

CLAIM SUMMARY / DETERMINATION

Claim Number:	N18040-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$2,303.51
Action Taken:	Offer in the amount of \$2,303.51

EXECUTIVE SUMMARY:

At approximately 1020 on May 16, 2018, the Harbor Master for the City of Aransas Pass reported to the National Response Center (NRC) via report # 1212796 that there was a potential spill from a 45' bay shrimp boat that was tied up behind Coast Point Shrimp Company.¹ The United States Coast Guard (USCG) Sector Corpus Christi, in its capacity as the Federal On Scene Coordinator (FOSC), received notification that the F/V MOJADO located in Conn Brown Harbor of Aransas Pass, a tributary of Redfish Bay, a navigable waterway of the United States. The FOSC reported that the vessel became partially submerged, creating a sheen on the water's surface.² The FOSC indicated that multiple attempts to reach the Responsible Party (RP) were made.³ CG Sector Corpus Christi Incident Management Division (IMD) and Texas General Land Office (TGLO) arrived on scene on May 22, 2018 and discovered a 5' x 5' pool of unknown oil discharging from the deck hatches.⁴

The Texas General Land Office (TGLO or Claimant), in its capacity as the State On Scene Coordinator (SOSC), issued a Letter of State Interest to the RP, Mr. (b) (6), dated May 16, 2018 and signed by the SOSC on May 21, 2018.⁵ The FOSC federalized the spill and opened Federal Project Number N18040 on May 22, 2018 and hired Miller Environmental Services to handle response.⁶ TGLO presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$2,303.51.⁷ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$2,303.51 of the requested amount is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

¹ National Response Center (NRC) report # 1212796 dated May 16, 2018.

² USCG SITREP One dated May 23, 2018.

³ USCG SITREP One dated May 23, 2018.

⁴ USCG SITREP One dated May 23, 2018.

⁵ TGLO Letter of State Interest dated May 16, 2018 and signed by SOSC on May 21, 2018.

⁶ Coast Guard Authorization to proceed with removal and disposal of oil and hazardous material spill dated May 22, 2018.

⁷ Texas General Land Office claim submission dated February 14, 2020, page 2.

On May 16, 2018, the FOOSC confirmed that the F/V MOJADO became partially submerged in Conn Brown Harbor and resulted in a spill of approximately 30 gallons of oil into Redfish Bay, a navigable waterway of the United States.⁸ A joint investigation and response monitoring was performed by both the FOOSC and the SOSOC.⁹

Recovery Operations

On May 16, 2018, TGLO responded to the incident and attempted to reach the RP multiple times but was unable to make contact. On May 17, 2018, TGLO placed boom around the vessel.¹⁰ On May 22, 2018, The claimant and FOOSC performed a pollution investigation and jointly embarked underway to investigate the incident. Upon arrival to the vessel, the Claimant and FOOSC observed a 5' x 5' pool of an unknown oil discharging from the deck hatches. Unable to reach the RP, the FOOSC federalized the incident and opened a Federal Project # N18040.¹¹ The FOOSC proceeded to hire Miller Environmental Services for response and disposal effective May 22, 2018.^{12 13} On May 23, 2018, Miller Environmental dewatered and refloated the vessel. Divers repaired a 7" hole in the hull and Miller stung the fuel tanks and recovered 100 gallons of fuel and 10 gallons of hydraulic fluid from the hydraulic tank. Boom was removed from around the vessel and active response actions were deemed completed on this date.¹⁴

II. CLAIMANT AND RP:

Claims for removal costs or damages may first be presented to the Fund by the Governor of a State for costs that are incurred by the State.¹⁵ TGLO issued a Letter of State Interest to the RP dated May 16, 2018 and signed May 21, 2018.¹⁶ TGLO provided proof of mail tracking showing pending and no available signature from addressee¹⁷ TGLO issued a Notice of Violation letter to the RP dated February 11, 2019 via certified mail and also provided a copy of the return "unclaimed envelope" dated March 25, 2019.¹⁸

III. CLAIMANT AND NPFC:

On February 19, 2020, the NPFC received a claim for uncompensated removal costs from the Texas General Land Office (TGLO) dated February 14, 2020 in the amount of \$2,303.51. The claim included the daily invoiced costs for state personnel, materials and equipment, TGLO incident Report, NRC report, Boat Registration for the RP, photos, daily field notes from the responding personnel, proof of presentment and Notice of Violation issued to the RP, mail

⁸ USCG SITREP One dated May 23, 2018.

