons. Investigators questioned and investigated every shrimp boat at the dock but no vessel took responsibility for the spill. Eleven total samples were taken and sent to the USCG lab for analysis. The USCG hired ES&H who brought two trucks, one boat and one response trailer to the spill location. No Responsible Party has been identified. The USCG POLREP confirms that the Claimant, TGLO, and the USCG jointly coordinated the response and investigation into the incident.

***Description of Removal Activities for this claimant:*** The State on Scene Coordinator (SOSC), [REDACTED] responded to the incident jointly with the USCG and found 10 – 15 gallons of oil in the Texas coastal waters. The GLO response officer assisted with the response and assisted in monitoring the cleanup to ensure the cleanup was consistent with the National Contingency Plan (NCP).

USCG opened a Federal Project in order to hire ES&H for response operations.

***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 \$341.94.

TGLO is claiming state personnel expenses of \$211.94, and state equipment expenses of \$130.00.

**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].

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 Marine Safety Unit, Port Arthur, Texas
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.

**B. Analysis:**

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.

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 amount billed.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$341.94 of uncompensated removal costs and 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 N12037-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on or about 9 May 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:**

The NPFC hereby determines that the OSLTF will pay \$341.94 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number N12037-0001. 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: \$341.94**

Claim Supervisor: 

Date of Supervisor's review: *1/16/13*

Supervisor Action: *Approved*

Supervisor's Comments: