

CLAIM SUMMARY / DETERMINATION

Claim Number:	N15019-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$5,558.06

FACTS:

Oil Spill Incident: On February 27, 2015, the Texas General Land Office (TGLO) was notified of an oil spill in Matagorda Bay, Matagorda County. TGLO personnel responded and discovered the F/V TWO SISTERS grounded and partially sunk in Matagorda Bay, discharging approximately 400 gallons of oil into the bay, a navigable waterway of the United States.¹ TGLO personnel contacted USCG Sector Corpus Christi who responded and found a 2nd vessel, the F/V CAPT SANG, also grounded and partially sunk in Matagorda Bay, TX. CG personnel offered the vessel owner Mr. ██████████² owner of both vessels, according to the pollution report (POLREP) released by CG Sector Corpus Christi, the opportunity to remove the fuel from his vessels but he declined claiming an inability to fund the response.³

Description of Removal Activities for this claimant: On March 3, 2015, CG Sector Corpus Christi accessed the Oil Spill Liability Trust Fund and opened FPN # N15019 to respond to the discharge of oil from both the F/V TWO SISTERS and the F/V CAPT SANG. CG and TGLO personnel oversaw the deployment of containment boom and a diver who removed fuel from the partially sunken vessels with the use of a diaphragm pump.⁴

The Claim: On June 1, 2015, TGLO submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel and equipment costs in the amount of \$5,558.06.⁵

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (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. Removal costs are those “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 June 1, 2015.

² See email from MST2 ██████████, CG Sector Corpus Christi to Mr. ██████████ dated June 2, 2015, stating that Mr. ██████████ was the owner of the F/V TWO SISTERS but Mr. ██████████ was the owner of the F/V CAPT SANG. As such, the NPFC mailed an RP identification letter to both Mr. ██████████ and Mr. ██████████ on June 2, 2015.

³ See CG Sector Corpus Christi POLREP 1 dated March 6, 2015.

⁴ Id.

⁵ See TGLO Expedited Small Claim Package dated June 1, 2015.

"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).

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. PO [REDACTED] of Coast Guard Sector Corpus Christi provided FOSC coordination 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. 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.

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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has confirmed that the rates charged by the Claimant are in accordance with the published rates at the time services were rendered. Based on the Federal On Scene Coordinator’s direction and oversight, the response has been determined to be reasonable, necessary and performed in accordance with the NCP and as such, is approved.

The NPFC hereby determines that the OSLTF will pay \$5,558.06 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N15019-0001. 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: \$5,558.06

Claim Supervisor:	
Date of Supervisor’s review:	<i>June 5, 2015</i>
Supervisor Action:	<i>Approved</i>
Supervisor’s Comments:	