

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 6/10/2009
Claim Number	: 909085-001
Claimant	: State of Texas
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$8,111.07

### **FACTS:**

**1. Oil Spill Incident:** On October 23, 2008 an oil spill was discovered in the Taylor Bayou Turning Basin in Jefferson County, Texas. The Taylor Bayou Turning Basin is a navigable waterway of the United States. The State on Scene Coordinator (SOSC), ██████████ of the Texas General Land Office (TGLO), responded and discovered 32 gallons of oil in the Texas coastal waters. The source of the spill was determined to be the fishing vessel *Hannah Leigh*. The *Hannah Leigh* had been pushed ashore by Hurricane Ike and was in derelict condition. The SOSC coordinated with LTJG ██████████ ██████████ the Federal on Scene Coordinator Representative (FOSCR), who authorized the state to take the lead for the response.

The SOSC hired Triangle Waste Solutions (Triangle) for immediate response and cleanup of the spill. The Claimant monitored their cleanup efforts. According to the signed Texas General Land Office (TGLO) Memorandum, TGLO ensured that the cleanup and disposal were consistent with the National Contingency Plan.

Claimant did not attempt to collect administrative penalties or response costs from the owner of the vessel.

**2. The Claim:** On April 29, 2009, the Claimant submitted a removal cost claim in the amount of \$8,111.07 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated State response costs. The claim consists of the incident billing summary, invoices, dailies, proof of payment, and photographs taken at the incident site.

### **APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan." 33 USC § 2702(b)(1)(B).

"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. The FOSC coordination was provided by LTJG [REDACTED] of Marine Safety Unit Port Arthur, Texas.

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 on time.
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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

**B. *Determined Amount:***

The Claims Manager’s review of the cost documentation has determined that the Claimant will be compensated for removal costs based on the contracted rate schedule of the response company which was provided by the claimant with the claim submission.

In reviewing Triangle’s Job Ticket #7159 for 10/27/08; a 70bbl vac truck with operator was billed out at \$65.00 per hour although the rate schedule provided shows a rate of \$55.00 per hour to be charged therefore the NPFC is adjusting the amount payable to \$55.00 per hour for a total denied amount of \$30.00. A fuel surcharge of \$40.95 is charged on this ticket as well which is based on 21% of the total vac truck charge of \$195.00. The NPFC is subsequently reducing the fuel surcharge to \$34.65 which is 21% of the total amount approved by the NPFC which is \$165.00 and 21% of that number is \$34.65 giving a total denied amount for fuel surcharge of \$6.30.

Lastly, Triangle billed \$65.00 for a new DOT drum on ticket #7557. The field daily log provided shows the drum as ‘used’ and the rate schedule states the price for a ‘used’ DOT drum is \$50.00 each therefore the NPFC denies the \$15.00 overcharge for the new drum.

Based on the NPFC’s denial of \$51.30, the NPFC determines that the OSLTF will pay \$8,059.77 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909085-001.

**AMOUNT: \$8,059.77**

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *6/15/09*

Supervisor Action: *Approved*

Supervisor’s Comments: