

CLAIM SUMMARY / DETERMINATION

Claim Number:	N17041-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$5,714.64

FACTS:

Oil Spill Incident: On August 18, 2017, at approximately 12:30 pm local time, a private citizen reported to the Texas General Land Office (TGLO) that tar balls were washing up onto South Padre Island, TX from the Gulf of Mexico, a navigable water of the U.S. The tar balls amounted to approximately 15,780 gallons of oil and were located at Boca Chica and South Padre Island beaches in Cameron County, Texas¹. TGLO personnel and U.S. Coast Guard personnel from Marine Safety Detachment Brownsville responded on scene.²

USCG MSD Brownsville provided Federal On-Scene Coordination (FOSC)³ and federalized the response utilizing FPN N17041-0001.

Description of Removal Activities for this claimant: On August 18, 2017, a TGLO response officer assisted and monitored the cleanup efforts of the removal contractor, after the U.S. Coast Guard federalized the incident response and hired Chemical Response and Remediation Contractors (CRRC) to perform cleanup.⁴

Responsible Party: A Responsible Party was not identified.

The Claim: On October 20, 2017, TGLO submitted a claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs which consisted of TGLO personnel expenses in the amount of \$3,767.99, TGLO equipment expenses in the amount of \$1,946.65 for 4x4 Trucks/Response Vehicles, a 17' Utility Trailer, a 4x4 ATV, and a 4x4 Kubota⁵ which came to total amount of \$5,714.64.⁶

APPLICABLE LAW:

¹ See, Texas General Land Office Claim submission letter dated October 20, 2017, page 1.

² See, Texas General Land Office claim submission letter dated May October 20, 2017, page 1; See also SITREP-POL ONE.

³See, SITREP-POL One.

⁴ See, SITREP-POL One through Four and Final.

⁵ See, Texas General Land Office claim submission letter dated October 20, 2017, page 3.

⁶ See, Incident Response Cost Invoice attached to the Texas General Land Office claim submission dated October 20, 2017.

"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 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 National Contingency Plan (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 has determined that the rates charged are in accordance with the State’s previously submitted rate table and that the services provided were appropriate as the Claimant performed the response actions in conjunction with the response contractor that was hired by the for this incident and also performed monitoring actions as identified in the USCG Pollution Reports. The FOSC determined that a response was necessary and has determined that the actions performed by TGLO were performed in accordance with the National Contingency Plan (NCP).

The NPFC hereby determines that the OSLTF will pay \$5,714.64 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N17041-0001. 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: \$5,714.64

Claim Supervisor:

Date of Supervisor's review: *11/1/17*

Supervisor Action: *Approved*

Supervisor's Comments: