

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N17044-0001
Claimant	: State of Texas General Land Office
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$465.00

### **FACTS:**

- 1. *Oil Spill Incident:*** The United States Coast Guard Sector Corpus Christi reports that on August 23, 2017, approximately 30-40 gallons of red-dye diesel fuel was discovered in the waters of Turtle Cove Marina (part of the Corpus Christi Shipping Channel), Nueces County, Texas, a navigable waterway of the U.S.<sup>1</sup> The State of Texas General Land Office (TGLO) State On-Scene Coordinator (SOSC), Mr. [REDACTED], responded. The SOSC coordinated with the Federal On Scene Coordinator (FOSC), USCG Sector Corpus Christi, who then opened Federal Project Number (FPN) N17044 and hired Miller Environmental for cleanup and removal activities for the incident.

Vessels in the area were investigated by the USCG<sup>2</sup> but no source was located. Therefore, at this time, no Responsible Party (RP) has been identified and a source has not been confirmed.

This incident was reported to the National Response Center under Report # 1188211.<sup>3</sup>

- 2. *Description of removal actions performed:*** The Claimant, TGLO, was part of the initial response to the spill site, and maintained a presence throughout as it worked with the USCG. As the SOSC, it responded and found approximately 30-40 gallons of red-dye diesel fuel in the water. After consulting with the FOSC, Miller Environmental was contracted for cleanup and disposal of the fuel.
- 3. *The Claim:*** On April 6, 2018, TGLO submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$465.00 for state equipment (4x4 Truck/Response vehicle) and personnel provided on August 23, 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".

<sup>1</sup> See, SITREP-POLREP One for this incident, dated 8/24/2017.

<sup>2</sup> See, Notes for USCG Sector Corpus Christi Activity # 6250091, opened 8/24/2017.

<sup>3</sup> See, NRC Report # 1188211, opened 8/23/2017.

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. USCG Sector Corpus Christi, as the FOSC for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the NCP.<sup>4</sup> 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 and confirmed that they were billed in accordance with state rates at the time services were rendered. The FOSC has determined that the actions undertaken by TGLO as the State On Scene Coordinator (SOSC) were 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 August 23, 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 and consideration of the file and the corresponding FPN documents, the response by the State was determined to be reasonable and necessary to mitigate the effects of the incident. On that basis, the Claims Manager hereby determines that the Claimant incurred \$465.00 of uncompensated removal costs for state equipment and personnel, 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 # N17044-0001.

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<sup>4</sup> See, USCG Sector Corpus Christi Case # 1095734, opened 8/24/2017.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$465.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N17044-0001.

**AMOUNT: \$465.00**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *4/20/1* [REDACTED]

Supervisor Action: *Approved*

Supervisor's Comments: