

CLAIM SUMMARY / DETERMINATION

Claim Number: N15034-0001
Claimant: Texas General Land Office
Type of Claimant: State Government
Type of Claim: Removal Costs
Claim Manager: [REDACTED]
Amount Requested: \$232.15

FACTS:

Oil Spill Incident: On May 30, 2015, United States Coast Guard, MSU Texas City, Texas, received a report of a 36 foot fishing vessel, actively sinking in the Intracoastal Waterway, in the vicinity of the Colorado Locks, a navigable waterway in the United States. After further investigation, it was estimated that there was approximately 450 gallons of diesel fuel on board. The Federal-on-Scene Coordinator Representative (FOSCR)¹ determined that the vessel posed a substantial threat to the public and the environment.^{2 3}

The Texas General Land Office (TGLO, Claimant), State-on-Scene Coordinator, (SOSC) responded and coordinated with the FOSCR. TGLO response officer⁴ assisted and monitored the cleanup efforts of the contractor, TNT Marine, to ensure that that the cleanup was consistent with the National Contingency Plan.⁵

MSU Texas City issued a notice of Federal assumption to the Responsible Party, (RP), Mr. [REDACTED], Rockport, TX. The RP notified the FOSCR that he was financially incapable of conducting pollution assumption. At this point the FOSCR determined there was a substantial threat to the public and environment and requested to open the Oil Spill Liability Trust Fund, (OSLTF), to remove the pollution threat. Federal Project Number (FPN) N15034 was obtained.

Description of Removal Activities for this Claimant: On May 30, 2015, MSU Texas City accessed the OSLTF and opened FPN # N15034 to respond to the discharge of oil from the F/V MISFIT.

T and T Marine Salvage Inc., arrived on scene with a 3,000 gallon capacity vac truck, five, personnel, and three trucks. Contractors applied pads and pumped diesel from the open tote on the deck of the F/V MISFIT. Sorbent boom was placed around the vessel to help contain and absorb the diesel and oil water mix. T and T Divers entered the water with an attempt to raise the vessel using airbags and were unsuccessful. A cofferdam was constructed around the vessel to adequately pump the oily water mixture from within and around the M/V MISFIT. Approximately 10 barrels of diesel and oily water was pumped from the tanks and bilges of the vessel, operations were secured.

¹ MST2 Lilly

² POLREP One and Final.

³ Coast Guard and TGLO responders discovered 200 gallons of diesel fuel on board an open 300 gallon tote on the deck of the vessel with approximately 250 gallons of diesel fuel inside.

⁴ [REDACTED]

⁵ TGLO letter to NPFC, dated August 11, 2015

The Claim: On August 12, 2015, TGLO submitted a removal costs claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel and equipment costs in the amount of \$232.15.⁶

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

⁶ TGLO Invoice Spill # 20151972

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

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 **\$232.15** as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # N15034-0001. 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: \$232.1 

Claim Supervisor: 

Date of Supervisor's review: 8/12/2015

Supervisor Action: *Approved*