

CLAIM SUMMARY / DETERMINATION

Claim Number:	N15028-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$1,655.59

FACTS:

Oil Spill Incident: On April 15, 2015, the Coast Guard Marine Safety Unit (CG MSU) Texas City, conducted a joint waterside harbor patrol with the Texas General Land Office (TGLO) in Dickinson Bayou, TX. The patrol went to assess the M/V SUMMERWIND, an abandoned, partially submerged, 40 foot wooden hull vessel. Upon arrival, they observed a sheen of oil discharging into the waters of Dickinson Bayou, TX, a navigable waterway of the United States.¹

The Coast Guard Federal On-Scene Coordinator's Representative (FOSCR) determined that the vessel posed a substantial threat of a further discharge of oil into navigable waters and attempted to contact the current owner. Several attempts were made without success (Responsible Party (RP)) so; the FOSCR issued a Notice of Federal Interest (NOFI) to the current owner and two previous owners. After none of the parties were responsive, the FOSCR issued a Notice of Federal Assumption. Additionally, MST1 ██████████ of CG MSU Texas City consulted with ██████████ of the National Pollution Fund Center (NPFC) regarding the proposed removal operations. A Federal Project Number (FPN) N15028 was opened so that the FOSCR could hire T and T Marine Salvage, Inc., (T & T) to remove the substantial threat of a discharge. The FOSCR directed and oversaw booming of the vessel, lifting of the vessel and removal of approximately 450 gallons of fuel oil from the vessel's fuel tanks. The FOSCR verified that the response activities were conducted in accordance with the National Contingency Plan (NCP).

Description of Removal Activities for this claimant: TGLO responded jointly with CG MSU Texas City to oversee the response.²

The Claim: On June 16, 2015, TGLO submitted a removal cost claim to the NPFC for reimbursement of its uncompensated removal costs for state personnel and equipment costs in the amount of \$1,655.59.³

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).

¹ See USCG POLREP One & Final, M/V SUMMERWIND

² See TGLO claim submission

³ Id.

"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. MSU Texas City 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 period of limitations for claims. 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 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 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 state rates at the time services were rendered and were coordinated with the FOOCR and determined to be reasonable, necessary and consistent with the NCP.

Based on the foregoing, the NPFC hereby determines that the OSLTF will pay \$1,655.59 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N15028-0001. 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: \$1,655.59

<p>[REDACTED]</p> <p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor’s review: <i>6/18/15</i></p> <p>Supervisor Action: <i>Approved</i></p> <p>Supervisor’s Comments:</p>
