

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 911098-0001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : ██████████
Amount Requested : \$6,727.61

FACTS:

Oil Spill Incident: On November 9, 2010, the Texas General Land Office (TGLO) investigated a spill of oil discovered in Adams Bayou, Orange County, Texas, a navigable waterway of the US. TGLO SOS ██████████ responded and found 50 gallons of oil emanating from the recreational vessel *Miss Jeanie*. TGLO coordinated with the Coast Guard (CG) Marine Safety Unit Port Arthur. CG FOSC representative, PO ██████████ authorized the state to take the lead. TGLO hired Oil Mop LLC for removal actions.

Description of Removal Activities for this claimant: TGLO hired Oil Mop to perform response actions. Several attempts were made to pump oil directly from the tanks on the vessel with poor results. Most of the recovered product was removed from the surface of the water using sorbent pads and boom. Since oil was leaking from the vessel from an unknown location, the USCG was able to help the process along by opening up the fuel tanks and allowing the tide changes to flush oil out of the vessel. On December 17, 2010, the USCG determined that the threat had been minimized to the point where it would no longer be cost effective to continue clean up operations. The USCG has continued to monitor the vessel and no additional product has been observed in the water. Invoices include personnel, equipment (vehicle use), and contractor costs.

The Claim: On July 27, 2011, TGLO submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$6,727.61.

TGLO is claiming personnel expenses of \$345.26, State equipment expenses of \$2,240.00 and contractor expenses of \$4,142.35.

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 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. PC [REDACTED] of MSU Port Arthur provided FOOSC coordination.
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 for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review of the documentation, the NPFC found the costs to be billed in accordance with the rate schedule in place at the time the services were rendered and the costs were appropriately documented.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$6,587.61 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 #911098-0001.

The NPFC denies the TGLO vehicle cost of \$140.00 on January 3, 2011 since the USCG determined the response to be complete on December 17, 2010. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on November 9, 2010. 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 \$6,587.61 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911098-0001. 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: \$6,587.61

Claim Supervisor

Date of Supervisor's review: *8/9/11*

Supervisor Action: *Approved*

Supervisor's Comments: