

CLAIM SUMMARY / DETERMINATION

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| Claim Number: | N19067-0001 |
| Claimant: | Texas General Land Office (TGLO) |
| Type of Claimant: | State |
| Type of Claim: | Removal Costs |
| Claim Manager: | (b) (6)(b) (6)(b) (6) |
| Amount Requested: | \$1,296.92 |
| Action Taken: | Offer in the amount of \$1,296.92 |

EXECUTIVE SUMMARY:

On August 15, 2019, Coast Guard (CG) Marine Safety Unit (MSU) Port Arthur received notification of an unknown oil sheen in Sabine Pass, a tributary to the Sabine-Neches River, a navigable waterway of the United States, in Jefferson County, Texas.¹ Coast Guard (CG) Marine Safety Unit (MSU) Port Arthur Incident management Division (IMD) conducted a phone investigation and determined that there was an oil spill at the Sabine Pass Port Authority with the majority of oil pooling at the Jefferson's County Sheriff's boat docks.²

MSU Port Arthur pollution investigators were dispatched to serve as Federal On Scene Coordinator (FOOSC).³ Attempts to locate the spill source were unsuccessful and no responsible party (RP) as defined by the Oil Pollution Act of 1990, could be identified.⁴⁵ Texas General Land Office (TGLO or claimant) was dispatched to assist with the cleanup of the oil spill into the Pass Channel.⁶ TGLO presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$1,296.92.⁷ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$1,296.92 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

On August 15, 2019, a spill of approximately 50 gallons of an oil substance was discovered in Jefferson County, Texas in Sabine Neches River; a navigable waterway of the United States.⁸ The spill was located under and around the Jefferson County Sherriff's Boat Docks, within the Sabine Pass Port Authority.⁹

¹ NRC Incident Report #1255199, dated August 15, 2019.

² MISLE Case # 1187259 dated August 16, 2019.

³ SITREP 1, dated August 19, 2019.

⁴ 33 U.S.C. § 2701(32).

⁵ CG Marine Safety Laboratory Oil Sample Analysis Report 19-104.

⁶ Response Chronology for Response Officer [REDACTED], dated August 15, 2019 through September 3, 2019.

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

⁸ Texas General Land Office Incident Report 2019-2839.

⁹ NRC Incident Report #1255199, dated August 15, 2019.

TGLO, in its capacity as the State On Scene Coordinator (SOSC), was dispatched to the scene following notification from the FOSC. Having found no RP, the MSU Port Arthur federalized the response under FPN N19067.¹⁰ The FOSC contracted OMI Environmental Solutions (OMI) to handle cleanup and disposal of the spill.¹¹ TGLO assisted with and jointly monitored OMI's cleanup activity.¹²

Responsible Party

CG MSU Port Arthur worked with TGLO, attempting to locate the source of the spill, and working to identify a responsible party (RP). All attempts at locating a source were unsuccessful, and a RP could not be identified.¹³ As such, the oil spill was determined to be a mystery sheen.

Recovery Operations

OMI boomed off the contaminated area and began cleanup operations on August 15, 2019.¹⁴ Sample analysis taken from the spill site concluded that the substance was a light fuel oil mixed with lubricating oil.¹⁵ Cleanup operations ended on August 27, 2019.¹⁶

II. CLAIMANT AND NPFC:

On February 19, 2020, the NPFC received a claim for \$1,296.92 from the Texas General Land Office, dated February 14, 2020.¹⁷

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁸ 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.¹⁹ The NPFC may rely upon, is not bound by the findings of fact, opinions,

¹⁰ SITREP 1, dated August 19, 2019.

¹¹ MISLE Case # 1187259 dated August 16, 2019.

¹² SITREP Three and Final, dated August 27, 2019.

¹³ Response Chronology for Response Officer ██████████, dated August 15, 2019 through September 3, 2019.

¹⁴ SITREP 2, dated August 20, 2019.

¹⁵ CG Marine Safety Laboratory Oil Sample Analysis Report 19-104.

¹⁶ SITREP Three and Final, dated August 27, 2019.

¹⁷ Texas General Land Office claim submission, dated February 14, 2020.

¹⁸ 33 CFR Part 136.

¹⁹ 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)).

or conclusions reached by other entities.²⁰ 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.”²¹ 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.”²²

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²³ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁴ 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.²⁵

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.²⁶
- (d) That the removal costs were uncompensated and reasonable.²⁷

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. 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 the FOSC.²⁸

²⁰ 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).

²¹ 33 U.S.C. § 2701(31).

²² 33 U.S.C. § 2701(30).

²³ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁴ 33 CFR Part 136.

²⁵ 33 CFR 136.105.

²⁶ SITREP Three and Final, dated August 27, 2019.

²⁷ 33 CFR 136.203; 33 CFR 136.205.

²⁸ MISLE Case # 1187259 dated August 16, 2019.

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 \$1,296.92

This determination is a settlement offer,²⁹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁰ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³¹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

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| Claim Supervisor: (b) (6)(b) (6) |
| Date of Supervisor's review: <i>2/26/2020</i> |
| Supervisor Action: <i>Offer Approved</i> |

²⁹ 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).

³⁰ 33 CFR § 136.115(b).

³¹ 33 CFR § 136.115(b).