

CLAIM SUMMARY / DETERMINATION

Claim Number:	N21014-0002
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$757.80
Action Taken:	Offer in the amount of \$738.08

EXECUTIVE SUMMARY:

On February 03, 2021 at approximately 12:40 pm local time, an individual of the Texas A & M Academy made a notification to the National Response Center (NRC), via report # 1297269 and reported an unknown sheen in the Galveston Channel, a navigable waterway of the United States.¹ The United States Coast Guard (USCG) Marine Safety Unit (MSU) Texas City, 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 mystery sheen of waste oil located in the vicinity of the Texas A&M ship dock that appeared to originate from the Galveston Ship Channel, a navigable waterway of the United States.² The FOSC determined that upon investigation, no source could be identified and that a substantial threat to the environment did exist. The FOSC opened the Oil Spill Liability Trust Fund (OSLTF) under Federal Project Number (FPN) N21014 and contracted with Oil Mop LLC (Oil Mop or OSRO) to conduct removal and disposal operations.³

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$757.80 on June 11, 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 \$738.08 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On February 03, 2021, from MSU Texas City responded to the report of a mystery sheen originating in the vicinity of the Galveston Ship Channel, a navigable waterway of the United States.⁵ TGLO reportedly observed a sheen of waste oil 40 feet x 30 feet x 0.03125 inches or approximately 23.37 Gallons.⁶ Oil Mop LLC conducted removal and cleanup operations as

¹ NRC Report # 1297269 dated February 03, 2021.

² SITREP-POL One and Final sent February 07, 2021 and TGLO Spill Incident Report for Case # 2021-0350, page 1 of 3, Description of Incident.

³ Updated SITREP-POL One and Final sent February 7, 2021.

⁴ TGLO Original Claim Submission dated June 11, 2021.

⁵ NRC Report # 1297269 dated February 03, 2021 and SITREP-POL One and Final sent February 07, 2021.

⁶ TGLO Spill Case Documentation 0350 page 1 of 5, under Amount of Oil Spilled in the Water section...

directed by the FOSC.⁷ TGLO oversaw and monitored the removal and cleanup operations performed by Oil Mop throughout the response.

Responsible Party

The FOSC and TGLO, in its capacity as the State On Scene Coordinator (SOSC), both responded to the incident and found a mystery sheen of waste oil located in the vicinity of the Texas A&M ship dock that appeared to originate from the Galveston Ship Channel, a navigable waterway of the United States.⁸ TGLO and the FOSC determined that upon investigation, no source could be identified. Two vessels and a dredge that were at the Port of Galveston docks were investigated and were cleared.⁹

Recovery Operations

On February 3, 2021, upon investigation of the incident, the FOSC witnessed a large sheen in the Galveston Ship Channel. The person who reported the incident to the NRC was located at Pelican Island aboard the training vessel, GENERAL RUDDER. He deployed sorbent boom around the vessel. There was a nearby area that was a natural collection point near the shoreline of Pelican Island and the remainder of the sheen was dissipating.

On February 4, 2021, the FOSC hired Oil Mop LLC to conduct removal and disposal operations. The FOSC reported that Oil Mop LLC completed response operations the same day.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 could not determine a Responsible Party.¹¹ TGLO presented its uncompensated removal cost claim to the NPFC on June 11, 2021, 2021.¹²

III. CLAIMANT AND NPFC:

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$757.80 on June 11, 2021.¹³ The claim included an Original Claim Submission, Invoice, Spill Case Documentation, and TGLO Incident Report. The NPFC requested that TGLO send their pricing matrix for this case via email on July 21, 2021.¹⁴

IV. DETERMINATION PROCESS:

⁷ SITREP-POL One and Final sent February 07, 2021.

⁸ SITREP-POL One and Final sent February 07, 2021 and TGLO Spill Incident Report for Case # 2021-0350, page 1 of 3, Summary of Cause section.

⁹ TGLO Spill Case Documentation 0350 page 1 of 5, under Summary of Cause section.

¹⁰ SITREP-POL One and Final sent February 07, 2021

¹¹ SITREP-POL One and Final sent February 07, 2021 and TGLO Spill Incident Report for Case # 2021-0350.

¹² TGLO Original Claim Submission dated June 11, 2021.

¹³ *Id.*

¹⁴ Email to TGLO requesting state rates on July 21, 2021.

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁵ 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.¹⁶ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁷ 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).¹⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.¹⁹ 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.²⁰

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.²¹
- (d) That the removal costs were uncompensated and reasonable.²²

The NPFC analyzed each of these factors and determined that the majority of the costs incurred and claimed by TGLO and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC determined all costs that it has approved as

¹⁵ 33 CFR Part 136.

¹⁶ 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)).

¹⁷ 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).

¹⁸ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

¹⁹ 33 CFR Part 136.

²⁰ 33 CFR 136.105.

²¹ In conjunction with the FOSC, TGLO jointly oversaw the response actions undertaken by the USCG response contractor.

²² 33 CFR 136.203; 33 CFR 136.205.

OPA compensable, were invoiced in accordance with the published rates at the time services were rendered and the denied portion of the hourly labor rate was adjusted to match the TGLO Personnel Rate Sheet provided on July 23, 2021.²³

Upon adjudication of the claim, the NPFC made a few requests for additional information as outlined below:

1. A copy of the most recent TGLO Equipment Fee Schedule for 2020-2021;
2. A copy of TGLO Personnel Rate Sheet

TGLO responded to the requests for information and it provided the following documentation:

1. A copy of the most recent TGLO Equipment Fee Schedule for 2020-2021; and;
2. A copy of TGLO Personnel Rate Sheet

Upon receipt of all information, the NPFC has determined that all costs approved are supported by adequate documentation.

The amount of compensable costs is \$738.08, while \$19.76 is deemed denied for the following reasons:

1. The claimant invoiced Personnel costs for (b) (6) at \$186.66 on February 03, 2021 and \$285.26 on February 04, 2021. On July 23, 2021, TGLO provided a Personnel Rate Sheet via email to the NPFC showing that the hourly rate for Mr. (b) (6) is \$42.26 per hour for both February 03, 2021 and February 04, 2021. Based on the salary information provided, the NPFC denies \$19.76 in labor costs billed that exceed the allowable rate.

Overall Denied Costs = \$19.76

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 \$738.08

This determination is a settlement offer,²⁴ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.²⁵ The NPFC reserves the right to revoke a

²³ TGLO Personnel Rate Sheet sent July 23, 2021.

²⁴ 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

settlement offer at any time prior to acceptance.²⁶ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor:

(b) (6)

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Date of Supervisor's review: *8/4/2021*

Supervisor Action: Approved.

Supervisor's Comments:

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).

²⁵ 33 CFR § 136.115(b).

²⁶ 33 CFR § 136.115(b).