

CLAIM SUMMARY / DETERMINATION

Claim Number:	N19070-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)(b) (6)(b) (6)
Amount Requested:	\$2,615.35
Action Taken:	Offer in the amount of \$2,615.35

EXECUTIVE SUMMARY:

On August 28, 2019 at approximately 10:12 local time, the City League Police Department notified the National Response Center (NRC) via report # 1256646 that a vessel was sinking and discharging an unknown amount of oil into Clear Lake, a navigable waterway of the United States. The caller also stated that the owner of the vessel, (b) (6)(b) (6)(b) (6), was currently incarcerated¹

United States Coast Guard (USCG) Sector Houston-Galveston's Incident Management Division (IMD) received the notification and upon arrival on scene, Sector Houston-Galveston, in its capacity as the Federal On Scene Coordinator (FOSC), discovered the M/V *LITTLE MISS MAGIC* (TX5794FU), partially submerged in Clear Lake and was discharging oil into the navigable waterway.² Upon further investigation, the FOSC determined that the Responsible Party (RP) was currently incarcerated and unable to mitigate the incident.³

In accordance with the Oil Pollution Act of 1990, (b) (6)(b) (6)(b) (6), the owner and operator of the vessel, was identified as the responsible party (RP) for the incident.⁴ On August 29, 2019, the FOSC opened Federal Project Number # N19070 and issued a Notice of Federal Assumption (NOFA) to the RP dated August 29, 2019. The NOFA informed the RP that the FOSC was assuming total response activities under its authority of Section 311(c) (1) of the Federal Water Pollution Control Act (FWPCA).⁵ On August 29, 2019, the FOSC contracted Oil Mop, LLC to handle clean-up and disposal.^{6,7}

The Texas General Land Office (TGLO or claimant) presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$2,615.35 on February 14, 2020.⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$2,615.35 is compensable and offers this amount as full and final compensation of this claim.⁹

¹ National Response Center Incident Report #1256646 dated August 28, 2019.

² USCG SITREP-Pol One and final dated August 30, 2019.

³ USCG SITREP-Pol One and final dated August 30, 2019.

⁴ USCG Notice of Federal Interest issued to (b) (6)(b) (6)(b) (6) dated August 28, 2019.

⁵ USCG Notice of Federal Assumption letter dated August 29, 2019.

⁶ USCG SITREP-Pol One and final dated August 30, 2019.

⁷ USCG Authorization to Proceed for FPN # N19070 dated August 29, 2019.

⁸ Texas General Land Office claim submission letter dated February 14, 2020.

⁹ 33 CFR 136.115.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On August 28, 2019, the United States Coast Guard's National Response Center (NRC) was notified by the City League Police Department of a discharge of an unknown amount of an oil from a partially submerged vessel.¹⁰ TGLO, in its capacity as the SOSC, performed joint assessment with the FOSC and assisted in response by placing an absorbent boom and pads around the vessel to absorb the gasoline and oil that was discharged by the sinking vessel.¹¹ The vessel has been anchored since August 18, 2019 and began to sink causing the spill of approximately 0.006 gallons of motor oil and gasoline combined.¹²

Responsible Party

(b) (6)(b) (6)(b) (6) is the owner and operator of the fishing vessel *LITTLE MISS MAGIC* and was designated the responsible party (RP) for the oil spill incident.¹³

The NPFC issued a Responsible Party (RP) Notification letter dated February 21, 2020 to Mr. (b) (6).¹⁴ A Responsible Party Notification letter notifies the owners and/or operators that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

The NPFC used the last known address provided by the claimant.¹⁵ The notification was sent through the US Postal Service certified mail and the NPFC has not received confirmation of receipt of the letter as of March 4, 2020.

Recovery Operations

The RP had been arrested and was in prison during the time of the incident and was unavailable to mitigate the substantial threat. On August 28, 2019, the FOSC issued a verbal Notice of Federal Interest to owner over the phone. TGLO's Response Officer (b) (6)(b) (6), in his capacity as the SOSC, arrived on scene and assisted by placing an absorbent boom and pads around the vessel to absorb the gasoline and oil that was discharged by the vessel.¹⁶

The vessel owner's friend refloated and moored the vessel near the channel entrance to the South Shore Harbor Marina in Clear Lake but took no further action to remove or clean fuel

¹⁰ National Response Center Incident Report #1256646 dated August 28, 2019.

¹¹ Texas General Land Office claim submission letter dated February 14, 2020; Response Chronology for Response Officer (b) (6).

¹² Texas Oil or Hazardous Substances Discharge or Spill Report, Description of Incident, Cause, Impact and Response, dated August 28, 2019.

¹³ USCG SITREP-Pol One and final dated August 30, 2019.

¹⁴ NPFC RP Notification Letter dated February 21, 2020.

¹⁵ Texas General Land Office claim submission letter dated February 14, 2020, Texas Parks and Wildlife Department Boat/Motor Ownership Inquiry.

¹⁶ Texas General Land Office claim submission letter dated February 14, 2020; Response Chronology for Response Officer (b) (6).

from the vessel. On August 29, 2019, the FOSC contracted and authorized Oil Mop LLC to commence fuel removal and clean-up operations recovering 2.5 barrels of oily water mixture from the vessel.¹⁷

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.¹⁸ The FOSC determined the RP to be (b) (6).¹⁹ Investigation into the whereabouts of the RP revealed that he had been arrested and taken to jail by the League City Police Department on August 19, 2019.²⁰

III. CLAIMANT AND NPFC:

On February 20, 2020, the NPFC received a claim for uncompensated removal costs from Texas General Land Office dated February 14, 2020 in the amount of \$2,615.35.

IV. 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.

V. 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

¹⁷ USCG SITREP-Pol One and final dated August 30, 2019.

¹⁸ 33 U.S.C. § 2713(b) (1) (c).

¹⁹ USCG Notice of Federal Interest issued to [REDACTED] dated August 28, 2019.

²⁰ Texas General Land Office claim submission letter dated February 14, 2020; Response Chronology for Response Officer [REDACTED] and identified as 8/28/19 at 1100am.

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).

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;
- (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.²⁴
- (d) That the removal costs were uncompensated and reasonable.²⁵

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 TGLO with the FOSC.^{26 27}

VI. 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 **\$2,615.35**.

This determination is a settlement offer,²⁸ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.²⁹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁰ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

²⁴USCG SITREP-Pol One and final dated August 30, 2019.

²⁵ 33 CFR 136.203; 33 CFR 136.205.

²⁶ MISLE Case # 1189456 dated August 28, 2019.

²⁷ USCG SITREP-Pol One and final dated August 30, 2019.

²⁸ 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).

²⁹ 33 CFR § 136.115(b).

³⁰ 33 CFR § 136.115(b).

(b) (6)(b) (6)(b) (6)
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Claim Supervisor: (b) (6)(b) (6)(b) (6)

Date of Supervisor's review: *3/4/2020*

Supervisor Action: *Approved*

Supervisor's Comments: