CLAIM SUMMARY / DETERMINATION

Claim Number:	N14040-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$436.46

Facts:

TGLO # 2014-2351

Oil Spill Incident: On July 17, 2014, the Texas General Land Office (TGLO) was notified of an unknown sheen at Sabine Pass Public Boat Launch, located in the Sabine Ship Channel in Jefferson County, Texas, a navigable water of the United States. SOSCs [redacted] and [redacted] esponded and found five gallons of thick, black, bilge slop oil in Texas Coastal Waters.[1] The product was distributed in three areas around the Spartan 208 Platform, which at the time of the incident, was undergoing maintenance.

Federal On-Scene Coordination (FOSC) was made with USCG MSU Port Arthur[2] who federalized the response utilizing FPN N14040.

Description of Removal Activities for this Claimant: TGLO inspected the platforms and found no immediate source.[3] An estimated quantity of oil discharged into navigable waters was 10-gallons.[4] TGLO hired Garner Environmental Services (Garner) to respond and clean up the spill.[5] However, it is important to note that Garner's costs are not inclusive of this claim.

The Claim: On August 12, 2014, TGLO submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs of TGLO personnel expenses in the amount of $156.46 and TGLO equipment expenses which consist of two 4x4 trucks/response vehicles, in the amount of $280.00. The total invoice amount is $436.46.[6]

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

[1] TGLO Memorandum dated 8/12/2014.
[2] Petty Officer [redacted]
[3] SITREP-POL One and Final.
[4] SITREP-POL One and Final.
[5] SITREP-POL One and Final.
[6] Texas General Land Office Oil Spill Prevention & Response Program Incident Response Cost Invoice.

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. PC[redacted]f Coast Guard MSU Port Arthur 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), 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 on time;
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 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 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 determined that rates charged are in accordance with the State's published rate schedule in place at the time services were rendered and that the services provided are appropriate as the Claimant is the State On Scene Coordinator (SOSC) for this incident and they working jointly with the FOSC. The NPFC has also determined that the actions undertaken by the Claimant were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

The NPFC hereby determines that the OSLTF will pay $436.46 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N14040-0001. 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: $436.46

Claim Supervisor: [redacted]

Date of Supervisor's review: ***8/13/14***

Supervisor Action: ***Approved***

Supervisor's Comments: