

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	N20018-0002
<b>Claimant:</b>	Texas General Land Office
<b>Type of Claimant:</b>	State Government
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6), (b)
<b>Amount Requested:</b>	\$9,567.51
<b>Action Taken:</b>	Offer in the amount of \$9,567.51

### **EXECUTIVE SUMMARY:**

On February 1, 2020 at approximately 1100 local time, the United States Coast Guard (USCG) Sector Houston/Galveston received notification from the National Response Center (NRC) via report # 1270194<sup>1</sup> that a wellhead located in Tabbs Bay in the vicinity of Baytown, TX began discharging approximately 630 gallons of crude oil.<sup>2</sup> Tabbs Bay flows directly into Galveston Bay, a nexus of the Gulf of Mexico, a navigable waterway of the United States.<sup>3</sup>

USCG Pollution Responders from Sector Houston/Galveston responded to the incident and discovered crude oil discharged from the wellhead into the water.<sup>4</sup> The Texas General Land Office (“TGLO” or “Claimant”) performed joint response actions along with the USCG Federal On-Scene Coordinator (FOSC).<sup>5</sup>

TGLO presented its uncompensated costs claim to the National Pollution Funds Center (NPFC) for \$9,567.51.<sup>6</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 \$9,567.51 of the requested \$9,567.51 is compensable and offers this amount as full and final compensation of this claim.<sup>7</sup>

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

#### ***Incident***

On February 1, 2020 at approximately 1100 local time, the United States Coast Guard (USCG) Sector Houston/Galveston received notification from the National Response Center (NRC) via report # 1270194<sup>8</sup> that a wellhead located in Tabbs Bay in the vicinity of Baytown, TX began discharging approximately 630 gallons of crude oil.<sup>9</sup> Tabbs Bay flows directly into Galveston Bay, a nexus of the Gulf of Mexico, a navigable waterway of the United States.<sup>10</sup> It is

<sup>1</sup> NRC Report # 1270194 dated February 1, 2020.

<sup>2</sup> USCG SITREP generated on August 25, 2020.

<sup>3</sup> USCG MISLE Case Report 1207799; Activity # 6901048, opened February 1, 2020.

<sup>4</sup> *Id.*

<sup>5</sup> TGLO claim submission # N20018-0001 dated July 23, 2020.

<sup>6</sup> 33 CFR 136.103(c).

<sup>7</sup> 33 CFR 136.115.

<sup>8</sup> NRC report # 1270194 dated February 1, 2020.

<sup>9</sup> USCG SITREP generated on August 25, 2020.

<sup>10</sup> USCG MISLE Case Report 1207799; Activity # 6901048, opened February 1, 2020.

also worth noting that the NRC was also called at 1300 local time and NRC Report # 1270139 was created and associated with the same incident.<sup>11</sup>

### ***Responsible Party***

Gaither Petroleum acted as the Responsible Party (RP) for this case but the FOSC reports that there is a high degree of uncertainty as to whether or not the wellhead leaking oil was actually theirs.<sup>12</sup> The Texas Railroad Commission (TRCC) in its capacity as one of the State On-Scene Coordinators (SOSC) is also not positive that Gaither Petroleum is the RP and was working with the Federal On Scene Coordinator (FOSC)<sup>13</sup> to determine who the RP may be with more certainty.<sup>14</sup> The FOSC issued a Notice of Federal Interest (NOFI) on February 1, 2020 to Gaither Petroleum as a potential RP for the incident.<sup>15</sup> On February 3, 2020, the FOSC issued a Notice of Federal Assumption (NOFA) to Gaither Petroleum and took over the response efforts since the RP remained unidentified as of that date.<sup>16</sup> Finally, on February 4, 2020, the FOSC also issued a Notice of Federal Interest (NOFI) to the TRCC.<sup>17</sup> To date, no RP has been definitively identified.<sup>18</sup>

### ***Recovery Operations***

On February 2, 2020, the FOSC reported that the suspected wellhead was secured but it was later discovered that the source was unsecured. The FOSC stated that the wellhead was a shut-in wellhead that was not currently operating. Due to the uncertainty as to the identity of the RP, the FOSC decided to open a Federal Project Number (FPN) through the Oil Spill Liability Trust Fund (OSLTF).

