

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP922011-URC001
Claimant:	Lone Star Hazmat Response, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal
Claim Manager:	(b) (6)
Amount Requested:	\$1,883.55
Action Taken:	Offer in the amount of \$1,883.55

EXECUTIVE SUMMARY:

On November 20, 2021 at approximately 3:57pm local time, Plano Police Department responded to a vehicle accident located on President George Bush Turnpike (PGBT), Plano, Texas², where a vehicle left the roadway, drove into the center median, past a barrier wall and into the space between the westbound and eastbound lanes of the PGBT. The vehicle vaulted off a concrete embankment into a creek that runs underneath the PGBT.³ The vehicle was reported to be leaking fluids, later determined to be gasoline.⁴ The United States Environmental Protection Agency (USEPA), in its capacity as the Federal On Scene Coordinator (FOSC), determined that the gasoline had leaked in or near the creek noting that there was a potential for release of oil into the stream, which could ultimately reach Trinity River through Lake Ray Hubbard, a navigable waterway of the United States.⁵ The North Texas Tollway Authority (NTTA) requested Lonestar Hazmat Response, LLC (“Lone Star” or “Claimant”) respond to the incident.⁶

In accordance with the Oil Pollution Act of 1990 (OPA),⁷ Ms. (b) (6) (b) (6) (b) (6), operator the vehicle, and Ms. (b) (6) (b) (6) owner of the vehicle, were identified as the responsible parties (“Responsible Parties” or “RPs”).⁹ Lone Star presented its uncompensated

¹ This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant’s rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant’s rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

² Texas Peace Officer’s Crash Report dated November 20, 2021 (Crash Report).

³ *Id.*

⁴ *See*, Plano Fire Department Report dated November 20, 2021, identifying the product as gasoline. In this case, the Federal On-Scene Coordinator determined from all the available evidence that this fluid was more likely than not, gasoline.

⁵ *See*, email from (b) (6)(b) (6) of USEPA to NPFC identifying discharge pathway dated July 18, 2022.

⁶ Lone Star Response Summary dated December 8, 2021.

⁷ 33 U.S.C. § 2701(32).

⁸ The owner of the vehicle is listed as (b) (6) (b) (6) in the Crash Report.

⁹ Crash Report.

removal cost claim to the National Pollution Funds Center (NPFC) for \$1,883.55 on April 8, 2022.

In order for a claim to be compensable, *inter alia*, the removal actions taken by the claimant must be directed by the Federal On-Scene Coordinator (FOSC) or determined by the FOSC to be consistent with the National Contingency Plan (NCP).¹⁰ Based on the location of this incident, the FOSC for this incident is the United States Environmental Protection Agency (USEPA).¹¹

There is no evidence in the administrative record that the FOSC was notified of this incident, and as such, it did not direct any actions. The NPFC contacted the FOSC to ascertain whether or not it considered the claimant's actions taken to be consistent with the NCP.¹² Based on the NPFC's request, the FOSC determined that the incident posed a substantial threat to a navigable waterway with an emphasis on the fact that had the actions performed by the Plano Fire Department not been taken, a discharge could have occurred while equally acknowledging the claimant mobilized, evaluated the incident and demobilized once the threat was mitigated.

The FOSC acknowledged the actions taken by the claimant were to mobilize to the scene as instructed by the NTTA, evaluate the incident scene, respond as needed, and then demobilize from the scene once the threat was mitigated. Based on the FOSC's (1) determination that the spill incident posed a substantial threat of discharge to a navigable waterway; (2) confirmation statement that the product leaking from the vehicle was oil; (3) determination that the Plano Fire Department responded to the incident, secured the source, deployed boom and removed the boom upon completion of response; and (4) acknowledgment of the claimant's presence on scene performing mobilization, evaluation, and demobilization once the threat was mitigated and then removed, the NPFC is of the belief that this incident has been coordinated with the FOSC based on the preponderance of the credible evidence.¹³

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$1,883.55 is compensable and offers this amount as full and final compensation of the claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On November 20, 2021, the RP, Ms. (b) (6) (b) (6) was traveling westbound in lane #4 on the President George Bush Turnpike (PGBT) in Plano, Texas when she received a text message on her phone. While she was using her cell phone, she failed to maintain control of her vehicle, traveled left on the roadway and drove into the center median and traveled past a barrier wall

¹⁰ 33 CFR 136.205.

¹¹ See generally, 40 CFR 300.120(a)(2).

¹² See, email from NPFC to FOSC dated June 21, 2022 requesting After-The-Fact FOSC coordination for the claimant's response actions.

¹³ See, Agreement for Environmental Emergency Response Clean-Up and Hazardous Waste Disposal between North Texas Tollway Authority (NTTA) and Lone Star Hazmat Response LLC dated November 2, 2020.

into the space between the westbound and eastbound lanes of the PGBT. The vehicle then vaulted off a concrete embankment in a creek that runs underneath the PGBT.¹⁴

Responsible Party

In accordance with the Oil Pollution Act of 1990, Ms. (b) (6), operator the vehicle, and Ms. (b) (6)⁵, owner of the vehicle, were identified as the responsible parties (“Responsible Parties” or “RPs”).¹⁶

Recovery Operations

On November 20, 2021, Lone Star arrived on scene and found a ½ ton GMC Sierra truck involved in an accident that had gone off the roadway into a ditch. Prior to Lone Star’s arrival on scene, the Plano Fire Department was on scene and had placed boom in the water to prevent further migration. The Plano Fire Department also stated that they would take care of removing the boom within 24 hours.¹⁷ A local wrecker then removed the vehicle from the site; the waterway and roadway were then inspected to ensure there was no remaining fluids. Lone Star personnel were cleared to depart the scene by NTTA after final inspection of the affected area was completed.¹⁸ Lone Star’s mobilization, evaluation, and subsequent demobilization were performed in accordance with the NTTA environmental service contract that was in effect at the time NTTA activated Lone Star.