⁹ USCG SITREP Two and Final dated May 24, 2018.

¹⁰ TGLO Handwritten daily logs provided as part of the TGLO claim submission.

¹¹ USCG SITREP One dated May 23, 2018.

¹² USCG SITREP One dated May 23, 2018.

¹³ Coast Guard Authorization to proceed with removal and disposal of oil and hazardous material spill dated May 22, 2018.

¹⁴ USCG SITREP Two and Final dated May 24, 2018.

¹⁵ 33 U.S.C. § 2713(b)(1)(c).

¹⁶ TGLO Letter of State Interest dated May 16, 2018 and signed by SOSOC on May 21, 2018.

¹⁷ LSO Next Day Airbill # Z4727992 dated June 18, 2018 and copy of unclaimed return envelope

¹⁸ TGLO Notice of Violation letter dated February 11, 2019 and copy of "unclaimed" envelope returned and dated March 25, 2019.

tracking evidencing the mail was “unclaimed.” Additional information was obtained via the CG MISLE case # 1126237 and via the Federal Project file # N18040 that included two SITREPS, a complete copy of the CG Authorization to Proceed hiring Miller Environmental Services along with a complete set of invoicing and supporting documentation.¹⁹

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁰ 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.²¹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²² 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:

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.²³ An RP’s liability is strict, joint, and several.²⁴ 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.”²⁵ 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

¹⁹ See NPFC claim # N18040-0001 for all copies of claim documentation submitted and obtained.

²⁰ 33 CFR Part 136.

²¹ 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)).

²² 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).

²³ 33 U.S.C. § 2702(a).

²⁴ See H.R. Rep. N0 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779,780.

²⁵ *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).

incident.”²⁶ 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.”²⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁹ 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.³⁰

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.³¹
- (d) That the removal costs were uncompensated and reasonable.³²

Upon review and adjudication of the claim submission, TGLO's claim submission consisted of their detailed Incident Response Cost Invoice for costs claimed dated February 14, 2020. TGLO's costs included personnel charges for (b) (6) and (b) (6) for joint response work performed between May 16, 2018 and May 23, 2018, in the total amount of \$699.81. The equipment charges comprised of a 22 foot response boat used on May 16, 2018, as well as a 4x4 truck response vehicle used between May 16, 2018 and May 23, 2018, in the total amount of \$1,603.70. The NPFC has confirmed all rates charged are in accordance with the published state rates and is determined reasonable.

The NPFC obtained all available Coast Guard documents associated with the Federal Project and associated MISLE Case #1126237 dated May 16, 2018. The NPFC also obtained a copy of the Authorization to Proceed with Removal and Disposal of Oil or Hazardous Material Spill for the Oil Spill Response Organization (OSRO) that was hired by the FOSC and a copy of the Coast Guard Case Management detailed billing letter to the RP, (b) (6), dated January 31, 2019.

The NPFC analyzed each of these factors and determined that all costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the

²⁶ 33 U.S.C. § 2701(31).

²⁷ 33 U.S.C. § 2701(30).

²⁸ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁹ 33 CFR Part 136.

³⁰ 33 CFR 136.105.

³¹ USCG SITREP Two and Final dated May 24, 2018.

³² 33 CFR 136.203; 33 CFR 136.205.

appropriate state published rates and all approved costs were supported by adequate documentation and outlined as a joint assessment and response by the FOSC.

VI. 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 **\$2,303.51**.

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.

(b) (6)
Claim Supervisor: (b) (6)
Date of Supervisor's review: <i>3/10/2020</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments:

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).