

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP922006-URC001
Claimant:	Lone Star Hazmat Response, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$3,967.36
Action Taken:	Offer in the amount of \$3,962.11

EXECUTIVE SUMMARY:

On the morning of May 11, 2021, (b) (6) was driving a 1996 black Jeep Cherokee northbound on the Dallas North Tollway at an unsafe speed for the wet road conditions. She lost control of the vehicle and struck the left barrier, which resulted in the vehicle rolling onto its right side, then coming to rest upside down. The vehicle released motor oil onto the Tollway.²

The North Texas Tollway Authority (NTTA) contacted Lone Star Hazmat Response, LLC (“LSHR” or “Claimant”) to respond to the incident on the tollway. LSHR responded to the incident location and applied absorbent pads to contain the oil while they used push brooms and shovels to collect absorbents that NTTA laid down as an initial response. All absorbents were collected and disposed of.³

On June 10, 2021, LSHR sent their invoice to Ms. (b) (6) (“RP”) in the amount of \$3,967.36 and sent the invoice to Allstate Fire and Casualty Insurance Company. On July 2, 2021 Allstate and Casualty Insurance Company denied the claim⁴ The RP sent Allstate Fire and Casualty Insurance Company a copy of the LSHR invoicing which was denied via a letter dated July 2, 2021.⁵ Upon receiving the Allstate denial, LSHR submitted their claim to the National Pollution Funds Center for compensation on December 7, 2021 in the amount of \$3, 967.36 for removal costs actions.⁶

¹ This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant’s rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant’s rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

² Lone Star Hazmat Response, LLC Original Claim submittal received by NPFC on December 7, 2021.

³ Lone Star Hazmat Response, LLC Response Summary #2021-0511-02.

⁴ Lone Star Hazmat Response, LLC Original Claim submittal received by NPFC on December 7, 2021, see pages 14 and 15 of 19.

⁵ Allstate Fire and Casualty Insurance Company letter to LSHR dated July 2, 2021 denying pollution coverage.

⁶ Lone Star Hazmat Response, LLC Original Clam submittal received by NPFC on December 7, 2021.

On February 15, 2022, the NPFC contacted the United States Environmental Protection Agency (USEPA) Region 6, Mr. (b) (6), who is the federally designated Federal On-Scene Coordinator (FOSC) for the incident location.⁷

Mr. (b) (6) provided an “after-the-fact” FOSC coordination statement on February 16, 2022 stating that the release of oil to the roadway had a potential to impact navigable waters of the United States via the storm water system had the action not been taken, and that the actions taken by LSHR appeared to be consistent with the National Contingency Plan.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 \$3,962.11 of the requested amount is compensable and offers this amount as full and final compensation of the claim.

I. INCIDENT, RESPONSIBLE PARTIES AND RECOVERY OPERATIONS:

Incident

On May 11, 2021 at 6:09 am, (b) (6) was operating a Jeep Cherokee in lane one of the Dallas North Tollway. She was traveling at an unsafe speed for the wet road conditions, lost control, and struck the left barrier with the front left quarter portion of the Jeep. The vehicle rolled onto its right side, then came to rest upside down in Lanes One and Two facing northwest on the Dallas North Tollway.⁹

LSHR was called to the accident scene by North Texas Tollway Authority (NTTA). They cleaned the booms and sawdust applied by NTTA to contain the oil release. Those items were placed in a contractor bag. LSHR used absorbent pads near the drain entry to prevent the release, applied coco absorbent to two lanes of the impacted roadway for a 150’ by 20’ area. Once the motor oil was absorbed, LSHR used a power broom to collect all the impacted absorbent, and placed it into a 55 gallon drum along with the contractor bag. No motor oil impacted the nearby drain box due to the swift action of the NTTA and LSHR personnel.¹⁰

Responsible Party

In accordance with the Oil Pollution Act of 1990, the owner and the operator of the vehicle is the Responsible Party (RP) for the incident.¹¹ (b) (6) was the owner of the

⁷ Email from NPFC to USEPA Region 6 FOSC dated February 15, 2022 requesting review and consideration of the response actions performed by LSHR. The NPFC further requested “after-the fact” FOSC coordination if the facts of the incident met the requirements of the determining consistency with the NCP.

