

CLAIM SUMMARY / DETERMINATION FORM

Claim Number:	914013-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$2,163.12

FACTS

On May 23, 2013, the Texas General Land Office (TGLO) responded to a mystery oil spill in Tres Palacios Bay, Matagorda County.¹ State On Scene Coordinator (SOSC) [REDACTED] observed approximately 30 gallons of oil in the bay.² Vessels in the vicinity of the harbor were investigated but no source for the oil was found.³ The Tres Palacios Bay is a navigable waterway of the United States.

Description of Removal Activities for this Claimant

On May 23, 2013, State On Scene Coordinator (SOSC) [REDACTED] responded to the spill and coordinated with the Federal On Scene Coordinator's Representative (FOSCR) PO [REDACTED]. The FOSCR approved TGLO to perform removal activities.⁴ TGLO placed sorbent pads and boom at the spill site, then contracted with Palacios Marine & Industrial Coatings, Inc., to perform removal activities. The contractor collected spent sorbents from the site. The cleanup was completed on May 23, 2013 under the oversight of [REDACTED] as the State On Scene Coordinator (SOSC).

The Claim

On December 30, 2013 the Texas General Land Office (TGLO) submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$2,163.12.

TGLO is claiming GLO personnel expenses in the amount of \$86.01, state equipment expenses in the amount of \$140.00, and response expenses in the amount of \$1,937.11, monies paid to Palacios Marine and Industrial Coatings, Inc., a state contractor for the response and removal costs associated with this fuel spill.

The claim consists of the claim memorandum, incident report, incident photo log, TGLO response cost invoice, invoice from Martin Energy to TGLO, and disposal manifests for removed materials.

APPLICABLE LAW

"Oil" is "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil" 33 USC § 2701(23).

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

¹ See, Texas General Land Office Memorandum, dated December 30, 2013.

² Ibid.

³ Ibid.

⁴ Ibid.

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.”

Pursuant to 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].

Pursuant to 33 USC § 2713(d), “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.”

Pursuant to 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.

Pursuant to 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.”

Pursuant to 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.”

Determination of Loss

Overview

1. FOSC coordination was made by USCG MSD [REDACTED] via MST1 [REDACTED]
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 USC § 2701 (23), that presented a substantial threat 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 costs for these actions were indeed reasonable and allowable pursuant to OPA 90 and 33 CFR § 136.025 as set forth below.

Analysis

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 FOOSC, and (4) whether the costs were adequately documented.


Upon review of the claim submission, the NPFC has determined that the removal costs presented and incurred were billed appropriately and in accordance with all governing rate schedules at the time services were rendered. Based on the approval by the FOOCR for TGLO to take the lead for response, the actions are determined to be reasonable and necessary.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$2,163.12 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 #914013-0001.

Determined Amount

The NPFC determines that the OSLTF will pay \$2,163.12 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to NPFC under claim #914013-0001. All costs presented to the OSLTF in this claim are for removal actions as defined in OPA 90 and 33 CFR 136, and are compensable removal costs.

AMOUNT: \$2,163.12

Claim Supervisor 

Date of Supervisor's review: *1/9/14*

Supervisor Action: *Approved*

Supervisor's Comments: