

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	915082-0001
<b>Claimant:</b>	Railroad Commission of Texas
<b>Type of Claimant:</b>	STATE
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$398,021.62

### **FACTS:**

In March and April 2013, the Railroad Commission of Texas (RCT) commenced preparations for a cleanup project to remove an abandoned tank battery last operated by Whittington Operating Company on the Tract 284 lease.<sup>1</sup> The wells to which the tank battery had been attached were plugged with State funds in 2004 and 2011. The tank battery site sat near the Gulf Intracoastal Waterway, a navigable water of the U.S. The tank battery consisted of a 300bbl above ground storage tank (AST), two 500bbl ASTs, two 625bbl ASTs, a heater-treater and other trash and scrap, plus a wooden loading dock extending into the water. RCT states that the tanks were in poor condition and some were leaking, and that the tanks contained a total of 681 bbl of oil and gas waste. The cleanup project began in late January 2014.

### **CLAIM AND CLAIMANT:**

On 13 May 2015, Railroad Commission of Texas (Claimant) submitted an Optional Oil Spill Trust Fund (OSLTF) claim form seeking \$398,021.62 in removal costs resulting from the Whittington Operating Company Tract 284 leased site incident. The Claimant requested reimbursement of its costs associated with preparations, and removing the tank battery, the oil and gas waste, and the dock from the site. The costs consist of 1) a field survey for wetland boundary delineation, 2) a field survey to identify presence of threatened or endangered species, 3) a cultural resources file search, 4) communication and permitting with jurisdictional state and federal agencies, 5) development of a Texas General Land Office Coastal Management Plan work plan, 6) preparation of a Commission bid document for the project, 7) mobilization of equipment, supplies and personnel, 8) site work, and 9) demobilization and waste disposal.

The NPFC denied the claim on May 22, 2015, on the basis that the facts and evidence did not support a finding that an OPA-incident occurred and additionally the Claimant failed to demonstrate that an FOSC made the determination that a substantial threat of a discharge to a navigable waterway existed.

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<sup>1</sup> RCT states that Whittington's registration with the Commission expired in December 2001 and Whittington entered Chapter 7 bankruptcy in May 2004.

**REQUEST FOR RECONSIDERATION:**

On July 22, 2015, the NPFC received the Claimant's official written request for reconsideration which consisted of a two page letter dated July 17, 2015 and three pages of color photographs.

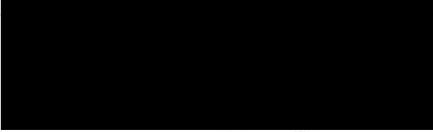
**RECONSIDERATION CLAIM ANALYSIS:**

The claimant requested reconsideration via a letter dated July 17, 2015. To support its request for reconsideration, the Claimant provided some detailed statements and the Claimant requested an extension of time until August 20, 2015 in order to try to obtain FOSC coordination for the actions undertaken. It is important to note that the new information provided by the Claimant, without coordination from the Federal On Scene Coordinator (FOSC), provides no meaning to the claim.

**NPFC Determination on Reconsideration**

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 136.115(d) a request for reconsideration must be received by the Director, NPFC, within 60 days after the date of the date the denial was mailed.

The Claimant requested an extension of time to August 20, 2015, allowing it to obtain FOSC coordination in accordance with the governing claims regulations. The NPFC's initial denial letter of May 22, 2015 advised the Claimant that they had 60 days from the date of the denial letter to request reconsideration. The Claimant had until close of business on July 21, 2015 to provide all information to the NPFC in support of its request for reconsideration along with any requests for an extension of time to present additional information. The Claimant's request for reconsideration was not received by this office until July 22, 2015, which was not timely and as such, the Claimant has failed to make a timely request for reconsideration and extension of time therefore the NPFC again denies the claim because the Claimant has failed to (1) request a timely reconsideration (2) demonstrate that the alleged incident posed a substantial threat of discharge of oil to navigable waters, and (3) the Claimant failed to obtain FOSC coordination for the actions undertaken. Based on the foregoing, this claim is denied upon reconsideration.

Claim Supervisor:	
Date of Supervisor's review:	8/4/15
Supervisor Action:	<i>Reconsideration denial approved</i>
Supervisor's Comments:	