⁸ USEPA email to NPFC providing “After-the-Fact” FOSC Coordination dated February 16, 2022.

⁹ Texas Peace Officer’s Crash Report by Investigator Emmanuel Hernandez dated May 11, 2021.

¹⁰ Lone Star Hazmat Response, LLC Original Claim submittal received by NPFC on December 7, 2021.

¹¹ Texas Peace Officer’s Crash Report by Investigator (b) (6) dated May 11, 2021.

vehicle¹² and (b) (6)¹³ was the operator of the vehicle at the time of the incident. As such, both are considered a Responsible Party under OPA.¹⁴ The RP letter was sent to (b) (6) (b) (6) on December 14, 2021 by certified mail.¹⁵ On January 12, 2022 the NPFC received the Return Receipt from Ms. (b) (6).¹⁶ A Responsible Party Notification letter notifies the RP 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.

Recovery Operations

The North Texas Tollway Authority (NTTA) contacted Lone Star Hazmat Response, LLC to respond to the single car accident, which resulted in the motor oil release that needed to be contained, removed, and disposed of.¹⁷ NTTA was at the scene when LSHR arrived. LSHR noted motor oil that had impacted the roadway from the accident. The car had been removed from the site prior to LSHR personnel arrival.¹⁸

The remedial steps taken by LSHR include using push brooms and shovels to collect NTTA absorbent material, which was placed in a contractor bag. LSHR also placed absorbent pads near the drain entry to prevent any release impacting the drain during remediation. LSHR applied coco absorbent to two lanes of the impacted roadway of an area approximately 150 x 20. Once the motor oil had been absorbed, LSHR used a power broom to collect all impacted absorbent.¹⁹ LSHR generated one 55-gallon poly drum containing motor oil absorbent which was transported to the Dallas Fort Worth office for disposal.²⁰

It was noted that no motor oil had impacted the nearby drain box. LSHR and NTTA personnel inspected the roadway and the roadway was cleared for use.²¹

II. CLAIMANT AND RP:

Absent limited circumstances, the Federal Regulations implementing OPA²² require all claims for removal costs or damages must be presented to the RP(s) before seeking compensation from the NPFC.²³

¹² Texas Peace Officer's Crash Report by Investigator (b) (6) dated May 11, 2021.

¹³ Texas Peace Officer's Crash Report by Investigator (b) (6) dated May 11, 2021.

¹⁴ 33 U.S.C. § 2701(32).

¹⁵ NPFC Responsible Party Letter to (b) (6) regarding the incident on May 11, 2021.

¹⁶ Certified Mail Return Receipt was received by NPFC on January 12, 2022.

¹⁷ Lone Star Hazmat Response, LLC Original Claim submittal received by NPFC on December 7, 2021.

¹⁸ Lone Star Hazmat Response, LLC Response Summary, Response #2021-0511-02 dated May 5, 2021.

¹⁹ Lone Star Hazmat Response, LLC Response Summary, Response #2021-0511-02 dated May 5, 2021.

²⁰ Uniform Hazardous Waste Manifest Tracking Number 021549421 dated June 14, 2021.

²¹ Lone Star Hazmat Response, LLC Response Summary, Response #2021-0511-02 dated May 5, 2021.

²² 33 U.S.C. § 2701 *et seq.*

²³ 33 CFR 136.103.

LSHR submitted its request for compensation to the operator of the vehicle.²⁴ When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.²⁵

On December 20th, 21st, 2021 and February 2, 2022, Mr. (b) (6) called and left messages for the NPFC regarding the RP Notification that (b) (6) received in December 2021.²⁶ The NPFC communicated with Mr. (b) (6) via telephone on February 3, 2022.²⁷ To date, no payments have been made by the RPs in this matter.

III. CLAIMANT AND NPFC:

On December 7, 2021 the NPFC received the claim for uncompensated removal costs from LSHR. The claim included a Response Summary #2021-0511-02 dated May 11, 2021; Uniform Hazardous Waste Manifest dated June 14, 2021; Invoice billed to (b) (6) dated June 17, 2021; Allstate Insurance Denial Letter to Ms. (b) (6) dated July 2, 2021; and Texas Peace Officer's Crash Report dated May 5, 2021. The total amount claimed is \$3,967.36.²⁸

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁹ 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.³⁰ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³¹ 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:

²⁴ Lone Star Hazmat Response, LLC Invoice 2021-0511-02 dated June 17, 2021 issued to the operator, Ms. (b) (6). Ms. (b) (6) sent the LSHR invoice to Allstate Fire and Casualty Insurance Company who denied the claim via a letter dated July 2, 2021.