The FOSC contracted with T&T Salvage Inc., which in turn subcontracted with Resolute Environmental who had already initiated clean-up operations under the oversight of Gaither Petroleum. T & T's dive team determined the oil was likely discharging from a plugged wellhead managed by the TRCC. TRCC built a cofferdam, providing temporary containment around the source and commenced re-plugging operations. T&T Marine Salvage remained the primary contractor for cleanup operations. Clean up was completed to the satisfaction of the FOSC and state and local partnering agencies on February 14, 2020.<sup>19</sup>

### **III. CLAIMANT AND NPFC:**

TGLO presented its uncompensated costs claim to the National Pollution Funds Center (NPFC) for \$9,567.51.<sup>20</sup> The costs claimed are for TGLO personnel that responded to the spill

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<sup>11</sup> NRC Report # 1270139 dated February 1, 2020.

<sup>12</sup> USCG Case Report 1207799; Activity # 6901048, opened February 1, 2020.

<sup>13</sup> The FOSC is designated as USCG Sector Houston/Galveston.

<sup>14</sup> USCG Case Report 1207799; Activity # 6901048, opened February 1, 2020.

<sup>15</sup> USCG Notice of Federal Interest (NOFI) was issued to Gaither Petroleum and dated February 1, 2020.

<sup>16</sup> USCG Notice of Federal Assumption (NOFA) dated February 3, 2020 was issued to Gaither Petroleum.

<sup>17</sup> USCG Notice of Federal Interest (NOFI) was issued to TRCC and dated February 4, 2020.

<sup>18</sup> USCG MISLE Case Report 1207799; Activity # 6901048, opened February 1, 2020.

<sup>19</sup> USCG Case Report 1207799; Activity # 6901048, opened February 1, 2020.

<sup>20</sup> 33 CFR 136.103(c).

from February 1, 2020 through February 7, 2020. The costs are for personnel time, utility boats, response trucks and the use of both a generator and response trailer.<sup>21</sup>

#### **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>22</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>23</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>24</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.

#### **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.<sup>25</sup> An RP's liability is strict, joint, and several.<sup>26</sup> 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."<sup>27</sup> 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."<sup>28</sup> 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

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<sup>21</sup> TGLO claim submission # N20018-0001 dated July 23, 2020.

<sup>22</sup> 33 CFR Part 136.

<sup>23</sup> See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2001 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 (5<sup>th</sup> Cir. 2010).

<sup>24</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).

<sup>25</sup> 33 U.S.C. § 2702(a).

<sup>26</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>27</sup> *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).

<sup>28</sup> 33 U.S.C. § 2701(31).

damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”<sup>29</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>30</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>31</sup> 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.<sup>32</sup>

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.
- (d) That the removal costs were uncompensated and reasonable.<sup>33</sup>

The NPFC analyzed each of these factors and determined the costs incurred by TGLO and submitted herein are compensable removal costs based on the supporting documentation provided and is also supported by the FOSC documentation substantiating TGLO’s involvement. The NPFC determined all approved costs are invoiced at the applicable published states. All approved costs were supported by adequate documentation which included the TGLO Incident Report # 2020-0374, a copy of its internal personnel expenses for this project, and FOSC statements.

The amount of compensable costs is \$9,567.51

## **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 **\$9,567.51**.

This determination is a settlement offer,<sup>34</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>35</sup> The NPFC reserves the right to revoke a

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<sup>29</sup> 33 U.S.C. § 2701(30).

<sup>30</sup> See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>31</sup> 33 CFR Part 136.

<sup>32</sup> 33 CFR 136.105.

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

<sup>34</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 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

settlement offer at any time prior to acceptance.<sup>36</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor:	(b) (6), (b)(b) (6), (b)	(b) (6), (b)(b) (6), (b)
Date of Supervisor's review:	<i>8/27/2020</i>	(b) (6), (b)(b) (6), (b)
Supervisor Action: Offer Approved:	<i>Approved</i>	(b) (6), (b)(b) (6), (b)

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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>35</sup> 33 CFR § 136.115(b).

<sup>36</sup> *Id.*