

CLAIM SUMMARY / DETERMINATION

Claim Number:	N18014-0001
Claimant:	Texas General Land Office
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,892.64

FACTS:

Oil Spill Incident: On November 28, 2017, the Texas General Land Office (TGLO) was notified of an oil spill in the Sabine Neches Ship Channel in Jefferson County, Texas. The Sabine Neches Ship Channel is a navigable waterway of the U.S. TGLO personnel responded to the spill site, discovering approximately five (5) gallons of bilge waste oil “located along the bulkhead of Alpha Dock, Sabine Port Authority.”¹ A local citizen reported that the oil came in subsequent to a vessel passing by the night before. In addition to the discovery of oil in the water, TGLO personnel discovered oil along a bulkhead and a dead bird amongst the oily water.²

No responsible party (RP) has been identified for the incident.

Description of Removal Activities for this Claimant: The TGLO State On-Scen Coordinator (SOSC) Mr. [REDACTED] coordinated with the Federal On-Scene Coordinator’s Representative (FOSCR) MST3 [REDACTED] in the process of federalizing the response utilizing FPN N18014. TGLO personnel responded to the spill site by removing a dead bird from the water, then placed absorbent boom in the water to prevent further spreading through the marina. Additionally, TGLO personnel conducted a shoreline assessment to check for a potential source. No potential source was determined. Subsequently, the oil spill removal organization (OSRO) OMI responded to the oil spill site and began pollution removal response efforts utilizing a wash pump, skimmer nets, and absorbent pads. Prior to departing the scene on the afternoon of November 28, 2017, TGLO personnel conducted a walk through of OMI’s cleanup efforts and were satisfied. On the following afternoon, TGLO received notice of additional oil discovered in the center of the marina. TGLO responded by conducting a boat patrol to observe the sheening near the Port Authority. OMI again responded to removal the additional emulsified oil. TGLO personnel reported that no additional emulsified oil remained and departed the scene at 1435 that afternoon.

The Claim: On February 6, 2018, TGLO submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs for state personnel and equipment costs in the amount of \$1,892.64.³ This amount includes the costs associated with five (5) personnel, two (2) response boats, and three (3) response vehicles.

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 TGLO Response Chronology for Response Officer [REDACTED] dated November 28, 2017.

² *Id.*

³ See TGLO Expedited Small Claim form # 2017-3869 dated February 6, 2018.

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. MST3 [REDACTED] of Coast Guard Sector Houston-Galveston 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 NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

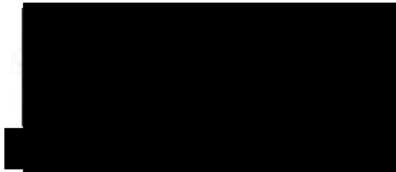
NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the 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 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 confirmed that the rates charged by the Claimant are in accordance with the published rates at the time services were rendered. Based on the Federal On Scene Coordinator’s direction and oversight, the response has been determined to be reasonable, necessary and performed in accordance with the NCP and as such, is approved.

The NPFC hereby determines that the OSLTF will pay \$1,892.64 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N18014-0001. 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: \$1,892.64

Claim Supervisor:



Date of Supervisor’s review: *2/13/18*

Supervisor Action: *Approved*

Supervisor’s Comments: