

CLAIM SUMMARY / DETERMINATION

Claim Number:	UCGPN21033-URC001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$625.76
Action Taken:	Offer in the amount of \$625.76

EXECUTIVE SUMMARY:

On July 11, 2021 at approximately 5:47pm local time, an individual of the United States Coast Guard (USCG) from Sector Corpus Christi (SCC) made a notification to the National Response Center (NRC), via report # 1311412 and reported an unknown sheen in Newport Pass Beach, a tributary of the Gulf of Mexico, a navigable waterway of the United States.¹ The USCG SCC, in its capacity as the Federal On Scene Coordinator (FOSC) and Texas General Land Office (“TGLO” or “Claimant”), in its capacity as the State On Scene Coordinator (SOSC), jointly responded to the incident and found crude oil tar balls located in Newport Pass Beach, a navigable waterway of the United States.² The FOSC determined that upon investigation, no source could be identified and that a discharge of oil in the form of crude oil tarballs occurred. The FOSC opened the Oil Spill Liability Trust Fund (OSLTF) under Federal Project Number (FPN) N21033 and contracted with Miller Environmental to conduct removal and disposal operations.³

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$625.76 dated December 27, 2021.⁴ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$625.76 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On July 21, 2021, TGLO responded to the report of tar balls that washed up on Newport Pass Beach, a navigable waterway of the United States. TGLO observed two tar balls approximately 10 feet x 10 feet x 2 feet, estimated to be 2,000 gallons.⁵ Miller Environmental was contracted for removal and cleanup operations as directed by the FOSC. TGLO jointly oversaw and

¹ NRC Report #1311412 dated July 21, 2021.

² SITREP-Pol One dated July 23, 2021 and TGLO Original Claim Submission page 1 of 26 dated December 27, 2021.

³ SITREP-Pol One dated July 23, 2021.

⁴ TGLO Original Claim Submission dated December 27, 2021.

⁵ NRC Report #1311412 dated July 21, 2021 and TGLO Original Claim Submission page 1 of 26 dated December 27, 2021.

monitored the removal and cleanup operations performed by Miller Environmental throughout the response.

Responsible Party

TGLO and the FOSC determined that upon investigation, no source could be identified.⁶

Recovery Operations

On July 21, 2021, upon investigation of the incident, the FOSC hired Miller Environmental to conduct removal and disposal operations. After Miller Environmental arrived to the scene, the estimated amount of crude oil was updated to 3,184 gallons.⁷ The tar balls were wrapped in plastic at the end of the night and clean-up was resumed the next day.⁸ The crude oil tar balls were removed by a drum skimmer, bale pads, and absorbent booms.

On July 22, 2021, Miller Environmental continued clean-up and removal of the crude oil tar balls. During removal additional tar balls were found. The total amount of crude oil removed was just under 5,000 gallons (4,984).⁹ TGLO jointly oversaw and monitored the spill removal, clean-up, and disposal that was completed by Miller Environmental.¹⁰

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. The FOSC was unable to determine a spill source.¹¹

III. CLAIMANT AND NPFC:

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$625.76 dated December 27, 2021.¹² The claim included a TGLO cover sheet, Invoice, spill case documentation, and a TGLO Incident Report.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹³ 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.

⁶ SITREP-Pol One dated July 23, 2021.

⁷ SITREP-Pol One dated July 23, 2021.

⁸ TGLO Original Claim Submission page 9 of 26 dated December 27, 2021.

⁹ SITREP-Pol One dated July 23, 2021. and TGLO Original Claim Submission pages 1 & 21 of 26 dated December 27, 2021.

¹⁰ SITREP-Pol One dated July 23, 2021.

¹¹ SITREP-Pol One dated July 23, 2021.

¹² Id.

¹³ 33 CFR Part 136.

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.¹⁴ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁵ 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).¹⁶ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.¹⁷ 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.¹⁸

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.¹⁹
- (d) That the removal costs were uncompensated and reasonable.²⁰

Upon review and adjudication of the claim, the NPFC confirmed that the labor and vehicle charges were billed in accordance with the published state rates. The NPFC also confirmed that the actions undertaken by TGLO were determined by the FOSC to be consistent with the NCP.²¹

VI. CONCLUSION:

¹⁴ 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)).

¹⁵ 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).

¹⁶ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

¹⁷ 33 CFR Part 136.

¹⁸ 33 CFR 136.105.

¹⁹ SITREP-Pol Ond dated July 23, 2021.

²⁰ 33 CFR 136.203; 33 CFR 136.205.

²¹ SITREP-Pol One dated July 23, 2021.

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 \$625.76.

This determination is a settlement offer,²² the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.²³ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.²⁴ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

	(b) (6)
Claim Supervisor:	(b) (6)
Date of Supervisor's review:	1/21/2022
Supervisor Action:	<i>Offer Approved</i>

²² 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).

²³ 33 CFR § 136.115(b).

²⁴ 33 CFR § 136.115(b).