

CLAIM SUMMARY / DETERMINATION

| | |
|--------------------------|-----------------------------------|
| Claim Number: | N19031-0001 |
| Claimant: | Texas General Land Office |
| Type of Claimant: | State |
| Type of Claim: | Removal Costs |
| Claim Manager: | ██████████ |
| Amount Requested: | \$1,015.63 |
| Action Taken: | Offer in the amount of \$1,015.63 |

FACTS:

Oil Spill Incident

On January 31, 2019, an oil spill was discovered in Tres Palacios Bay in Matagorda County, Texas.¹ Texas General Land Office (TGLO) Response Officer, ██████████, in his capacity as the State On-Scene Coordinator (SOSC), responded to the incident and notified the United States Coast Guard's Marine Safety Detachment (MSD) Victoria. Upon arrival, it was discovered that approximately 35 gallons of oil mixed with diesel fuel was discharged into the harbor by an unknown party. TGLO coordinated with the United States Coast Guard (USCG), who federalized the response and opened a federal project number (FPN) N19031.² Texas General Land Office (TGLO) response officers assisted and monitored the cleanup efforts of the response contractor, Horizon Environmental. Horizon Environmental was hired by the USCG for cleanup and disposal activities.³

Responsible Party

The SOSC indicated that the responsible party (RP) was unknown.⁴ The Coast Guard indicated this was indeed a mystery spill, discharged into the harbor by an unknown party.⁵

Description of Removal Activities for this Claimant:

TGLO monitored the daily response activities of the response contractor, Horizon Environmental, and the TGLO response officers' daily field logs describe the response actions as follows: discovered a 25' x 20' section of free floating oil between four (4) boats and a 20' x 10' section of oil trapped in a corner between a bulkhead and two (2) boats;⁶ approximately 70 feet of absorbent sweep and two (2) sections of absorbent boom were deployed;⁷ absorbent sweep was 100% saturated with black oil with approximately 18-20 gallons being absorbed;⁸ approximately 10 gallons of waste oil removed by contractor Horizon Environmental. The contractor disposed of recovered debris also.⁹

¹ NRC Report # 1236436 dated January 31, 2019.

² USCG SitRep-POL ONE AND FINAL, Page 1, dated February 4, 2019 by MSD Victoria.

³ TGLO Claim Submission, Page 1.

⁴ TGLO Claim Submission, Page 1

⁵ USCG SitRep-POL ONE AND FINAL, Page 1, dated February 4, 2019 by MSD Victoria.

⁶ TGLO Claim Submission, Page 10, Unit Debrief Log.

⁷ TGLO Claim Submission, Page 8, Unit Debrief Log.

⁸ TGLO Claim Submission, Page 12, Unit Debrief Log.

⁹ USCG SitRep-POL ONE AND FINAL, Page 2, dated February 4, 2019 by MSD Victoria.

The Claim:

On April 25, 2019, the NPFC received TGLO's claim for reimbursement of its uncompensated removal costs in the total amount of \$1,015.63 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 Marine Safety Detachment (MSD) Victoria, 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.¹⁰ 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 \$1,015.63 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

¹⁰ USCG SitRep-POL ONE AND FINAL, Page 1, dated February 4, 2019 by MSD Victoria.

and submitted to the NPFC under claim number N19031-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on January 31, 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 \$1,015.63 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number N19031-0001. 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: \$1,015.63

| | |
|------------------------------|--|
| |  |
| Claim Supervisor: |  |
| Date of Supervisor's review: | <i>5/1/19</i> |
| Supervisor Action: | <i>Approved</i> |