

CLAIM SUMMARY / DETERMINATION

Claim Number:	919026-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$4,847.65
Action Taken:	Offer in the amount of \$4,847.65

FACTS:

Oil Spill Incident

On June 4, 2019, the Texas General Land Office (TGLO) was notified by United States Coast Guard (USCG) Ensign ██████████ of the Marine Safety Unit (MSU) Port Arthur of an oil spill resulting from the sunken pleasure craft EQUALIZER. The spill was reported to USCG by a Mr. ██████████ and the USCG provided the information to TGLO because the spill was determined to be out of the USCG's jurisdiction.¹

TGLO notified the United States Environmental Protection Agency (USEPA) Region 6 of the incident since they are the jurisdictional Federal On Scene Coordinator (FOSC) for the incident.² On January 10, 2019, Mr. ██████████ of the USEPA Region 6, signed a TGLO/EPA agreement form providing his coordination to allow TGLO to handle the lead as the SOSC and ensure that an appropriate response was performed.³

The sunken vessel was discharging waste oil into Cow Bayou, a navigable waterway of the United States.⁴ Texas General Land Office (TGLO) Response Officer, ██████████ and Regional Director ██████████, in their capacity as the State On-Scene Coordinators (SOSC), responded to the incident and found .000311 gallons of oil. TGLO contracted Donovan Industrial Service, a division of TAS Environmental Services LP (Donovan/TAS) for immediate response.⁵

TGLO coordinated with Mr. ██████████ at the Environmental Protection Agency (EPA) and ensured that the cleanup was consistent with the National Contingency Plan. Texas General Land Office (TGLO) response officers assisted and monitored the response efforts of the response contractor, Donovan/TAS.⁶

Responsible Party

TGLO obtained and provided a copy of the vessel's registration for the P/C EQUALIZER from the Texas Parks and Wildlife Department. The registration was expired and the last known

¹ TGLO Response Chronology Log for Response Officer ██████████ dated January 4, 2019.

² TGLO Response Chronology Log for Response Officer ██████████ dated January 5, 2019.

³ TGLO/EPA FOOSC Coordination Form dated January 10, 2019.

⁴ TGLO Expedited Small Claim Package dated June 26, 2019.

⁵ TGLO Expedited Small Claim Package dated June 26, 2019.

⁶ TGLO Expedited Small Claim Package dated June 26, 2019.

registrant is listed [REDACTED].⁷ The NPFC issued a Responsible Party (RP) Notification letter dated July 3, 2019 to Ms. [REDACTED] at the last known address on the registration. To date, no response has been received.⁸

Description of Removal Activities for this Claimant:

EPA signed an agreement form authorizing TGLO to oversee and monitor the contractor's cleanup operations on January 10, 2019. On February 5, 2019, Donovan/TAS was onsite and placed absorbent boom around vessel Equalizer, removed fuel from vessel's tank, and completed cleanup operations recovering two 260 gallon totes approximately ¼ full. The amount of oil recovered was 0.000311 gallon. TGLO monitored the contractor to ensure cleanup was consistent with the National Contingency Plan (NCP).⁹

The Claim:

On June 27, 2019, the NPFC received TGLO's claim for reimbursement of its uncompensated removal costs in the total amount of \$4,847.65 for State personnel and equipment costs, and contractor's labor and equipment expenses.

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".

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

⁷ Texas Asset Ownership Inquiry document for the P/C EQUALIZER dated January 23, 2019.

⁸ NPFC RP Notification Letter dated July 3, 2019.

⁹ TGLO Response Chronology Log for Response Officer [REDACTED] dated February 5, 2019.

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) USEPA Region 6, ██████████ 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 USEPA confirmed that the actions undertaken by TGLO, in its response to the incident, were reasonable and necessary.¹⁰ The NPFC has confirmed that the services performed by TGLO were billed in accordance with the state’s rates for reimbursement. The NPFC also obtained a copy of the Donovan/ TAS rate sheet and has confirmed the rates charged were in accordance with the rates in place at the time the services were rendered and were for response actions as requested by the SOSC to mitigate the effects of the spill.¹¹

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$4,847.65 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 919026-001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on January 4, 2019. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$4,847.65 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number 919026-0001. 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: \$4,847.65

<p></p> <p>Claim Supervisor: </p> <p>Date of Supervisor’s review <i>July 15, 2019</i></p> <p>Supervisor Action: <i>Approved</i></p>

¹⁰ Texas General Land Office and Environmental Protection Agency Agreement dated January 10, 2019.

¹¹ Donovan Industrial Service, LLC and TAS Environmental Services, LP Rate Schedules