

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 917034-0001
Claimant	: State of Texas General Land Office
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$1,068.00

FACTS:

- 1. Oil Spill Incident:** On April 26, 2017, Texas General Land Office (TGLO) was performing a vehicle patrol on Sea Rim State Park in Jefferson County, Texas. While patrolling the shoreline, TGLO Response Officer, [REDACTED], reports that he found a tar mat that measured approximately 2 foot by 3 foot by 6 inches in size.¹ TGLO states that the tar mat posed a threat of discharge into the Gulf of Mexico, a navigable waterway of the US.²

TGLO states that after they received authorization from the Director of TGLO, [REDACTED] to open their state spill fund and hire a response contractor, they called Donovan Industrial Services to handle cleanup and recovery of tar mat. TGLO then contacted Coast Guard Marine Safety Unit (MSU) Port Arthur and spoke with Chief Warrant Officer [REDACTED], Chief of the Incident Management Division (IMD) who authorized TGLO to take the lead to handle the response.³ ⁴U

At this time, no Responsible Party (RP) has been identified and a source has not been determined.⁵⁶

This incident was reported to the National Response Center via Report # 1176784.⁷

- 2. Description of removal actions performed:** The Claimant, TGLO, was performing beach patrol on the morning of April 27, 2017 when Response Officer [REDACTED] discovered a tar mat that measured approximately 2 foot by 3 foot by 6 inches in diameter. Upon discovery of the tar mat, TGLO took a sample of the tar mat and called TGLO Headquarters who then called Donovan Industrial Services to respond and cleanup and dispose of the tar mat. TGLO monitored the response of Donovan Industrial to ensure proper response and disposal.
- 3. The Claim:** On August 18, 2017, TGLO submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$1,068.00 for the response services provided by Donovan Industrial on April 27, 2017.

¹ See, NRC Report # 1176784 dated April 27, 2017.

² See, TGLO Texas Oil or Hazardous Substances Discharge or Spill Report # 20171258 dated April 26, 2017.

³ See, TGLO Response Officer Daily Field Log for April 26, 2017.

⁴ See, Email from CWO [REDACTED] of MSU Port Arthur to TGLO Response Officer [REDACTED] dated April 28, 2017 providing an after the fact FOSC coordination statement.

⁵ See, NRC Report # 1176784 dated April 27, 2017.

⁶ See, TGLO Texas Oil or Hazardous Substances Discharge or Spill Report # 20171258 dated April 26, 2017.

⁷ See, NRC Report # 1176784, opened 4/27/2017.

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. Chief Warrant Officer [REDACTED] of Marine Safety Unit Port Arthur, as the Federal On-Scene Coordinator (FOSC) for this incident, determined that the actions undertaken

by TGLO and its contractor, Donovan Industrial Services were consistent with the NCP⁸ for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);

2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. A Responsible Party could not be determined. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if 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 Claims Manager validated that the costs were incurred by TGLO and also confirmed that the costs invoiced to TGLO were billed in accordance with the contractor rate schedule with TGLO at the time services were rendered. The FOSC has determined that the actions undertaken by Donovan Industrial as TGLO’s response contractor was reasonable, necessary and performed in accordance with the National Contingency Plan (NCP). The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on April 27, 2017. The Claimant represents that the costs it paid are compensable removal costs, payable by the OSLTF as presented by the Claimant.

After a review of the file, and reading the corresponding documents, the response by the State and cleanup by its contractor, Donovan Industrial Services, were reasonable and justified. On that basis, the Claims Manager hereby determines that the Claimant incurred \$1,068.00 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 # 917034-0001

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$1,068.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #917034-0001.

⁸ See email from Mr. [REDACTED] of MSU Port Arthur [REDACTED] of TGLO dated April 28, 2017.

AMOUNT: \$1,068.00

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *8/23/17*

Supervisor Action: *Approved*

Supervisor's Comments: