

CLAIM SUMMARY / DETERMINATION FORM

Date	: 6/2/2009
Claim Number	: N08033-001
Claimant	: State of Texas
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$1,145.75

FACTS:

- 1. Oil Spill Incident:** On April 10, 2008 an oil spill was discovered in the Old Brazos River at the Trico Seafood Dock in Freeport, Texas. The Old Brazoria River is a navigable waterway of the United States. The State on Scene Coordinator (SOSC), [REDACTED] of the Texas General Land Office (TGLO), responded and discovered 46 gallons of diesel fuel in the Texas coastal waters. The source of the spill was determined to be the fishing vessel *Miss Carolee*. The vessel discharged 42 gallons of diesel fuel, which caused a sheen. The vessel also continued to pose a substantial threat of discharge due to the remaining fuel onboard in the approximate amount of 500 -700 gallons. The SOSC coordinated with Petty Officer [REDACTED], the Federal on Scene Coordinator Representative (FOSCR), who federalize the response. Mr. [REDACTED] from the National Pollution Funds Center (NPFC) was then contacted by the FOSCR requesting a Federal Project Number (FPN) be opened for this incident. The NPFC opened FPN# N08033 with an authorized ceiling of \$10,000.00. (See POLREP 1).

On April 15, 2008, the NPFC authorized a ceiling change from \$10,000.00 to \$15,000.00. (See POLREP 2).

According to the Claimant's submission, they hired T& T Marine for immediate response and cleanup of the spill. The SOSC assisted and monitored the good cleanup efforts of T & T Marine. According to the signed Texas General Land Office (TGLO) Memorandum, the cleanup was consistent with the National Contingency Plan (NCP).

The Responsible Party (RP) is [REDACTED], of Houston, Texas. The RP paid the \$550.00 penalty involving the incident. However, the Claimant attempted to collect administrative penalties and response costs from the RP by sending the billings via certified mail. The certified receipts were returned, indicating Mr. [REDACTED] had received them but he did not respond.

- 2. The Claim:** On April 29, 2009, the Claimant submitted a removal cost claim in the amount of \$1,145.75 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated personnel and vehicle expenses. The claim consists of the billing summary, proof of RP penalty payment, and photographs taken at the incident site. The NPFC obtained a copy of the United States Coast Guard's MISLE Case and a copy of the National Response Center (NRC) report # 867595 dated April 10, 2008.

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 Petty Officer [REDACTED] of Marine Safety Unit Galveston.
2. The incident involved the discharge and substantial threat of 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 NPFC determines that the OSLTF will pay \$1,145.75 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# N080033-001.

AMOUNT: \$1,145.75

Claim Supervisor: [REDACTED]

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

Supervisor Action: *Approved*

Supervisor’s Comments: