CLAIM SUMMARY / DETERMINATION

Claim Number:	N12069-0001
Claimant:	State of Texas
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$181.97

Facts:
TGLO # 2012-3160

On September 17, 2012, the Texas General Land Office (TGLO) received notification that oil was found in the Houston Ship Channel, Old Buffalo Bayou IVO Brady's Island, in Harris County, Texas, a navigable waterway of the United States. State on Scene Coordinator (SOSC) Trey Trahan responded and found 63 gallons of oil.

Federal on Scene Coordination (FOSC) was made with the United States Coast Guard, Sector Houston-Galveston. The Sector immediately opened the Oil Spill Liability Trust Fund (OSLTF) for oil removal operations and hired Garner Environmental Services, Inc.[1] Garner's costs were paid for under the project number, N12069.

The National Response Center was notified via Incident Report # 1024651.

Claim:

On December 18, 2012, TGLO submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated State costs in the amount of $181.97 for the personnel and 4x4 truck provided in response to the oil spill incident that took place in the Texas coast waters.

The claim consists of TGLO's Memorandum and their Response Costs Invoice.

The review of this claim 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

[1] SITREP-POL ONE and FINAL.

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. FOSC coordination was provided by Sector Houston / Galveston.
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 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 as set forth below.

B. Analysis:

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

The NPFC performed a review of the costs presented and has determined that the rates charged were in accordance with the established state rates permitted under state law and that the actions taken by all parties responding to the incident were determined by the USCG to be consistent with the National Contingency Plan (NCP). On that basis, the Claims Manager hereby determines that the claimant did in fact incur $181.97 of uncompensated removal costs and that the amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by Claimant and submitted to the NPFC under claim N12069-0001.

C. Determined Amount:

The NPFC determines that the OSLTF will pay $181.97 as full compensation for the reimbursable removal costs incurred by Claimant and submitted to the NPFC under claim # N12069-0001. All costs claimed are for charges paid for by Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by Claimant.

Claim Supervisor [redacted]

Date of Supervisor's review: ***12/20/12***

Supervisor Action: ***Approved***

Supervisor's Comments: