

CLAIM SUMMARY / DETERMINATION

Claim Number:	915083-0001
Claimant:	Railroad Commission of Texas
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$32,644.34

FACTS:

Incident: On March 27, 2014, the Railroad Commission of Texas (RRC)¹ received a report from the Lulling Police Department in Caldwell County, Texas of a crude oil spill into Mill Creek, an intermittent creek that is a tributary of the San Marcos River. The San Marcos River is a navigable waterway of the United States.

The RCC is the state agency that regulates the oil and gas industry, gas utilities, pipeline safety, liquefied petroleum gas (LPG) industry and surface coal and uranium mining industries within Texas. Despite its name, it no longer regulates railroads. The RCC has funds to remediate oil spills in the state of Texas.¹

RRC personnel tracked the source of the crude oil through dense brush and discovered a two and a quarter inch flow line that emptied into Mill Creek. RRC ordered nearby oil well operators to shut-in their wells, flow lines, and tank batteries until they could be inspected. After inspection, there was no indication that the source of the oil was originating from the operating wells, flow lines or tank batteries in the vicinity. In an attempt to identify the owner/operator, the RRC conducted a survey of abandoned flow lines in the area. The RRC was unable to associate the discharging flow line to any historic plugged wells.² RRC estimated 30 barrels of crude oil had discharged from the flow line pipe. RRC personnel investigated the source, created an action plan, hired Centex Pipe and Equipment (Centex) an oil spill cleanup contractor and then provided oversight of Centex's removal activities in its capacity as a State On Scene Coordinator (SOSC).

Federal On-Scene Coordination: There was no Federal On Scene Coordinator (FOSC) for this incident. However, there is a National Response Center (NRC) report number. The NRC website has a spreadsheet that shows that a report was made on March 26, 2014.³

¹ The Railroad Commission of Texas is the state agency that regulates the oil and gas industry, gas utilities, pipeline safety, safety in the liquefied petroleum gas (LPG) industry, and surface coal and uranium mining. Despite its name, RRC no longer regulates railroads.^[1] Established by the Texas Legislature in 1891, it is the state's oldest regulatory agency. From the 1930s to the 1960s it largely set world oil prices, but was displaced by OPEC (Organization of Petroleum Exporting Countries) after 1973. In 1984, the federal government took over transportation regulation for railroads, trucking and buses, but the Railroad Commission kept its name. With an annual budget of \$79 million, it now focuses entirely on oil, gas, mining, propane, and pipelines, setting allocations for production each month.^{[2][3]}

² See Claimant's Exhibit #2 RRC Unidentified #876876

³ See NRC report # in claim submission

Description of Removal Activities: Centex Pipe & Equipment, Inc. (Centex) was hired by the Claimant to mitigate and remove the oil. On March 27, 2015, Centex arrived at Mill Creek and under the direction of the Claimant, they deployed four to five oil-spill responders each day until the spill was cleaned up. In addition to its personnel, Centex deployed a vacuum truck, a “digger truck,” a backhoe, and pressure washer in conjunction with the use of absorbent pads, rolls, and containment boom. Centex cut through the underbrush in order to reach the flow line. Centex personnel contained and removed the oil from the soil and water and noted its daily activities from March 27, 2014 through May 28, 2014. Centex’s invoice #35783 includes rented equipment costs. Traceland Analysis was contracted by RRC to report lab analysis of oil samples taken by the RRC.

The Claim: The RRC’s claim submission was received at the NPFC on May 13, 2015. Initially, RRC sought initial reimbursement of uncompensated removal costs in the amount of \$31,715.86 but on July 2, 2015, the Claimant requested to amend its sum certain to \$32,644.34 after it recalculated its personnel costs.⁴

The Claimant submitted Centex’s invoice for removal costs and included a copy of its rate schedule along with waste disposal tickets and invoices from OGO Refining and lab analysis from Traceland Analysis with a copy of its invoice.

The claim consists of copies of the following: NRC report #1078504, an Optional OSLTF Claim Form, Summary of Cleanup Costs, Incident Description (narrative), Map, Photos, 30-Day Certified letter sent to unidentified operator, Emergency Bid Award - Purchase Order, Award letter, Contractor rate sheet, Contractor invoice, RRC proof of payment issued, Itemized weekly spreadsheet for contractor costs created by RRC, Contractor Daily Field Log, RRC Daily Field Log, RRC Personnel Daily Field Log w/ Photos, AMW Oil Tool and OGO Refining: subcontractor rental tickets and waste disposal manifests (Run Tickets) and Traceland Analysis, lab invoice with RRC proof of payment issued and RRC spreadsheet of personnel and mileage.

On June 11, 2015, the Claims Manager requested additional information from the RCC. On June 17, 2015, the RCC requested an extension of time to July 2, 2015 to submit the additional information. The NPFC granted RRC’s extension and on July 2, 2015, the NPFC received the additional information documenting RRC’s employee rates and contractor payments totaling \$32,644.34 along with a signed affidavit from Centex’s President.

On July 9, 2015, the Claims Manager requested additional information regarding an explanation from RRC about its use of OGO Refining and the purpose of its Run Tickets. On July 13, 2015, RRC explained that these tickets serve as a waste manifest for disposal of oily liquid and solid waste.

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.

⁴ See Email from [REDACTED] of RRC dated July 2, 2015

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. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 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. A Responsible Party was not determined for this incident. 33 U.S.C. § 2701(32).
4. 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;
5. The claim was submitted within the six years statutory deadline for removal cost claims;
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which 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 state invoice 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 NPFC has determined that the costs presented and incurred were billed in accordance with the rate schedule in place at the time services were rendered. The NPFC also determined that the actions taken by the Claimant and its contractor were reasonable and necessary in order to mitigate the discharge and continuing threat of discharge to the environment. The NPFC has determined that the removal actions undertaken by the RRC were consistent with the NCP. Proper disposal has been performed and documented.

The Claims Manager created two spreadsheets to review and account for all removal costs claimed. Spreadsheet #1 itemizes RRC’s contractor invoice costs and Spreadsheet #2

itemizes RRC's personnel and mileage costs. Spreadsheet #1 shows the items the NPFC has determined are OPA compensable removal costs.

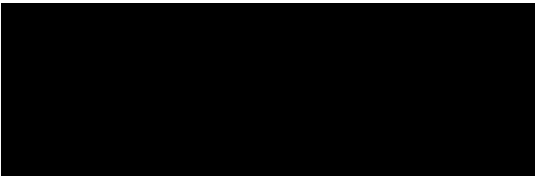

The Claims Manager also requested additional information from RRC to prove that its contractor Centex paid its subcontractors. On July 2, 2015, RRC submitted a written affirmation from the President of Centex that AWM Oil Tools and OGO Refining were paid.

On July 9, 2015, the Claims Manager requested clarification (Additional Information) from RRC to explain why there was not a standard waste disposal manifest. On July 13, 2015, RRC replied that it uses OGO Refining Run Tickets as waste manifests. In summary, Centex's invoice totals \$25,077.25 which includes AWM Oil Tools and OGO Refining invoices. The costs appear as line items on Spreadsheet #1. Traceland Analysis invoiced \$931.00 and its two invoices are on Spreadsheet #1. RRC's personnel and mileage costs subtotal \$7,567.14. Spreadsheet #2 reflects those daily costs. All rates were charged in accordance with the state's salary and mileage schedule. Claimant's removal submission totals \$32,644.34.

The NPFC finds that one contractor item, a 10' x 100" boom is not considered an uncompensated removal cost. The boom was deployed across Mill Creek to catch residual oil migrating downstream and during a rainstorm, it was washed downstream and lost. The NPFC finds that the cause of the boom being lost is not an OPA compensable response cost. RRC negotiated with Centex to pay \$400 as a replacement price. The NPFC denies the \$400 as not an OPA compensable removal cost.

The NPFC hereby determines that the OSLTF will pay \$32,244.34 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 915083-0001. All costs claimed are for charges paid for by the Claimant for removal actions as defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

AMOUNT: \$32,244.34

	
Claim Supervisor:	
Date of Supervisor's review:	8/4/15
Supervisor Action:	Approved
Supervisor's Comments:	