

CLAIM SUMMARY / DETERMINATION

Claim Number:	N21007-0001
Claimant:	Texas General Land Office
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$363.33
Action Taken:	Offer in the amount of \$363.33

EXECUTIVE SUMMARY:

On December 10, 2020, the United States Coast Guard Sector Corpus Christi (“CG Sector Corpus Christi” or “FOSC”) was notified of an unknown sheen from an unknown source, spotted in the waters of the Aransas Bay, Texas.¹ The Texas General Land Office (“TGLO” or “Claimant”) arrived on scene as State One Scene Coordinator (“SOSC”) and recorded a dark brown colored sheen of approximately 10 feet by 40 feet; identified as 2.5 gallons of motor oil.² CG Sector Corpus Christi verified the oil substance was in waters surrounding Fulton Harbor, of the Aransas Bay, Texas; a navigable waterway of the United States.³ No clear path of discharge and no source of the discharge was identified by either the FOSC or the SOSC. The spill source remains unknown.

Miller Environmental Services (“Miller Environmental”) was notified of the spill and hired by the CG Sector Corpus Christi as the oil spill removal organization (OSRO).⁴ TGLO monitored Miller Environmental’s cleanup activity, as the OSRO directed personnel and equipment for removal activities.⁵ TGLO presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$363.33.⁶

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$363.33 of the requested amount is compensable and offers this amount as full and final compensation of the claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On December 10, 2020, an unknown sheen from an unknown source was reported to the TGLO,⁷ and the United States Coast Guard.⁸ TGLO identified a sheen of approximately 10 feet

¹ NRC Report #1293968.

² Texas Oil or Hazardous Substances Discharge or Spill Report #2020-4028.

³ USCG Situation Report-Pollution Report 1 and Final, dated December 14, 2020.

⁴ MISLE Case Id: 1244937.

⁵ TGLO Invoice 2020-4028.

⁶ TGLO claim submission received June 17, 2021.

⁷ Texas Oil or Hazardous Substances Discharge or Spill Report #2020-4028.

⁸ NRC Report #1293968.

by 40 feet, dark brown in color and consisting of 2.5 gallons of motor oil.⁹ CG Sector Corpus Christi served as Federal On Scene Coordinator (FOSC) for this spill incident and verified oil from an unknown source within the waters surrounding Fulton Harbor, in the Aransas Bay, Texas; a navigable waterway of the United States.¹⁰ The SOSC on site coordinated with the FOSC, and Sector Corpus Christi federalized the response using FPN N21007.¹¹

Responsible Party

CG Sector Corpus Christi worked with TGLO, attempting to locate the source of the spill, and working to identify a responsible party (RP). With all attempts to locate a source being unsuccessful, CG Sector Corpus Christi collected samples from suspected vessels in an attempt to designate the responsible party, but a RP could not be identified.¹² As such, the oil spill was determined to be a mystery sheen.

Recovery Operations

CG Sector Corpus Christi reported that Aransas Party Navigation District had applied sorbent pads, leaving a light sheen as the oil still needing cleanup.¹³ Sector Corpus Christi opened the OSLTF and contracted Miller Environmental Services for the cleanup, who arrived on scene, removing the remaining substance and disposing of all sorbent pads.¹⁴ TGLO monitored Miller Environmental's cleanup activity, and remained on site until cleanup was complete.¹⁵

II. CLAIMANT AND NPFC:

On June 17, 2021, the NPFC received a claim for uncompensated removal costs from Texas General Land Office, dated June 17, 2021.¹⁶ The NPFC began the adjudication process of the claim submission on June 21, 2021.

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁷ 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

⁹ TGLO claim submission received June 17, 2021.

¹⁰ MISLE Case Id: 1244937.

¹¹ USCG Authorization to Proceed, dated December 14, 2020.

¹² MISLE Case Id: 1244937.

¹³ SITREP-POL 1 and Final, dated December 14, 2020.

¹⁴ MISLE Case Id: 1244937.

¹⁵ TGLO Invoice 2020-4028.

¹⁶ TGLO claim submission dated June 17, 2020.

¹⁷ 33 CFR Part 136.

the facts of the claim.¹⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁹ 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.

IV. 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.²⁰ An RP's liability is strict, joint, and several.²¹ 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."²² 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."²³ 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."²⁴

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁵ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁶ 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.²⁷

¹⁸ 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)).

¹⁹ 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).

²⁰ 33 U.S.C. § 2702(a).

²¹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

²² *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).

²³ 33 U.S.C. § 2701(31).

²⁴ 33 U.S.C. § 2701(30).

²⁵ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁶ 33 CFR Part 136.

²⁷ 33 CFR 136.105.

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.²⁸²⁹
- (d) That the removal costs were uncompensated and reasonable.³⁰

The NPFC analyzed each of these factors and determined all of the costs incurred by TGLO and submitted herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

V. 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 **\$363.33**.

This determination is a settlement offer,³¹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³³ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *6/24/2021*

Supervisor Action: *Offer Approved*

²⁸ MISLE Case Id: 1244937.

²⁹ SITREP-POL 1 and Final, dated December 14, 2020.

³⁰ 33 CFR 136.203; 33 CFR 136.205.

³¹ 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).

³² 33 CFR § 136.115(b).

³³ 33 CFR § 136.115(b).