

CLAIM SUMMARY / DETERMINATION

Claim Number:	N18061-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$2,136.04
Action Taken:	Offer in the amount of \$2,136.04

FACTS:

Oil Spill Incident

On September 14, 2018, an oil spill was discovered in the Rainbow Marina Channel in Jefferson County, Texas.¹ Texas General Land Office (TGLO) Response Officer, [REDACTED], in his capacity as the State On-Scene Coordinator (SOSC), responded to the incident after being notified by both the Port Arthur Fire Department and the Coast Guard’s Marine Safety Unit (MSU) Port Arthur. Upon arrival, TGLO found the pleasure craft (P/C) Nanja, sunk at the dock. TGLO coordinated with the United States Coast Guard (USCG), who federalized the response and opened a federal project number (FPN) N18061.² Texas General Land Office (TGLO) response officers assisted and monitored the cleanup efforts of the response contractor, American Pollution Control (AMPOL). AMPOL was hired by the USCG for cleanup and disposal activities.³

Responsible Party

The last known owner/responsible party (RP) of the P/C Nanja, was Ms. [REDACTED], who has since passed away in 2015.⁴ The Coast Guard indicated in its initial Pollution Report that the RP was unknown.⁵

Description of Removal Activities for this Claimant:

TGLO monitored the daily response activities of the response contractor, AMPOL who was hired by the Coast Guard. The TGLO response officers’s daily field logs describe the response actions as follows: AMPOL placed boom around the source of the spill; all pockets of diesel were contained by absorbent boom. Hard boom was deployed as secondary containment on pockets of diesel.⁶ AMPOL performed vacuum truck operations. An estimated 1500 gallons of water/diesel mix were vacuumed from the vessel tanks, of which approximately 300 gallons were actual diesel fuel. Additional boom was then deployed, and the vacuumed truck contents were decanted onto absorbent boom inside the hard boom. Absorbent booms were also placed inside the vessel cabin for cautionary measure in case of engine leaks.⁷

¹ NRC Report # 1224632 dated September 14, 2018.

² USCG Polrep One dated September 16, 2018 by MSU Port Arthur.

³ USCG Polrep Three and Final dated October 4, 2018.

⁴ TGLO response officer daily field log of actions taken, pages 10-13 of TGLO claim submission.

⁵ USCG Polrep One dated September 16, 2018 by MSU Port Arthur.

⁶ TGLO response officer daily field log of actions taken, pages 10-17 of TGLO claim submission.

⁷ *Id*

The Claim:

On January 31, 2019, the NPFC received TGLO's claim for reimbursement of its uncompensated removal costs in the total amount of \$2,136.04 for State personnel and equipment costs.

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 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 MSU Port Arthur, 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 Coast Guard confirmed that the actions undertaken by TGLO, in its joint response to the incident, were reasonable and necessary.⁸ The NPFC has confirmed that the services performed by TGLO were billed in accordance with the state’s rates for reimbursement.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$2,136.04 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

⁸ USCG Polrep Three and Final dated October 4, 2018.

and submitted to the NPFC under claim number N18061-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on September 14, 2018. 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 \$2,136.04 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number N18061-0001. 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: \$2,136.04

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