

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	917013-0001
<b>Claimant:</b>	Ygriega Environmental Services, LLC
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$4,087.50

### **FACTS:**

***Oil Spill Incident:*** On October 17, 2015, at approximately 1:03pm local time, the National Response Center (NRC) notified U.S. Coast Guard Sector Corpus Christi (SCC) of a partially sunken vessel at the dock in the Port of Harlingen, near Rio Hondo, Texas<sup>1</sup>. After being notified of the incident SCC contacted Marine Safety Detachment (MSD) Brownsville who relayed the information to the Texas General Land Office (TGLO). Due to the partial sinking, the Towboat LIBRA released approximately 1000 gallons of red dye diesel into the Arroyo Colorado, and navigable water of the U.S. The Coast Guard identified the Responsible Party (RP) as Chalico Concrete Materials, Inc.

***Description of Removal Activities for this claimant:*** On October 17, 2015, Chemical Response & Remediation Contractors, Inc.(CRRC) hired Ygriega Environmental Services, LLC to provide a vacuum truck to vacuum and dispose of the skimmed diesel.<sup>2</sup>

***Responsible Party:*** The owner and operator of the LIBRA is Chalico Concrete Materials, Inc., which is owned by Mr. ██████████. Mr. ██████████ was on scene during the pollution removal activities and hired CRRC to conduct cleanup; however, the RP hasn't paid the Claimant any costs associated with oil spill cleanup. Via letter dated May 05, 2017, the NPFC notified Mr. ██████████ of the pending claim by Ygriega Environmental Services, LLC<sup>3</sup>.

***The Claim:*** On May 5, 2017, TGLO forwarded a removal cost claim to the National Pollution Funds Center (NPFC) on behalf of the Claimant for reimbursement of the Claimant's uncompensated removal costs of personnel and equipment costs in the amount of \$4,087.50<sup>4</sup>.

### **APPLICABLE LAW:**

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<sup>1</sup> See NRC Report #1131055

<sup>2</sup> See Ygriega Environmental Services, LLC Claim Package Dated May 4, 2017

<sup>3</sup> See Chalico Concrete Materials, Inc. Responsible Party notification letter Dated May 5, 2017

<sup>4</sup> See Ygriega Environmental Services, LLC invoice #368

Under the Oil Pollution Act of 1990 (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. Removal costs are those “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”.

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.”

**DETERMINATION OF LOSS:**

**A. Overview:**

1. PO [REDACTED] of Coast Guard Marine Safety Detachment (MSD) Brownsville provided FOSC coordination in accordance with the National Contingency Plan (NCP). 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 C.F.R. § 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. 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 C.F.R. § 136.205.

**B. Analysis:**

The NPFC Claims Manager reviewed the documentation provided by the claimant, TGLO and independently obtained by the NPFC. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 C.F.R. § 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 were directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC confirmed that Claimant’s services and costs were necessary and reasonable, were performed in accordance with the NCP, and that the rates charged by the Claimant were in accordance with the Claimant’s published rates at the time services were rendered.

The NPFC hereby determines that the OSLTF will pay \$4,087.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 917013-0001. All costs claimed are for charges incurred 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: \$4,087.50**

Claim Supervisor:



Date of Supervisor's review: *6/12/17*

Supervisor Action: *Approved*

Supervisor's Comments: