

CLAIM SUMMARY / DETERMINATION

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|--------------------------|---------------------------------|
| <b>Claim Number:</b>     | N19050-0011                     |
| <b>Claimant:</b>         | Texas General Land Office       |
| <b>Type of Claimant:</b> | State                           |
| <b>Type of Claim:</b>    | Removal Costs                   |
| <b>Claim Manager:</b>    | (b) (6)                         |
| <b>Amount Requested:</b> | \$172.63                        |
| <b>Action Taken:</b>     | Offer in the amount of \$172.63 |

**EXECUTIVE SUMMARY:**

On May 13, 2019 at approximately 2:00 pm local time, United States Coast Guard (USCG) Sector Corpus Christi notified the National Response Center (NRC) via report # 1245538 that they found tar balls that washed ashore on the beaches of Mustang Island and Padre Island in the Gulf of Mexico, a navigable waterway of the United States. USCG Sector Corpus Christi, in its capacity as the Federal On Scene Coordinator (FOSC), arrived on scene and conducted an assessment of the affected areas and decided to open a Federal Project Number # N19050 in the amount of \$10,000 to cover the costs of removal and disposal activities performed by Miller Environmental Services (Miller), as the contracted Oil Spill Response Organization (OSRO).<sup>1</sup>

Texas General Land Office (TGLO or claimant), in its capacity as the State On Scene Coordinator (SOSC), assisted and jointly monitored the activities of the response contractor.<sup>2</sup> The FOSC determined there was no responsible party for the incident.<sup>3</sup> Miller Environmental disposed of a combined total of 602 gallons of tar balls recovered from the beaches from May 13, 2019 to November 5, 2019.<sup>4</sup>

The Texas General Land Office (TGLO or claimant) presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$172.63 on March 4, 2020.<sup>5</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$172.63 is compensable and offers this amount as full and final compensation of this claim.<sup>6</sup>

**I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

***Incident***

On May 13, 2019, United States Coast Guard Sector Corpus Christi, in its capacity as the FOSC reported to NRC that tar balls washed ashore on the beaches of Mustang Island and Padre Island in the Gulf of Mexico. The FOSC arrived on scene and conducted an assessment of the affected areas and decided to open a Federal Project Number # N19050 in the amount of \$10,000 to cover the costs of removal and disposal activities performed by Miller Environmental Services (Miller), as the contracted

<sup>1</sup> USCG SITREP-Pol One dated May 19, 2019.

<sup>2</sup> USCG SITREP-Pol Two dated June 21, 2019.

<sup>3</sup> USCG SITREPS-Pol One through Five and Final dated November 5, 2019.

<sup>4</sup> USCG SITREP-Pol Five and Final dated November 5, 2019.

<sup>5</sup> Texas General Land Office claim submission letter dated February 14, 2020.

<sup>6</sup> 33 CFR 136.115.

Oil Spill Response Organization (OSRO).<sup>7</sup> TGLO, in its capacity as the SOSC, performed joint assessment with the FOSC and assisted in the response by patrolling the area.<sup>8</sup>

### ***Recovery Operations***

After being notified by NRC, TGLO Response Officer, (b) (6), SOSC, arrived on scene coordinated with the FOSC Petty Officer (b) (6) for the recovery of tar balls throughout tar ball season. 1.05 gallons of oil was collected. All recovered tar balls are to be placed in a roll off box that Miller Environmental had staged at their facility at the request of the FOSC.<sup>9</sup>

### **II. CLAIMANT AND NPFC:**

On March 4, 2020, the NPFC received a claim for uncompensated removal costs from Texas General Land Office dated March 3, 2020 in the amount of \$172.63.

### **III. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>10</sup> 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.<sup>11</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>12</sup> 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:**

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

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;

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<sup>7</sup> USCG SITREP-Pol One dated May 19, 2019.

<sup>8</sup> USCG SITREP-Pol One dated May 19, 2019.

<sup>9</sup> USCG SITREP-Pol Five and Final dated November 5, 2019.

<sup>10</sup> 33 CFR Part 136.

<sup>11</sup> 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)).

<sup>12</sup> 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).

- (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.<sup>13</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>14</sup>

The NPFC analyzed each of these factors and determined that all costs incurred and submitted by TGLO herein are compensable removal costs based on the supporting documentation provided.<sup>15</sup><sup>16</sup> All costs approved for payment were verified as being invoiced at the appropriate state published rates and all approved costs were supported by adequate documentation and outlined as a joint assessment and response by TGLO with the FOSC.<sup>17</sup>

**V. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Texas General Land Office request for uncompensated removal costs is approved in the amount of **\$172.63**.

This determination is a settlement offer,<sup>18</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>19</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>20</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

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| <b>(b) (6)</b>                                |
| Claim Supervisor: <b>(b) (6)</b>              |
| Date of Supervisor's review: <i>3/26/2020</i> |
| Supervisor Action: <i>Approved</i>            |
| Supervisor's Comments:                        |

<sup>13</sup> USCG SITREP-Pol One through Five and Final dated November 5, 2019.

<sup>14</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>15</sup> USCG SITREP-Pol One through Five and Final dated November 5, 2019.

<sup>16</sup> Texas General Land Office claim submission letter dated February 14, 2020.

<sup>17</sup> USCG SITREP-Pol One through Five and Final dated November 5, 2019.

<sup>18</sup> 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).

<sup>19</sup> 33 CFR § 136.115(b).

<sup>20</sup> 33 CFR § 136.115(b).