

CLAIM SUMMARY / DETERMINATION

Claim Number:	N17019-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$406.99

FACTS:

Oil Spill Incident: On April 03, 2017 at approximately 11:10am local time, Ms. ██████████ of the Sabine Pass Port Authority, contacted the National Response Center (NRC) and reported an unknown sheen by an unknown source.¹ After reporting the incident to the NRC, Marine Safety Unit (MSU) Port Arthur was notified of oil that had washed into the Sabine Pass Port Authority Basin from an unknown source. The oil measured approximately 20ft x 5ft in diameter. The Coast Guard was unable to identify a Responsible Party (RP).

MSU Port Arthur opened the Oil Spill Liability Trust Fund (OSLTF) via federal project number # N17019 and hired Oil Mop, LLC (OMI) to handle cleanup and response actions.²

Description of Removal Activities for this claimant: MSU Port Arthur notified TGLO of the incident.³ TGLO Response Officer arrived on scene at about 12:20pm and met with Petty officer ██████████ who was the Federal On Scene Corrdinator's Representative (FOSCR). A joint investigation was performed by the USCG and TGLO. The FOSCR requested that the TGLO Response Officer perform SCAT of the area as the Coast Guard took samples. TGLO Response Officer also jointly boarded vessels in the area in search of a potential Responsible Party (RP). TGLO remained on scene with Coast Guard as the response contractor, Oil Mop, LLC was hired by the Coast Guard and performed cleanup.⁴

The Claim: On April 3, 2017, TGLO submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel and equipment costs in the amount of \$406.99.⁵

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".

¹ See, NRC Report #1174716

² See, USCG SITREP-POL ONE AND FINAL.

³ See, USCG SITREP-POL ONE AND FINAL.

⁴ See, TGLO Response Officer daily handwritten field logs provided in claim submission

⁵ See, TGLO Expedited Small Claim Package dated May26, 2017.

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. PO [REDACTED] of Coast Guard Marine Safety Unit (MSU) Port Arthur provided FOSC coordination via Federal Project Number # N17019. 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 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 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has confirmed that the rates charged by the Claimant are in accordance with the state’s rates at the time services were rendered. The NPFC confirmed the presence via the USCG Activity Case # 6116954 which specifically states that TGLO was performing joint investigation with the FOOCR.⁶

The NPFC hereby determines that the OSLTF will pay \$406.99 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N17019-0001. 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: \$406.99

Claim Supervisor:	
Date of Supervisor’s review:	<i>6/7/17</i>
Supervisor Action:	<i>Approved</i>
Supervisor’s Comments	

⁶ See, USCG Activity Case # 6116954.