

Claim Number: 918001-0001
Claimant: Texas General Land Office
Type of Claimant: State
Type of Claim: Removal Costs
Claim Manager: [REDACTED]
Amount Requested: \$384.49

FACTS:

TGLO # 2017-0741

Oil Spill Incident: On March 10, 2017, the Texas General Land Office (TGLO) was notified of a mystery oil spill at Mile Marker 45 of the beach on Mustang Island in Nueces County, Texas., The oil affected the Gulf of Mexico, a navigable waterway of the United States. State On-Scene Coordinator (SOSC) [REDACTED] responded and found approximately 59 gallons of oil on the adjoining shoreline of Texas coastal waters . The mystery oil spill produced one 4' x 2' x 1" tar mat which washed ashore on Mustang Island Beach.²

MST2 [REDACTED] of USCG Sector Corpus Christi provided Federal On-Scene Coordination.³

Description of Removal Activities for this Claimant: TGLO investigated a tar mat found by a Port Aransas City Beach worker.⁴ TGLO responded to the spill and hired Corpus Christi Area Oil Spill Control Association to handle the response and disposal of the tar mat.⁵

The Claim: On October 19, 2017, TGLO submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs consisting of TGLO personnel expenses in the amount of \$19.78, TGLO equipment expenses for a 4x4 truck/response vehicle in the amount of \$142.95, and disposal by Corpus Christi Area Oil Spill Control Association totaling \$221.76. The total claimed amount is \$384.49.⁶

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 See, TGLO Incident Report Form.

² See, Texas Oil or Hazardous Substances Discharge Spill Report dated March 10, 2017.

³ See, TGLO/USCG Agreement Form dated March 14, 2017.

⁴ See, TGLO Response Officer handwritten daily field notes.

⁵ See, TGLO claim submission form dated October 19, 2017.

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. MST2 [REDACTED] of Coast Guard Sector Corpus Christi 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 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 National Contingency Plan (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 the rates charged are in accordance with the State’s previously submitted rate table and that the services provided were appropriate in response to the reported incident and subsequent hiring of a response contractor to handle the recovery and disposal of the tar mat. The FOSCR determined that a response was necessary and approved the State’s course of action and confirmed that the actions performed were in accordance with the National Contingency Plan (NCP).

TGLO provided copies of the contractor invoicing, disposal manifest and confirmation of proof of payment to the Contractor.

The NPFC hereby determines that the OSLTF will pay \$384.49 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 918001-0001. All costs claimed are for charges paid 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: \$384.49

Claim Supervisor:



Date of Supervisor’s review: *11/1/07*

Supervisor Action: *Approved*

Supervisor’s Comments: