

## CLAIM SUMMARY / DETERMINATION

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|--------------------------|----------------------------------|
| <b>Claim Number:</b>     | N15012-0001                      |
| <b>Claimant:</b>         | Texas General Land Office (SOSC) |
| <b>Type of Claimant:</b> | State                            |
| <b>Type of Claim:</b>    | Removal Costs                    |
| <b>Claim Manager:</b>    | [REDACTED]                       |
| <b>Amount Requested:</b> | \$4,370.26                       |

### FACTS:

#### Oil Spill Incident

During a helicopter overflight on January 8, 2015, the United States Coast Guard, Marine Safety Unit, (USCG, MSU) Port Arthur, discovered a sheen of oil in the Gulf of Mexico at McFaddin Beach in Jefferson County, Texas, a navigable waterway of the United States. Texas General Land Office (TGLO), Response Officers responded to the spill with MSU Port Arthur personnel and began researching pipeline operators from the area. The Responsible Party was eventually identified as Mining Oil Inc./High Island Gas LLC. Due to unsatisfactory response actions from the RP, MSU Port Arthur opened Federal Project Number (FPN) N15012 and contracted with T and T Marine Services to conduct removal operations and secure the source<sup>1</sup>.

#### Description of Removal Activities for this Claimant

Divers found an active pipeline uncovered with two small holes.<sup>2</sup> The first hole measured 3 to 4 inches by 1 inch in the bottom of the pipeline and the second hole was located 2 inches west of the first hole, measuring 1 inch by 1 inch. The Divers also discovered approximately 20 feet of exposed pipeline to the west of the hole. The divers checked the durability of the pipeline around the hole and determined that it could withstand a clamp to patch the hole. While the divers were in the water they discovered 15 additional feet of exposed pipeline to the east of the hole.<sup>3</sup>

The pipeline was clamped off at the holes and an oil sample was taken from inside of the pipeline using an absorbent pad.<sup>4</sup>

MSU and State Personnel conducted further site assessment and no sheen was observed in the vicinity of the pipeline. After several days of site monitoring, the Unified Command declared that the residual oil in the pipeline no longer remains a substantial threat to the environment.<sup>5</sup> MSU Port Arthur will continue to monitor the area.

<sup>1</sup> SITREP-POL One through Three and Final.

<sup>2</sup> SITREP-POL Three (FINAL).

<sup>3</sup> Divers found approximately 35 feet of uncovered, active pipeline.

<sup>4</sup> SITREP does not document oil sample results however the NPFC sent an RP Notification letter on June 02, 2015.

<sup>5</sup> SITREP-POL Three (FINAL).

The Claim

On May 28, 2015, TGLO submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel and equipment costs in the amount of \$4,370.26.<sup>6</sup>

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.

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<sup>6</sup> Personnel Total: \$695.26, Equipment Total: \$3,675.00. See TGLO Incident Response Cost Invoice.

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.
2. MSU Port Arthur provided FOSC coordination 33 U.S.C. § 2702(b)(1)(B) and 2712(a)(4);
3. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
4. 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;
5. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
6. 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, and 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 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 FOSC and determined to be consistent with the NCP. The NPFC issued an RP Notification Letter to the Responsible Party, High Island Pipeline in a letter dated June 2, 2015.

The NPFC hereby determines that the OSLTF will pay \$4,370.26 as full compensation for the reimbursable removal costs incurred by TGLO and submitted to the NPFC under claim # N15012-0001. 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: \$4,370.26**

Claim Supervisor:



Date of Supervisor's review: *6/3/15*

Supervisor Action: *Approved*

Supervisor's Comments: