

## CLAIM SUMMARY / DETERMINATION

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|--------------------------|---------------------------|
| <b>Claim Number:</b>     | 917019-0001               |
| <b>Claimant:</b>         | Texas General Land Office |
| <b>Type of Claimant:</b> | State                     |
| <b>Type of Claim:</b>    | Removal Costs             |
| <b>Claim Manager:</b>    | ██████████                |
| <b>Amount Requested:</b> | \$11,389.09               |

### FACTS:

**Oil Spill Incident:** On February 25, 2017, at approximately 08:30am local time, Cameron County Beach maintenance workers discovered tar chunks from a large tar mat consisting of 400 gallons of spilled, weathered crude oil in the Gulf of Mexico, a navigable water of the U.S. The oil was located behind the Schlitterbahn Beach Resort on South Padre Island, Texas<sup>1</sup>. The Cameron County Beach maintenance workers reported their discovery to the Texas General Land Office (TGLO). TGLO personnel and U.S. Coast Guard personnel from Marine Safety Detachment Brownsville responded on scene.<sup>2</sup>

**Description of Removal Activities for this claimant:** On February 25, 2017, county workers performed some cleanup work, including using a front loader to pull the chunks to shore; however Bryant Industrial Services, LLC (BIS) was contracted to remove the tar chunk material from the beach and dispose of it.<sup>3</sup>

**Responsible Party:** A Responsible Party was not identified.

**The Claim:** On May 23, 2017, TGLO initially submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of \$11,389.09 in uncompensated removal costs for TGLO personnel and equipment costs, and BIS contractor costs<sup>4</sup>. However, after the NPFC notified TGLO of a personnel time calculation error by BIS, TGLO sent the NPFC an email on June 30, 2017 amending its removal cost claim to a new, reduced total of \$10,849.09<sup>5</sup>.

### APPLICABLE LAW:

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

<sup>1</sup> See NRC Report #1171904

<sup>2</sup> Texas General Land Office claim submission letter dated May 23, 2017, page 1.

<sup>3</sup> Texas Oil or Hazardous Substances Discharge or Spill Report.

<sup>4</sup> See Texas General Land Office claim submission letter dated May 23, 2017.

<sup>5</sup> See Texas General Land Office New Sum Total Removal Cost Email on June 30, 2017.

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 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 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 the costs for these actions were indeed reasonable and allowable under OPA and 33 C.F.R. § 136.205.


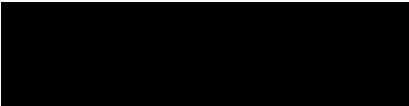
***B. Analysis:***

The NPFC Claims Manager reviewed the documentation provided by the claimant. 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 the claimed costs were properly documented, were necessary and reasonable, were performed in accordance with the NCP, and that the rates under which the contractor charged the Claimant were in accordance with the contractor’s published rates at the time services were rendered. The NPFC also verified that BIS was paid by TGLO for its services.

The NPFC hereby determines that the Claimant has demonstrated entitlement to full reimbursement of the amended amount claimed and the OSLTF will pay \$10,849.09 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 917019-0001. 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: \$10,849.09**

|                              |   |  |
|------------------------------|---|--|
| Claim Supervisor:            |  |  |
| Date of Supervisor’s review: | 7/05/2017   |  |
| Supervisor Action:           | Approved.   |  |
| Supervisor’s Comments:       |   |  |