

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	N20031-0001
<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)
<b>Amount Requested:</b>	\$212.62
<b>Action Taken:</b>	Offer in the amount of \$212.62

### **EXECUTIVE SUMMARY:**

On June 5, 2020, at approximately 2036 local time, Mr. (b) (6), (b) of the Galveston County Sheriff's Department reported to the National Response Center (NRC)<sup>1</sup> that a black trash bag full of an unknown oil washed up on the shore and broke open causing a discharge of the oil onto the beach and into the Gulf of Mexico, a navigable waterway of the United States..<sup>2</sup> United States Coast Guard Sector Houston/Galveston was the Federal On Scene Coordinator (FOSC) for the incident and performed a joint response along with the Texas General Land Office ("TGLO" or "Claimant") and determined no Responsible Party (RP) could be identified. The FOSC hired a response contractor who cleaned up the incident, performed testing to ensure the product was oil and handled proper disposal. The FOSC opened Federal Project Number #N20031.

The Claimant then presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$212.62 in personnel and vehicle costs. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$212.62 is compensable and offers this amount as full and final compensation of this claim.

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

#### ***Incident***

On June 5, 2020, at approximately 7:55 pm, TGLO Response Officer (b) reported that he was notified by Chem-Tell of an unknown oil had come from a trash bag that washed up on the beach on the Boliver Peninsula.<sup>3</sup> The TGLO Response Officer contacted Sector Houston/Galveston who mobilized a Pollution Investigator from Marine Safety Unit (MSU) Texas City.<sup>4</sup> The FOSC opened a Federal Project Number (FPN) and hired a response contractor, T & T Marine to handle the cleanup and disposal since no responsible party was identified.<sup>5</sup> The FOSC advised that the trash bag contained oil filters that were actively discharging oil upon his arrival.<sup>6</sup>

#### ***Recovery Operations***

<sup>1</sup> NRC Report # 1278971 dated June 5, 2020.

<sup>2</sup> NRC Report # 1278971, Description of Incident action, dated June 5, 2020.

<sup>3</sup> TGLO Incident Report for Spill Case 2020-1716.

<sup>4</sup> USCG MISLE Case # 1220186.

<sup>5</sup> TGLO Incident Report for Spill Case 2020-1716.

<sup>6</sup> Email from MST3 (b) to NPFC dated August 3, 2020.

T & T Salvage was hired by the FOSC and arrived on scene. The spill was estimated to be around 30 gallons of waste oil.<sup>7</sup> By the time responders had arrived, the oil had soaked into roughly 1000 square feet of sand to a depth of approximately ¼ inch to 3/8 inch deep. The contractor removed the oily sand. Testing performed by T & T Salvage confirmed that the substance was oil.<sup>8</sup>

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

On July 24, 2020, NPFC received a claim for uncompensated removal costs from the Texas General Land Office dated July 23 totaling \$212.62.

## **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>9</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>10</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>11</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:**

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>12</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>13</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>14</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;

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<sup>7</sup> Email from MST3 [REDACTED] to NPFC dated August 3, 2020.

<sup>8</sup> Email from MST3 [REDACTED] to NPFC dated August 3, 2020.

<sup>9</sup> 33 CFR Part 136.

<sup>10</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>11</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>12</sup> See generally, 33 U.S.C. § (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>13</sup> 33 CFR Part 136.

<sup>14</sup> 33 CFR 136.105.

- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.<sup>15</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>16</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>17</sup><sup>18</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>19</sup>

**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's request for uncompensated removal costs is approved in the amount of **\$212.62**.

This determination is a settlement offer,<sup>20</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>21</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>22</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p>(b) (6), (b)(b) (6), (b)(b) (6), (b) (b) (6), (b)(b) (6), (b)(b) (6), (b) (b) (6), (b)(b) (6), (b)(b) (6), (b) (b) (6), (b)(b) (6), (b)(b) (6), (b)</p>
Claim Supervisor: [REDACTED]
Date of Supervisor's review: <i>8/5/2020</i>
Supervisor Action: <i>Offer Approved</i>

<sup>15</sup> MST3 [REDACTED] as the FOSC provided coordination via email dated August 3, 2020 to NPFC.

<sup>16</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>17</sup> Email from MST3 [REDACTED] to NPFC dated August 3, 2020.

<sup>18</sup> Texas General Land Office claim submission letter dated July 24, 2020.

<sup>19</sup> Texas General Land Office claim submission dated July 24, 2020.

<sup>20</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>21</sup> 33 CFR § 136.115(b).

<sup>22</sup> 33 CFR § 136.115(b).