

CLAIM SUMMARY / DETERMINATION

Claim Number:	915016-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,101.47

FACTS:

Oil Spill Incident: On March 28, 2014, the Texas General Land Office (TGLO) was notified that the fishing vessel F/V ROSEBUD sank discharging approximately 45 gallons of oil into San Antonio Bay, a navigable waterway of the United States. The F/V ROSEBUD was moored at the Westside Navigation District (aka. The Hole) in Calhoun County near the town of Seadrift, TX.¹

TGLO personnel responded to the incident. TGLO identified [REDACTED] in Port Lavaca, TX as the owner and the responsible party (RP) for the incident. TGLO assigned spill # 2014-0957. The incident was reported to the National Response Center (#1078051).

MST [REDACTED] of USCG, Marine Safety Detachment Victoria, TX responded to the discharge as the acting FOSC-R. MST1 [REDACTED] met with SRO [REDACTED] of TGLO who coordinated the state's response and removal oversight with the FOSC-R. The FOSC signed a TGLO document stating that he verified all response activities were conducted in accordance with the National Contingency Plan (NCP).

Removal actions consisted of the Harbor Master placing boom around the vessel to contain the spill. The RP contracted with Clean Tank, Inc., to remove the oil. Eventually, the RP removed the vessel from the water, which concluded further removal activity.

No Federal Project Number was assigned because the RP had contracted with Clean Tank, Inc.

Description of Removal Activities for this claimant: TGLO responded to this incident along with CG Marine Safety Detachment Victoria, TX. TGLO oversaw the containment of the spill and removal of the oil and vessel from the water.²

The Claim: On November 24, 2014, TGLO submitted its removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs for state personnel and equipment costs in the amount of \$1,101.47.³

¹ See TGLO Expedited Small Claim Package dated November 21, 2014.

² Id.

³ See TGLO Expedited Small Claim Package dated November 21, 2014.

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].

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. MST1 [REDACTED] USCG, Marine Safety Detachment Victoria, TX provided FOSC coordination. 33 U.S.C. § 2702(b)(1)(B) and 2712 (a)(4);
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), into 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 period of limitations. 33 CFR § 136.101(a)(2).
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 NPFC has confirmed that the rates charged by the Claimant are in accordance with the published rates at the time these services were rendered and were coordinated with the FOSC and determined to be consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay \$1,101.47 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 915016-0001. 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 Claimant.

AMOUNT: \$1,101.47

Claim Supervisor [REDACTED]

Date of Supervisor’s review: November 25, 2014

Supervisor Action: *Approved*

Supervisor’s Comments: