

CLAIM SUMMARY / DETERMINATION FORM

Date	: 11/04/2009
Claim Number	: N08Z28-001
Claimant	: State of Texas General Land Office
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$446.76

FACTS:

- 1. Oil Spill Incident:** The United States Coast Guard Marine Safety Unit (MSU) Galveston Case # 446783,¹ reports that on April 3, 2009, a discharge of approximately 150 gallons of oil from the M/V Offshore King was discovered in Galveston Channel, a navigable waterway of the US. The Potential Responsible Party (PRP) was determined to be Offshore Specialty Fabricators, the operator of the M/V Offshore King.

The incident was reported to the National Response Center (NRC) on April 3, 2009 at approximately 01:29 local time via report # 901692 by Mr. ██████████ of Hoernbeck Offshore Services.² USCG MSU Galveston responded and assumed Federal Control of the spill since, initially, no RP had been determined. T & T Marine Salvage was hired out to conduct cleanup operations. All vessels in the vicinity of the spill were sampled by MSU Galveston to determine responsibility. Because the M/V Offshore King was seen leaving the scene of the discharged oil shortly after the spill was discovered, USCG MSU Lake Charles sampled the vessel for MSU Galveston. Analysis of the samples showed a match between the M/V offshore King and the oil found at the spill site.³

- 1. Description of removal actions performed:** The claimant, State of Texas General Land Office (TGLO), was part of the initial response to the spill site. State On-Scene Coordinator Mr. ██████████ coordinated with the Federal On-Scene Coordinator, PO ██████████, USCG. As T & T Marine Salvage was hired for the cleanup, Mr. ██████████'s role was simply to monitor and assist the cleanup efforts of the contractor.⁴

T & T Marine Salvage's cleanup was consistent with the National Contingency Plan.⁵

- 3. The Claim:** On October 15, 2009, TGLO submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$6,389.78 for the services provided on April 3, 2009. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

This claim consists of copies of the invoicing and associated dailies, a copy of USCG Case Report # 446783, a copy of NRC Report # 901692, a copy of TGLO Spill Report # 09-1019, pictures and internal email correspondence.

¹ See Marine Safety Unit Galveston's Coast Guard Case # 446783 opened 4/3/2009

² See, NRC report # 901692, dated April 3, 2009

³ See Marine Safety Unit Galveston's Coast Guard Case # 446783 opened 4/3/2009

⁴ See Claim submission forms, submitted by State of Texas to the NPFC on 10/15/2009.

⁵ See USCG Federal Project N09Z28, opened 4/03/2009.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

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 has been established via USCG Case # 446783.⁶
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 CA made presentment of costs to the RP and to date the NPFC has received no response.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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. 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 Claims Manager confirmed that the claimant did in fact perform a joint site assessment with the USCG. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$446.76 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #N09Z28-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on April 3,

⁶ See Marine Safety Unit Galveston’s Coast Guard Case # 446783 opened 4/3/2009

2009. 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 \$446.76 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N08Z28-001. All costs claimed are for charges paid for 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: \$446.76

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *11/4/09*

Supervisor Action: *Approved*

Supervisor's Comments: