CLAIM SUMMARY / DETERMINATION

Claim Number:	N16049-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$3,336.15

FACTS:

***Oil Spill Incident**:* On July 16, 2016, the Texas General Land Office (TGLO) received notification that tar patties had impacted Mustang Island and the Padre National Seashore in Corpus Christi, TX.[1] The Padre National Seashore is the coastal area separating the Gulf of Mexico, a navigable waterway of the U.S., from the Laguna Madre, a hypersaline lagoon.[2] On July 21, 2016, Brian Slate of Padre Island National Seashore reported to the USCG that "they have been receiving large amounts of tar patties (many larger than 2 feet in diameter) washing up onto the shores of Padre Island National Seashore."[3] The TGLO State On-Scene Coordinator (SOSC) [redacted] responded to the site and discovered an estimated "924.46 gallons of oil in Texas coastal waters."[4] SOSC [redacted] coordinated with the USCG Federal On-Scene Coordinator's Representative (FOSCR) MST2 [redacted]. Subsequently, the FOSC federalized the response.[5]

Description of Removal Activities for this Claimant: TGLO response officers both monitored and cleaned the tar patty spill from July 16, 2016, through September 1, 2016, resulting in the removal of approximately 150 gallons of weathered crude tar from the beach. The remaining 600 gallons of crude tar was collected by Miller Environmental (OSRO) hired by the United States Coast Guard under the Federal Project.[6][7]

***The Claim**:* On November 28, 2016, TGLO submitted a removal cost 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 $3,336.15. No responsible party has been identified to date.

---

[1] See Texas General Land Office Incident Report dated July 20, 2016.
[2] See description of Padre Island. Available at: https://www.nps.gov/pais/index.htm
[3] See USCG MISLE Case History Report dated November 23, 2016.
[4] See letter from [redacted], TGLO, to National Pollution Funds Center – Claims Division (CA) dated November 28, 2016.
[5] See USCG FPN N16049 Notification Mystery – N16049 dated July 22, 2016.
[6] See TGLO daily activity logs dated July 16, 2016 – August 25, 2016.
[7] See USCG Polrep Two dated October 4, 2016.

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;
(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. USCG Sector Corpus Christi, as the FOSC for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the NCP. 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. NPFC 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 confirmed that the actions undertaken were reasonable and necessary and that the services were billed in accordance with the state's rates for reimbursement. Additionally, the Federal On Scene Coordinator (FOSC) agreed and authorized the state's response plan and has endorsed the actions taken to mitigate the effects of the spill.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur $3,336.15 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N16049-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on July 16, 2016. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay $3,336.15 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N16049-0001. 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.

<u>AMOUNT</u>**:** **$3,336.15**

[redacted]

Claim Supervisor: [redacted]

Date of Supervisor's review: ***12/2/16***

Supervisor Action: ***Approved***

Supervisor's Comments: