CLAIM SUMMARY / DETERMINATION

Claim Number:	N12046-0001
Claimant:	State of Texas
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$530.43

FACTS:

Oil Spill Incident: On June 25, 2012 the M/V HARD TIMES (O/N 663956) sank at Conn Brown Harbor in the vicinity of Aransas Pass, Texas. The sinking resulted in the discharge of oil into the Aransas Ship Cannel, a tributary to the Gulf of Mexico, a navigable waterway of the US. Responsible party (RP) was identified as Mr. [redacted][1]

Description of Removal Activities for this claimant: Texas General Land Office (TGLO) Response Officer [redacted] responded to the incident and assisted the Federal On Scene Coordinator (FOSC), USCG Sector Corpus Christi with spill response coordination. The spill resulted in the FOSC to assert federal assumption of the response operations in order to prevent further damage to the marine environment due to unsuccessful attempts to contact the owner of the M/V HARD TIMES. Miller Environmental Services was contracted to remove the oil from the sunken vessel.

The Claim: On May 28, 2013, TGLO presented a removal cost claim to the National Pollution Funds Center (NDFC) for reimbursement of their uncompensated removal costs in the amount of $530.43.[2]

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".

[1] USCG SITREP-POL MSG DTG R 032215Z JUL 12.
[2] TGLO Response Cost Invoice for Incident #20122062.

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. FOSC coordination was made with USCG Sector Corpus Christi, TX.
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 period of limitations for removal claims to the Fund. 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 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 determined that the response actions were properly documented in order to support the charged billed.

On that basis, the Claims Manager herby determines that the Claimant did in fact incur $530.43 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 #N12046-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on June 25, 2012. 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 $530.43 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N12046-0001. 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: $530.43

Claim Supervisc [redacted]

Date of Supervisor's review: *6/5/13*

Supervisor Action: *Approved*

Supervisor's Comments: