

CLAIM SUMMARY / DETERMINATION

Claim Number:	N16035-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$365.52

FACTS:

Oil Spill Incident:

On June 8, 2016, the State of Texas General Land Office (TGLO) State On-Scene Coordinator (SOSC), Mr. [REDACTED] responded to the report of an oil sheen in the Sabine River, at the Port of Orange, in Orange, Texas. The sheen consisted of two pockets of heavily weathered and emulsified diesel fuel totaling less than one gallon.¹

Description of Removal Actions Performed:

The SOSC notified and coordinated with the United States Coast Guard (USCG), in which, members from the Marine Safety Unit (MSU), Port Arthur Incident Management Division (IMD) responded. After the initial investigation by MSU Port Arthur IMD, a source of the spill was not determined. The National Pollution Funds Center, (NPFC), Oil Spill Liability Trust Fund (OSLTF) was opened and AMPOL was hired under the Federal Project to recover, remove and dispose of the spilled oil. After the spilled oil had been collected, MSU Port Arthur IMD personnel continued to search for a potential source/responsible party with negative results.²

The SOSC assisted and monitored the cleanup efforts of the contractor, American Pollution Control (AMPOL)³. TGLO states in their claim submission that the cleanup was consistent with the National Contingency Plan (NCP) which has been confirmed through the Coast Guard.

The National Response Center (NRC) via NRC report # 1150016⁴

Claim:

On November 29, 2016, TGLO submitted a removal cost claim to the NPFC for reimbursement of its uncompensated removal costs in the amount of \$365.52 for its response personnel and equipment.⁵

¹ MISILE Case ID: 1028084

² See MISLE case ID: 102804 for a list of vessels that were investigated as a result of this incident.

³ See SOSC notes in claim file.

⁴ Claimant provided the report with its claim submission.

⁵ 4x4 Response truck, Unit #102.

The Claimant provided a signed TGLO Expedited Small Claim form, a TGLO Spill Prevention & Response Program Incident Response Cost Invoice, a TGLO Oil Spill Incident Report for Spill Number 2016-1677, and SOSC notes.⁶

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;

⁶ See claim file the reports.

(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. Findings of Facts:

1. FOSC coordination has been established by MSU Port Arthur IMD. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23) to navigable waters;
3. A Responsible Party was not determined. 33 U.S.C. § 2701(32);
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

The NPFC Claims Manager 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 actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (3) whether the costs were adequately documented and reasonable.

The NPFC hereby determines that the NPFC will offer and the OSLTF is available to pay **\$365.52** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim # N16035-0001. All of the costs deemed compensable by the Fund have been 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.

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.205, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan. Removal costs are defined as “the costs of removal that are incurred after a discharge of

oil has occurred or, in a case in which there is a substantial threat of discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$ 365.52 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N16035-0001.

Claim Supervisor:



Date of Supervisor's review: *12/1/16*

Supervisor Action: *Approved*