²⁵ 33 CFR 136.103.

²⁶ December 20, 2021, December 21, 2021, and February 2, 2022 voice mail messages to NPFC.

²⁷ February 3, 2022 Email to file recapping conversation with Mr. (b) (6) regarding payment of the invoice.

²⁸ Lone Star Hazmat Response, LLC Original Claim submittal received by NPFC on December 7, 2021.

²⁹ 33 CFR Part 136.

³⁰ 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)).

³¹ 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).

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.³² An RP's liability is strict, joint, and several.³³ 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."³⁴ 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."³⁵ 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."³⁶

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁷ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁸ 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.³⁹

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.⁴⁰
- (d) That the removal costs were uncompensated and reasonable.⁴¹

The NPFC analyzed each of these factors and determined the majority of the costs incurred by LSHR and submitted herein are compensable removal costs based on the supporting

³² 33 U.S.C. § 2702(a).

³³ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁴ *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).

³⁵ 33 U.S.C. § 2701(31).

³⁶ 33 U.S.C. § 2701(30).

³⁷ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁸ 33 CFR Part 136.

³⁹ 33 CFR 136.105.

⁴⁰ In conjunction with the EPA Region 6 FOSC Coordination.

⁴¹ 33 CFR 136.203; 33 CFR 136.205.

documentation provided. The NPFC determined all approved costs were invoiced at the appropriate rate sheet pricing and were billed in accordance with the rate schedule provided.⁴² All approved costs were supported by adequate documentation which included invoices, proofs of payment, and were determined by the FOOSC to be consistent with the NCP.⁴³

On April 1, 2022, the NPFC contacted LSHR regarding the pricing discrepancies of five bags of Coco Absorb and one 55-gallon drum on their 2021 Rate Schedule.⁴⁴ On April 6, 2022, LSHR responded that Coco Absorb was added to their inventory in April of 2021 at \$44.95 per bag due to the limited availability of what they normally used as an absorbent (peat moss), as well as a price increase from \$70.00 to \$75.00 for a 55 gallon drum.⁴⁵ On April 7, 2022 the NPFC informed LSHR that we can only use the rate schedule that was applicable on the dates services were provided.⁴⁶ Based on the price differentials, the NPFC denies the price differential on Coco Absorb in the amount of \$.25⁴⁷; the price differential on the 55-gallon drums in the amount \$5.00⁴⁸; and adjusted the state tax in order to account for the denied materials which resulted in a differential of \$.43⁴⁹ for a total amount denied of \$5.68.

TOTAL DENIED: \$5.68⁵⁰

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Lone Star Hazmat Response, LLC request for uncompensated removal costs is approved in the amount of **\$3,962.11**.

This determination is a settlement offer,⁵¹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵³ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

⁴² LSHR Rate Sheet attachment to January 12, 2022 email from LSHR to NPFC.

⁴³ Email from NPFC to USEPA Region 6 FOOSC dated February 15, 2022 requesting review and consideration of the response actions performed by LSHR. The NPFC further requested “after-the-fact” FOOSC coordination if the facts of the incident met the requirements of the determining consistency with the NCP.

⁴⁴ NPFC email to LSHR re rate schedule inquiries dated April 1, 2022.

⁴⁵ LSHR email to NPFC re rate prices increased in April 2021 dated April 6, 2022.

⁴⁶ NPFC email reply to LSHR re April 2021 rate sheet pricing dated April 7, 2022.

⁴⁷ See, Enclosure (3) Summary of Costs spreadsheet, line 11.

⁴⁸ See, Enclosure (3) Summary of Costs spreadsheet, line 13.

⁴⁹ See, Enclosure (3) Summary of Costs spreadsheet, line 15.

⁵⁰ See, Enclosure (3) Summary of Costs spreadsheet.

⁵¹ 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).

⁵² 33 CFR § 136.115(b).

⁵³ 33 CFR § 136.115(b).

Claim Supervisor:

(b) (6)

(b) (6)

Date of Supervisor's review: *5/16/2022*

Supervisor Action: *Offer Approved*