

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPN20021-URC001
Claimant:	Texas General Land Office
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$520.58
Action Taken:	Offer in the amount of \$520.58

EXECUTIVE SUMMARY:

On February 22, 2020, the United States Coast Guard Sector Houston-Galveston (“CG Sector Houston-Galveston” or “FOSC”) was notified of an unknown sheen from an unknown source, spotted in the waters of the Sabine Pass Ship Channel, Texas.² The Texas General Land Office (“TGLO” or “Claimant”) arrived on scene as State On-Scene Coordinator (“SOSC”) and recorded a black colored sheen of approximately 3 feet by 500 feet.³ CG Sector Houston-Galveston verified the oil substance was located in the Sabine-Neches Waterway, also known as the Sabine Pass Ship Channel, Texas; a navigable waterway of the United States.⁴ No clear path of discharge was detected. The substance was identified as refined oil-diesel, but the spill source remains unknown.⁵

OMI Environmental Solutions (“OMI” or “Contractor”) was notified of the spill and hired by CG Sector Houston-Galveston as the oil spill removal organization (OSRO).⁶ The FOSC and TGLO monitored OMI’s cleanup activity, while the OSRO provided personnel and equipment for removal activities.⁷ TGLO presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$520.58.⁸

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$520.58 of the requested amount is compensable and offers this amount as full compensation of the claim.

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 National Response Center Report #1271800.

³ USCG Situation Report-Pollution Report 1 and Final, dated February 22, 2020.

⁴ MISLE Case Id: 1209954.

⁵ See, Texas Oil or Hazardous Substances Discharge or Spill Report, dated February 22, 2020.

⁶ MISLE Case Id: 1209954.

⁷ See, TGLO Case Officer Response Chronology Report for Case #2020-0634.

⁸ TGLO Claim Submission, received November 28, 2022.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On February 22, 2020, the National Response Center (NRC) received a call from the Sabine Pass Port Authority (SPPA) notifying them of an unknown sheen from an unknown source in the SPPA Marina.⁹ The SPPA had a strong diesel smell, alerting marina personnel to the spill incident. The NRC notified Sector Houston-Galveston.¹⁰

TGLO was notified and arrived on scene to serve as State On Scene Coordinator (SOSC), while CG Sector Houston-Galveston arrived on scene to serve as Federal On Scene Coordinator (FOSC). The FOSC identified the pollution as bilge/waste oil,¹¹ and both CG Sector Houston-Galveston and TGLO suspected a CFV/Shrimp Boat titled DYNO MIKE to be the responsible party (RP) for the spill.¹²¹³ The vessel owner denied responsibility and samples collected from the suspected vessel did not provide any positive results linking the vessel to the spill incident.¹⁴ The sheen itself, was identified to be refined oil-diesel.¹⁵ Sector Houston-Galveston federalized the response under FPN N20021.¹⁶

Responsible Party

CG Sector Houston-Galveston worked with TGLO, attempting to locate the source of the spill, and to identify a responsible party (RP). CG Sector Houston-Galveston collected samples from a suspected vessel in an attempt to designate the responsible party, but tests were negative and a RP could not be identified.¹⁷ As such, the oil spill was determined to be a mystery spill.

Recovery Operations

On February 22, 2020, Sector Houston-Galveston contracted OMI Environmental Solutions for the cleanup. OMI arrived on scene then boomed off and began removing the 3 foot wide by 500 foot long sheen of oil.¹⁸ OMI's activities were monitored by both the SOSC and FOSC, who confirmed OMI had returned on February 23, 2020 to remove all the remaining sorbent pads. The spill was determined to contain 25 gallons of diesel fuel oil.¹⁹ Removal of all oils and waste was fully completed on February 23, 2020.

⁹ NRC Report #1271800.

¹⁰ SITREP-POL 1 and Final, dated February 22, 2020.

¹¹ SITREP-POL 1 and Final, dated February 22, 2020.

¹² See, TGLO Chronology Report for Case #2020-0634.

¹³ SITREP-POL 1 and Final, dated February 22, 2020.

¹⁴ MISLE Case Id: 1209954.

¹⁵ See, Texas Oil or Hazardous Substances Discharge or Spill Report, dated February 22, 2020

¹⁶ SITREP-POL 1 and Final, dated February 22, 2020.

¹⁷ MISLE Case Id: 1209954.

¹⁸ SITREP-POL 1 and Final, dated February 22, 2020.

¹⁹ See, TGLO Chronology Report for Case #2020-0634.

II. CLAIMANT AND NPFC:

On November 28, 2022, the NPFC received a claim for uncompensated removal costs from Texas General Land Office.²⁰

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²¹ 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.²² The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²³ 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.

IV. DISCUSSION:

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.”²⁴ 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.”²⁵

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁶ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁷ The claimant bears the burden of providing all evidence, information, and

²⁰ TGLO Claim Submission, dated November 28, 2022.

²¹ 33 CFR Part 136.

²² 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)).

²³ 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).

²⁴ 33 U.S.C. § 2701(31).

²⁵ 33 U.S.C. § 2701(30).

²⁶ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁷ 33 CFR Part 136.

documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.²⁸

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.²⁹³⁰³¹
- (d) That the removal costs were uncompensated and reasonable.³²

The NPFC analyzed each of these factors and determined all of the costs incurred and submitted by TGLO herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, TGLO's request for uncompensated removal costs is approved in the amount of \$520.58.

This determination is a settlement offer,³³ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁴ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁵ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

²⁸ 33 CFR 136.105.

²⁹ In conjunction with the FOSC, TGLO oversaw the work as well.

³⁰ MISLE Case Id: 1209954.

³¹ SITREP-POL 1 and Final, dated February 22, 2020.

³² 33 CFR 136.203; 33 CFR 136.205.

³³ 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).

³⁴ 33 CFR § 136.115(b).

³⁵ 33 CFR § 136.115(b).

Claim Supervisor:

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Date of Supervisor's review: 12/6/2022

Supervisor Action: *Approved*