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)¹⁹ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.²⁰

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after ninety days of receipt or denies a claim, a claimant may elect to present its claim to the NPFC.²¹ The Claimant presented its costs to the RP via certified mail.²² The NPFC received a claim for uncompensated removal costs from Lone Star dated April 7, 2022 in the amount of \$1,883.55.²³

IV. DETERMINATION PROCESS:

¹⁴ Texas Peace Officer’s Crash Report dated November 20, 2021.

¹⁵ The owner of the vehicle is listed as (b) (6) in the Crash Report.

¹⁶ Crash Report.

¹⁷ Lone Star Response Summary dated December 8, 2021.

¹⁸ Lone Star Response Summary dated December 8, 2021.

¹⁹ 33 U.S.C. § 2701 et seq.

²⁰ 33 CFR 136.103(c)(1).

²¹ 33 CFR 136.103.

²² USPS delivery tracking receipt from Lone Star dated February 2, 2022, that shows delivery to the RP’s residential address and signed by (b) (6)

²³ Lone Star claim submission dated April 7, 2022.

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁴ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.²⁵ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁶ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.²⁷ An RP's liability is strict, joint, and several.²⁸ When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."²⁹ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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."³⁰ The term "remove" or "removal" means "containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches."³¹

²⁴ 33 CFR Part 136.

²⁵ See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

²⁶ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

²⁷ 33 U.S.C. § 2702(a).

²⁸ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

²⁹ *Apex Oil Co., Inc. v. United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (*citing* S. Rep. No. 101-94 (1989), *reprinted in* 1990 U.S.C.C.A.N. 722).

³⁰ 33 U.S.C. § 2701(31).

³¹ 33 U.S.C. § 2701(30).

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³² The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³³ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.³⁴

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.
- (d) That the removal costs were uncompensated and reasonable.³⁵

Based on the location of this incident, the FOSC for this incident is the United States Environmental Protection Agency (USEPA).³⁶ There is no evidence in the administrative record that the FOSC was notified of this incident, and as such, it did not direct any actions. The NPFC contacted the FOSC to ascertain whether or not it considered the actions taken to be consistent with the NCP. The FOSC's evaluation of the incident determined that the vehicle ended up in or near the creek and that there was in fact a potential for the release of oil to the stream which could ultimately reach the Trinity River through Lake Ray Hubbard, a navigable waterway of the United States.³⁷ The FOSC made an after-the-fact FOSC determination that the incident posed a substantial threat of discharge to a navigable waterway while simultaneously acknowledging the presence of both Lone Star and the Plano Fire Department.³⁸

Based on the overall available evidence in the record, the NPFC considers this claim to have been coordinated with the FOSC and determined to be consistent with the National Contingency Plan (NCP) on the basis that (1) the FOSC determined there was a substantial threat of discharge of oil to a navigable waterway of the United States; (2) the FOSC acknowledged Lone Star's mobilization to the scene, evaluation of the incident and response, demobilization from the scene once the threat was removed;³⁹ and (3) in accordance with Lone Star's contract with NTTA, Lone Star invoiced at the current rate sheet pricing and fulfilled the terms of the service

³² See generally, 33 U.S.C. § 2712 (a)(4); and 33 CFR Part 136.

³³ 33 CFR Part 136.

³⁴ 33 CFR 136.105.

³⁵ 33 CFR 136.203; 33 CFR 136.205.

³⁶ See generally, 40 CFR 300.120(a)(2).

³⁷ See, email from the FOSC to NPFC dated July 18, 2022 describing nexus of threat to the waterway and acknowledging actions taken by both the claimant and the Plano Fire Department.

³⁸ *Id.*



³⁹ See, Agreement for Environmental Emergency Response Clean-Up and Hazardous Waste Disposal between North Texas Tollway Authority (NTTA) and Lone Star Hazmat Response LLC dated November 2, 2020. NTTA activated Lone Star to respond to the incident and in accordance with its response contract terms, Lone Star responded immediately, coordinated with both NTTA and the Plano Fire Department personnel. Lone Star provided oversight of the response until the vehicle was removed from the ditch area below the PGBT.

agreement with the North Texas Tollway Authority for response to an Oil Pollution Act (OPA) incident.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Lone Star Hazmat Response, LLC's request for uncompensated removal costs is approved in the amount of **\$1,883.55**.

This determination is a settlement offer,⁴⁰ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴¹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴² Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.


Claim Supervisor: 
Date of Supervisor's review: <i>10/11/22</i>
Supervisor Action: <i>Offer approved</i>
Supervisor's Comments:

⁴⁰ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

⁴¹ 33 CFR § 136.115(b).

⁴² 33 CFR § 136.115(b).