

CLAIM SUMMARY / DETERMINATION

Claim Number:	915107-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$5,004.31

FACTS:

Oil Spill Incident: On May 14, 2015, the Texas General Land Office (TGLO) was notified of fresh crude oil tar mats on the beach of South Padre Island, Cameron County, TX. TGLO personnel responded and discovered approximately 200 lbs of fresh crude oil tar mats on the beach and in the surf zone of the Gulf of Mexico, a navigable waterway of the United States. TGLO contacted USCG MSD Brownsville who authorized TGLO personnel to take the lead in the response and investigation. TGLO activated Chemical Response & Remediation Contractors (CRRC) to respond for the pollution removal activities. An investigation conducted by TGLO personnel as to the source of the fresh crude oil tar mats was unsuccessful.¹

Description of Removal Activities for this Claimant: On May 14, 2015, CRRC personnel responded under the supervision of TGLO and removed all of the fresh crude oil tar mats from the beach of South Padre Island. The tar mats were properly disposed of at U.S. Ecology Texas, Inc, Robstown, TX.²

The Claim: On September 8, 2015, TGLO submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel, equipment and contractor costs in the amount of \$5,004.31.³

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".

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". 33 USC § 2701(31).

Removal costs include any 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).

¹ See TGLO Expedited Small Claim Package dated September 8, 2015

² Id.

³ Id.

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.

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. MST1 [REDACTED] of Coast Guard MSD Brownsville provided FOSC coordination 33 U.S.C. § 2702(b)(1)(B) and 2712 (a)(4)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.

⁴ See TGLO/USCG Agreement signed by MST1 [REDACTED] dated 31 Aug 2015.



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 NPFC has determined that the majority of the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or contractual agreements in place at the time the services were rendered and were determined by the FOSC to be consistent with the NCP. The only cost denied by the NPFC is the rate charged by CRRC for the use of their 16’ Utility Trailer. Specifically, CRRC billed \$135.00 a day for the use of that trailer while their rate schedule only allows \$100.00 a day for the use of that trailer. As such, the NPFC only allowed \$100.00 of the \$135.00 billed by CRRC and claimed by the TGLO.

The NPFC therefore determines that the OSLTF will pay \$4,969.31 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 915107-0001. 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: \$4,969.31


Claim Supervisor: 
Date of Supervisor’s review: <i>October 13, 2015</i>
Supervisor Action: <i>Approved</i>
Supervisor’s Comments: