CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N13043-0001
Claimant	: State of Texas General Land Office
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [redacted]
Amount Requested	: $872.82

FACTS:

1. ***Oil Spill Incident:*** The United States Coast Guard Sector Houston Galveston, via Case # 650440,[1] reports that on August 9, 2013, a mystery sheen was reported in Turning Basin, a tributary of the Intracoastal Waterway (ICW), at berth 3 of the Valero refining facility in Port Arthur, TX. Coast Guard (CG) investigation revealed that the sheen was noticed at approximately 0630 on August 9th as it floated into the basin and near the dock. A transfer of crude oil was being conducted with two barges (Buffalo 800 and 801), and the sheen concentrated around these barges and the surrounding dock. Pockets of recoverable product were also visible. The sheen and recoverable product was emulsified by water movement, and mixed with coke dust from Valero's coke refinery and with sand and paint chips from sandblasting operations being conducted across the waterway at Gulf Copper.

2. ***Description of removal actions performed:*** The Claimant, State of Texas General Land Office (TGLO), was part of the initial response to the spill site. State On-Scene Coordinators Mr[redacted] and Mr.[redacted] responded and found approximately 30 gallons of oil in the water. After consulting with the USCG Federal On Scene Coorodinator (FOSC), the Federal Project was opened, and Oil Mop, Inc. (OMI) was contracted for cleanup and removal activity.

   After testing and analysis of the samples taken at the spill site, no Responsible party could be identified.

3. ***The Claim:*** On December111, 2013, TGLO submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of $872.82 for the services provided on August 9, 2013.

   The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

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

[1] See USCG Sector Corpus Christi Case Report # 650440, opened 8/09/2013.

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. *Overview:*

1. The FOSC coordination has been established via USCG Case # 650440.[2]
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.

[2] See USCG Sector Houston Galveston Case Report # 650440, opened 8/09/2013.

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. In accordance with33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.
5. No Responsible Party was identified.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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 confirmed they were billed in accordance with state rates at the time services were rendered. The FOSC substantiates that the actions undertaken by TGLO as the State On Scene Coordinator (SOSC) were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP). The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on November 23, 2012. The Claimant represents that the costs it paid are compensable removal costs, payable by the OSLTF as presented by the Claimant.

After a review of the file, and reading the corresponding FPN documents, the response by the State was reasonable and justified to mitigate any further damage the oil may have caused. Though it was determined later to possibly be a mixed spill, TGLO's initial response on-scene was to mitigate the effects of the oil spill spreading. On that basis, the Claims Manager hereby determines that the Claimant incurred $872.82 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # N13043-0001

C. ***Determined Amount:***

The NPFC hereby determines that the OSLTF will pay $872.82 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N13043-0001.

AMOUNT: $872.82

Claim Supervisor: [redacted]

Date of Supervisor's review: ***12/17/13***

Supervisor Action: ***Approved***