

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	UCGPN21051-URC001
<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>Amount Requested:</b>	\$310.44
<b>Action Taken:</b>	Offer in the amount of \$310.44

### **EXECUTIVE SUMMARY:**

On September 25, 2021 at approximately 8:30pm 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 # 1317881 and reported an unknown sheen in Conn Brown Harbor, a navigable waterway of the United States.<sup>1</sup> 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), both responded to the incident and found a sheen of waste oil located in the Conn Brown Harbor, a navigable waterway of the United States.<sup>2</sup> The FOSC determined that upon investigation, no source could be identified and that a discharge of oil occurred. The FOSC opened the Oil Spill Liability Trust Fund (OSLTF) under Federal Project Number (FPN) N21051 and contracted with Miller Environmental to conduct removal and disposal operations.<sup>3</sup>

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$310.44 on December 21, 2021.<sup>4</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 \$310.44 is compensable and offers this amount as full and final compensation of this claim.

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

#### ***Incident***

On September 25, 2021, TGLO responded to the report of a sheen originating in the Conn Brown Harbor, a navigable waterway of the United States. TGLO reportedly observed a 30 feet x 30 feet red dye diesel oil spill, consisting of approximately 350 gallons.<sup>5</sup> Miller Environmental conducted removal and cleanup operations as directed by the FOSC. TGLO oversaw and monitored the removal and cleanup operations performed by Miller Environmental throughout the response.

#### ***Responsible Party***

<sup>1</sup> NRC Report #1317881 dated September 25, 2021.

<sup>2</sup> SITREP dated September 25, 2021 and TGLO Original Claim Submission page 1 of 16 dated December 21, 2021.

<sup>3</sup> SITREP dated September 25, 2021.

<sup>4</sup> TGLO Original Claim Submission dated December 21, 2021.

<sup>5</sup> SITREP-Pol One and Final dated October 14, 2021.

The FOSC and TGLO, in its capacity as the State On Scene Coordinator (SOSC), both responded to the incident and found a red dye diesel oil sheen located in the Conn Brown Harbor, a navigable waterway of the United States.<sup>6</sup> No vessels on the scene took responsibility for the spill. TGLO and the FOSC determined that upon investigation, no source could be identified.

### ***Recovery Operations***

On September 25, 2021, upon investigation of the incident, the FOSC hired Miller Environmental as a contractor to conduct removal and disposal operations. The red dye diesel oil was removed by a drum skimmer, absorbent pads, and absorbent booms. Spill removal, clean-up, and disposal was completed by the contractor.<sup>7</sup>

### **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 could not determine a Responsible Party.<sup>8</sup> TGLO presented its uncompensated removal cost claim to the NPFC on December 21, 2021.<sup>9</sup>

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

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$310.44 on December 21, 2021.<sup>10</sup> The claim included a TGLO Signed Claim cover sheet, Invoice, Spill case documentation, and TGLO Incident Report.

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

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>11</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>12</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions,

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<sup>6</sup> SITREP dated September 25, 2021 and TGLO Original Claim Submission page 1 of 16 dated December 21, 2021.

<sup>7</sup> SITREP dated September 25, 2021.

<sup>8</sup> SITREP dated September 25, 2021.

<sup>9</sup> TGLO Original Claim Submission dated December 21, 2021.

<sup>10</sup> Id.

<sup>11</sup> 33 CFR Part 136.

<sup>12</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)).

or conclusions reached by other entities.<sup>13</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>14</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>15</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>16</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.<sup>17</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>18</sup>

Upon review and adjudication of the claim, the NPFC reached out to the FOSC to confirm the presence and joint response by TGLO.<sup>19</sup> Chief (b) (6) from Sector Corpus Christi confirmed the presence of TGLO on scene during RP investigation for the incident.<sup>20</sup> The NPFC confirmed that the labor and vehicle charges were billed in accordance with the published state rates.<sup>21</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 request for uncompensated removal costs is approved in the amount of \$310.44.

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<sup>13</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>14</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>15</sup> 33 CFR Part 136.

<sup>16</sup> 33 CFR 136.105.

<sup>17</sup> The FOSC federalized the incident and determined all actions undertaken were reasonable, necessary and determined to be consistent with the NCP.

<sup>18</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>19</sup> January 5, 2022 email from NPFC to FOSC regarding TGLO involvement as SOSC.

<sup>20</sup> January 5, 2022 email from FOSC to NPFC re TGLO presence as SOSC.

the presence of TGLO on scene during RP investigation for the incident.<sup>17</sup> The NPFC confirmed that the labor and vehicle charges were billed in accordance with the published state rates.<sup>21</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 request for uncompensated removal costs is approved in the amount of \$310.44.

This determination is a settlement offer,<sup>18</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>19</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>20</sup> 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:	Offer Approved

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<sup>17</sup> January 5, 2022 email from FOSC to NPFC re TGLO presence as SOSC.

<sup>18</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>19</sup> 33 CFR § 136.115(b).

<sup>20</sup> 33 CFR § 136.115(b).