

CLAIM SUMMARY / DETERMINATION

Claim Number:	N20010-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6), (b)
Amount Requested:	\$452.89
Action Taken:	Offer in the amount of \$452.89

EXECUTIVE SUMMARY:

On December 24, 2019, United States Coast Guard (USCG) Sector Corpus Christi Incident Management Division (IMD) received National Response Center (NRC) notification via report # 1267229 of a 30-gallon mystery oil discharge in the Corpus Christi Marina, which was creating a rainbow sheen on Corpus Christi Bay, a navigable waterway of the United States.¹ While the Texas General Land Office (TGLO), in its capacity as the State On Scene Coordinator (SOSC) and the USCG in its capacity as the Federal On Scene Coordinator (FOSC) were investigating potential responsible parties in the area, the commercial fishing vessel FANTASY D II, had fresh algae growth on the starboard side of the vessel indicating the vessel had previously been slightly lower in the water.² TGLO State On Scene Coordinator obtained samples of the mystery spill and the bigle of the FANTASY D II and sent the samples to the USCG Marine Safety Lab (MSL) for analysis. The MSL Oil Sample Analysis Report (02-037) indicated the spill sample and source sample were a match.³ In accordance with the Oil Pollution Act of 1990 (OPA), (b) (6), (b) is identified as the responsible party (RP) for the incident by the Federal On Scene Coordinator (FOSC).⁴

Texas General Land Office (“TGLO” or “Claimant”) presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$452.89 on July 24, 2020.⁵ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$6,609.00 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On December 24, 2019, United States Coast Guard (USCG) Sector Corpus Christi Incident Management Division (IMD) received National Response Center (NRC) notification via report # 1267229 of a 30-gallon mystery oil discharge in the Corpus Christi Marina, which was creating a rainbow sheen on Corpus Christi Bay, a navigable waterway of the United States.⁶ While the

¹ United States Coast Guard MISLE Case Activity # 6901991/MISLE Case # 1203865 dated December 24, 2019.
² United States Coast Guard MISLE Case Activity # 6901991/MISLE Case # 1203865 dated December 24, 2019.
³ United States Coast Guard Marine Safety Lab Oil Sample Analysis Report # 20-037 dated January 13, 2020.
⁴ USCG Notice of Federal Interest issued to (b) (6), (b) dated December 24, 2019.
⁵ TGLO claim submission # N20010-0001 dated July 23, 2020.
⁶ United States Coast Guard MISLE Case Activity # 6901991/MISLE Case # 1203865 dated December 24, 2019.

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Responsible Party

(b) (6), (b)(b) (6), (b) has been identified by the FOSC as the responsible party liable under OPA.¹⁰ The FOSC issued a Notice of Federal Interest to the RP.¹¹ A Notice of Federal Interest notifies the owner and/or operator of vessels or facilities that their vessel or facility was determined to be the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

Recovery Operations

At approximately 1100 hours local time, the FOSC was notified of approximately 30-gallons of oily mixture in the Corpus Christi Bay, a navigable waterway of the United States.¹² Once the SOSC and FOSC were both on scene, they both performed a visual inspection and verified that there was a substantial amount of oily water mixture in the water creating a rainbow sheen

The SOSC and the FOSC walked the docks in an effort to identify the source of the spill. The local Marina personnel provided a list of all vessels and the vessel owners contact information. They attempted to make contact with all vessel owners in the area but were unsuccessful at making contact with every vessel owner. Due to the amount of oil in the water, it was determined a response was necessary and with no identified RP at the time, the FOSC opened a Federal Project Number (FPN) and hired Miller Environmental to respond to the spill.¹³

As response activities were being performed, the FOSC stated that a sail boat owner in the vicinity contacted them to discuss the F/V FANTASY D II. He informed the FOSC and SOSC that the vessel had been listing for several weeks and appeared to be taking on water. The person informed them that on December 24, 2019, he noticed that the vessel appeared to be leveled and further out of the water. The FOSC stated that he observed approximately 3" of algae growth on the starboard side of the vessel and it appeared water logged and not dired out. The SOSC took

⁷ United States Coast Guard MISLE Case Activity # 6901991/MISLE Case # 1203865 dated December 24, 2019.

⁸ United States Coast Guard Marine Safety Lab Oil Sample Analysis Report # 20-037 dated January 13, 2020.

⁹ USCG Notice of Federal Interest issued to (b) (6), (b) dated December 24, 2019.

¹⁰ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.A.N. 779, 780.

¹¹ USCG Notice of Federal Interest issued to (b) (6), (b) dated December 24, 2019..

¹² USCG Pollution Investigator MST2 (b) (6), (b) witness statement dated December 26, 2019.

¹³ USCG Pollution Investigator MST2 (b) (6), (b) witness statement dated December 26, 2019

samples from the water as well as from the bilge of the vessel and sent them to the USCG MSL for processing.¹⁴

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)¹⁵ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.¹⁶ The Claimant attempted to present its claim to (b) (6), (b)(b) (6), (b) via certified mail on February 3, 2020.¹⁷ To date, the RP has not settled the claim.

III. CLAIMANT AND NPFC:

On July 24, 2020, the NPFC received a claim for uncompensated removal costs from the Texas General Land Office (TGLO) dated July 23, 2020 in the amount of \$452.89. The claim included the daily invoiced costs for state personnel and equipment, TGLO incident Report, NRC report, Boat Registration for the RP, photos, daily field notes from the responding officer, proof of attempted presentment and MSL Analysis report, mail tracking evidencing the mail was sent to the RP. Additional information was obtained via the CG MISLE case # 1203865 and via the Federal Project file # N20010 that included one SITREP, a copy of the CG Pollution Responder statement and the Notice of Federal Interest (NOFI) issued to the RP.¹⁸

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁹ 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.²⁰ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²¹ If there is conflicting evidence in the record, the

¹⁴ USCG Pollution Investigator MST2 (b) (6) witness statement dated December 26, 2019.

¹⁵ 33 U.S.C. § 2701 *et seq.*

¹⁶ 33 CFR 136.103.

¹⁷ TGLO spill case # 2019-4573 claim submission via certified mail # 70191120000129090125. TGLO provided a notation in their claim submission to the NPFC stating no certified card was returned from the mailing to the RP.

¹⁸ See NPFC claim # N20010-0001 for all copies of claim documentation submitted and obtained.

¹⁹ 33 CFR Part 136.

²⁰ 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)).

²¹ 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).

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:

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.²² An RP's liability is strict, joint, and several.²³ 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."²⁴ 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 incident."²⁵ 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."²⁶

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁷ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁸ 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.²⁹

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

²² 33 U.S.C. § 2702(a).

²³ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

²⁴ *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).

²⁵ 33 U.S.C. § 2701(31).

²⁶ 33 U.S.C. § 2701(30).

²⁷ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁸ 33 CFR Part 136.

²⁹ 33 CFR 136.105.

