

CLAIM SUMMARY / DETERMINATION

Claim Number:	919015-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,129.70
Action Taken:	Offer in the amount of \$1,129.70

Oil Spill Incident

On March 26, 2018, a phone call was placed to the National Response Center (NRC) reporting an unknown red sheen from an unknown source on the waters of the Port Isabel Side Channel in Port Isabel, Texas.¹ Texas General Land Office (TGLO) responded to a spill of red-dyed diesel that was discovered in the waters of the Port Isabel Shrimp Basin in Cameron County, TX. The spill was located near South Bridge Street and Highway 100 in Port Isabel. TGLO investigated the surrounding shrimp boats and bilges for the source of the oil, but it could not be located. A consensus of about 20 gallons of diesel were spilled and deemed a mystery spill.²

Responsible Party

No responsible party (RP) has been identified for this incident.³

Description of Removal Activities for this Claimant:

TGLO cleaned up the oil, using two bales of 100 pads. Absorbent pads were placed upon the diesel spill. USCG personnel arrived and sampled the spill. The saturated pads were placed into a steel drum for disposal. TGLO hired Chemsol Services, Inc. was hired as the contractor to handle the disposal of the contaminated material.⁴

The Claim:

On January 30, 2019, the NPFC received TGLO's claim for reimbursement of its uncompensated removal costs in the amount of \$1,129.70. The claim consisted of TGLO spill records, timesheets, daily field log, photots, CG coordination statement, contractor invoicing, disposal documentation and proof of payment for contractor costs.⁵

APPLICABLE LAW:

¹ NRC Report # 1207686 dated March 26, 2018.

² TGLO Spill Report # 20181121 dated March 26, 2018.

³ Coast Guard FOSC coordination statement by [REDACTED] of Coast Guard Marine Safety Detachment Brownsville dated March 26, 2018.

⁴ TGLO Spill Report daily field log description of actions, page 6 of TGLO claim submission.

⁵ TGLO claim submission dated January 30, 2019 identified as NPFC claim # 919015-0001.

"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.” [Emphasis added].

DETERMINATION OF LOSS:

A. Overview:

- 1) USCG Marine Safety Detachment Brownsville, TX, as the FOSC for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the 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 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. NPFC 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 confirmed that the actions undertaken by TGLO were reasonable and necessary as confirmed by the Federal On Scene Coordinator (FOSC) and that the services were billed in accordance with the state’s rates for reimbursement. Additionally, the FOSC agreed and authorized the state’s response plan and has endorsed the actions taken to mitigate the effects of the spill.⁶

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$1,129.70 of uncompensated removal costs 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 number 919015-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on March 26, 2018. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

⁶ Coast Guard FOSC coordination statement by [REDACTED] of Coast Guard Marine Safety Detachment Brownsville dated March 26, 2018.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$1,129.70 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number 919015-0001. 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: \$1,129.70


Claim Supervisor: 
Date of Supervisor's review: <i>2/8/19</i>
Supervisor Action: <i>Offer approved</i>