

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
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Toll-Free: 1-800-280-7118
Fax: 703-872-6113
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NPFCCCLAIMSINFO@uscg.mil

5890
July 22, 2014

VIA EMAIL: 

Texas General Land Office
ATTN: Peggy Spies
1700 N. Congress Avenue
Austin, TX 78701-1495

RE: 914020-0001

Dear Ms. Spies:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that it will offer \$10,061.68 as full compensation for OPA claim number 914020-0001. This reconsideration determination is based on an analysis of information submitted. All costs that are not determined as compensable are considered denied. Disposition of this reconsideration constitutes final agency action.

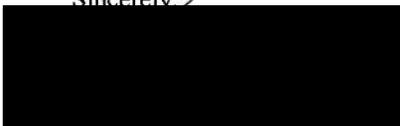
If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. If the determination is accepted, your payment will be mailed within 30 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

Sincerely,


Chief, Claims Adjudication Division
U.S. Coast Guard

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement
Summary of Costs spreadsheet

CLAIM SUMMARY / DETERMINATION

Claim Number:	914020-0001
Claimant:	Texas General Land Office
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	Donna Hellberg
Amount Requested:	\$10,495.03

FACTS

Oil Spill Incident

On 30 July 2012, Marine Safety Detachment (MSD) Brownsville responded to National Response Center (NRC) report # 1019392 of large amounts of red dye diesel in multiple areas throughout the Port Isabel Channel, a navigable waterway of the US.¹ Texas General Land Office (TGLO/Claimant) determined the source to be the Uninspected Towing Vessel (UTV) LIBRA, Official Number 647864, owned and operated by Chalico Concrete Materials, Inc., which has been identified as the Responsible Party (RP).²

The Removal Response & Activities

On 30 July 2012, the Texas, General Land Office, (TGLO/Claimant), Response Officers Gonzalo Pena and Steve Janskowski responded to notification from the National Response Center (NRC) of the incident. The response officers met with the RP's representative, the contractor, US Coast Guard personnel regarding response to the incident. The scene of the incident was divided into three divisions: Zone one: the vessel location; Zone two: a Bait Stand; and the Zone three: the South Point Marina. Both the contractor and the Claimant provided personnel, materials and equipment to each location in response to the incident. According to the submission, the RP initially accepted responsibility for this incident; hired the contractor, RM Walsdorf to respond to the incident.

The Federal On Scene Coordinator Representative (FOSCR) was U.S. Coast Guard, Petty Officer (PO) Beal of Marine Safety Detachment (MSD) Brownsville Texas. According to the submission, she was present on scene at the time of the incident and throughout the response to ensure the incident response was in compliance with the National Contingency Plan (NCP).

As a result of the incident a MISLE Case (#606704) was opened, an Activity Report (#439896) was created. The CG also issued a Notice of Federal Interest (NOFI) to the Responsible Party³. Photographic evidence was included in this report and in the claims submission presented to the Oil Spill Liability Trust Fund(Fund).⁴

The MISLE case contained witness statements from PO Todd Wheeler, PO Justin Cook and PO Rebekah Beal. All statements indicated that they responded to the incident site where the vessel sank and was completely submerged. They noticed red dye oil bubbling to the surface. After going to the spill location, CG personnel, Claimant personnel and contractor personnel went to the South Point Marina

¹ See, Coast Guard MISLE Case Report # 606704 dated August 2, 1012.

² *Id*

³ NOFI dated 30 July 2012 issued by MSD, Brownsville, signed by MST3 Cook

⁴ Texas General Land Office submission, photographs 1-12

where most of the red dye diesel had collected. The statements indicate that there were numerous sites along the South Shore where the red dye was located in smaller amounts. The contractor responded by utilizing sorbent pad and boom at the numerous locations.

At the time the personnel arrived at the scene of the incident, red dye diesel was present in the waters of the Basin. Once on scene the contractors proceeded to boom off the area contaminated by the oil spill. Personnel used drum skimmers to assist in the removal of oil from the waters of the Basin. The vessel was eventually removed from the waters. Personnel also removed boom from the waters from all locations.

The Claimant's personnel responded to the incident and were present at the scene of the incident and assisted the contractor with removal actions. They provided personnel and equipment. Those costs are included in this claim for reimbursement.

The Responsible Party

According to the submission, the Responsible Party is Chalico Concrete Materials. The NPFC issued an RP notification letter on 5 February 2014. To date, no reply has been received.⁵ They are the owner and operator of the t LIBRA.

CLAIM AND CLAIMANT

The Claimant is the State of Texas, General Land Office (TGLO/Claimant). The Claimant requests reimbursement of its uncompensated removal costs that were submitted by the Claimant to the Fund in the amount of \$10,495.03 on 29 January 2014.⁶

The Claimant sent invoices to the RP but they made no payment. The contractor sent invoices to the RP and received compensation in the amount of \$50,000.00,⁷ but never received full compensation. The contractor submitted a third party claim to the TGLO/Claimant for its unpaid costs as the State manages the State of Texas Coastal Protection Fund. TGLO/Claimant adjudicated the claim and paid the contractor in the amount of \$8,134.74.⁸ The Claimant then attempted to collect from the RP without success.⁹

The National Pollution Funds Center (NPFC) made an offer on this claim on May 30, 2014 in the amount of \$2,360.03. All other claimed costs were denied as the invoices from RM Walsdorf (contractor), did not have contemporaneous daily field logs that would indicate the personnel, materials and equipment used on a daily basis therefore the NPFC was unable to make an itemized determination of costs by day and charge.

⁵ RP Notification letter from the NPFC to the RP. Chalico Concrete Materials; MISLE Case Report No, 606704

⁶ See, Claim submission received at the NPFC on January 29, 2014.

⁷ See, correspondence from RM Walsdorf dated 4 8 13 The RP paid the contractor \$40,000.00 as an initial payment in August 2012, a second payment of \$9,000.00 in September 2012 and a final payment of \$1,000.00 in February 2013 for a total paid to the contractor of \$50,000.00 A credit of \$25,422.41 was applied for early payment from the contractor to the RP per claims initial claims submission

⁸ See, Copy of Claimant's check to RM Walsdorf dated September 25, 2013 in the amount of \$8,134.74.

⁹ See, Notice of Order to Pay letter dated December 11, 2013 from TGLO to Chalico Concrete Materials, Inc.

REQUEST FOR RECONSIDERATION:

On June 27, 2014, the Claimant sent a request for reconsideration to the NPFC via email stating they would like the NPFC to reconsider their claim. Upon receipt of the Claimant's email request for reconsideration, the NPFC sent an email asking for clarification of their request for reconsideration. The Claimant responded to the NPFC via email dated July 1, 2014 clarifying that their request for reconsideration is for all costs that the NPFC originally denied based on the lack of contemporaneous daily field logs to support the contractor's invoices.

The Claimant provided on reconsideration, both RM Walsdorf invoices identified as invoice numbers #13182 and 13228. In support of those invoices, the Claimant provided contemporaneous daily logs which itemize all personnel, materials, equipment, and subcontractor costs invoiced.

NPFC Determination on Reconsideration

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. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon review of the Claimant's request for reconsideration and supporting documentation, the NPFC determines that the Claimant has demonstrated uncompensated removal costs in the amount of \$10,061.68 out of the \$10,495.03 requested.¹⁰

During the adjudication on reconsideration, the NPFC determined that the costs associated with subcontractor costs were not supported by the underlying invoicing and on July 18, 2014, the NPFC requested a copy of all associated invoicing and supporting documentation. The Claimant responded to the NPFC on July 21, 2014, providing all invoicing and associated supporting documentation. The NPFC has now determined that the costs paid to the contractor in large part and claimed to the NPFC, were for the actions determined by the Federal On Scene Coordinator (FOSC) to be consistent with the National Contingency Plan (NCP) and that the majority of the costs claimed were reasonable and necessary in order to mitigate the threat and discharge of oil.

All costs denied by the NPFC fall in the following categories and the merits of each and everyline item are identified in the attached Summary of Costs spreadsheet by tab and entity. The denial categories are: not billed in accordance with the governing rate schedule that was in place at the time services were rendered or unidentified amounts claimed and not supported by the record.

Based on the foregoing, the NPFC hereby determines that the OSLTF will pay **\$10,061.68** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #914020-0001. All costs claimed are for charges paid for by the Claimant for

¹⁰ See, NPFC Summary of Costs spreadsheet for a line by line accounting of costs claimed.

removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

AMOUNT: \$10,061.68

Claim Supervisor

Date of Supervisor's review: *7/21/14*

Supervisor Action: *Offer on reconsideration approved*

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: 914020-0001	Claimant Name: Texas General Land Office
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I, the undersigned, ACCEPT this settlement offer of \$10,061.68 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Printed Name of Claimant or Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Printed Name of Witness	Signature

_____	_____	_____
*DUNS/EIN/SSN		
*Required for Payment	Bank Routing Number	Bank Account Number