

CLAIM SUMMARY / DETERMINATION

Claim Number:	N21021-0001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$3,501.63
Action Taken:	Offer in the amount of \$3,501.63

EXECUTIVE SUMMARY:

On April 14, 2021 at approximately 2:10 pm local time, the Texas General Land Office (TGLO) made a notification to the National Response Center (NRC), via report # 1302671 and reported that a recreational boat had discharged an estimated 15 gallons of diesel fuel into the Dickinson Bay, 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 TGLO, in its capacity as the State On Scene Coordinator (SOSC), responded to the incident and found the M/V DELTA PEARL actively releasing diesel fuel into the Dickinson Bay, a navigable waterway of the United States.² The FOsc tried to reach the owner of the vessel but was unsuccessful so they opened the Oil Spill Liability Trust Fund (OSLTF) and contracted Oil Mop LLC (Oil Mop or OSRO) with a ceiling of \$25,000 in order to remove the fuel onboard the vessel and in the water.³ TGLO, in its capacity as the State On Scene Coordinator (SOSC), jointly oversaw and monitored the removal and cleanup operations performed by Oil Mop throughout the response.

In accordance with the Oil Pollution Act of 1990, ██████████ (“Mr. ██████” or “RP”) is identified as the responsible party (RP)⁴ for the incident that resulted in a discharge of oil from the M/V DELTA PEARL.⁵ ██████████ (“RP), is the owner and operator of the vessel and the responsible party (RP) as defined by the Oil Pollution Act of 1990.⁶ OMI Environmental Solutions (“OMI” or “OSRO”), commenced cleanup operations on the water after being hired by the FOsc. TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$3,501.63 on June 14, 2021.⁷ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$3,501.63 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

¹ NRC Report # 1302671 dated April 14, 2021.

² SITREP-POL One dated April 14, 2021.

³ SITREP-POL Two and Final dated April 14, 2021.

⁴ 33 U.S.C. § 2701.

⁵ USCG Notice of Federal Interest (NOFI) dated April 16, 2021.

⁶ USCG Administrative Order # 21:002 dated April 16, 2021.

⁷ TGLO Original Claim Submission dated June 11, 2021 received June 14, 2021.

Incident

On April 14, 2021, TGLO and MSU Texas City responded to a report of a sunken recreational boat that was discharging diesel fuel.⁸ Upon arrival, TGLO's Response Officer (RO) and the FOSCR witnessed several gallons of diesel on the deck of the vessel. The RO assisted by FOSCR personnel, deployed 3 bags of sorbent boom around the sides and stern of the vessel.⁹ The FOSCR attempted to contact the owner of the vessel, Mr. [REDACTED], but was unsuccessful so the FOSCR federalized the spill and hired OMI to conduct cleanup.¹⁰ The cause of the spill was considered to be due to high tides over taking the vessel allowing diesel to be released from the tank vent on the starboard side of the vessel.¹¹ The vessel had been aground in shallow water since January 2021 and no pollution had been observed until April 14, when it was reported to the TGLO.¹²

Recovery Operations

On April 14, 2021, upon responding to the spill, TGLO responded to the scene and deployed 3 bags of sorbent boom around the stern of the vessel. The FOSC hired OMI on April 14, 2021 and upon arrival, OMI placed a containment boom around the vessel and the sorbents deployed by the USCG and TGLO were replaced with fresh sorbents.¹³

On April 15, 2021, the RO met with FOSCR personnel to take them out to oversee the removal of the diesel that was still aboard the vessel. The owner had contacted the USCG and OMI and agreed to cover the cost of the clean up at that moment in the response which was estimated to total \$8,000.¹⁴ OMI removed the diesel inside of the containment booms with sorbents, then pumped off approximately 400 gallons from the vessel and the vent where the diesel was observed to be coming from was plugged. At 6:30 pm, TGLO left the scene when OMI stopped removing diesel from the vessel because both totes were full of diesel.¹⁵

On April 16, 2021, at 10:00 am, TGLO Response Officers were on scene to oversee the removal of the remaining diesel. Approximately 240 gallons of diesel were removed, bringing the total removed from the vessel to approximately 640 gallons.¹⁶

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 spill was federally funded on April 14, 2021, and the owner paid OMI for costs on April 15, 2021. The remainder of the response for April 16, 2021 was paid for under the federal project number that the FOSC opened on April 14, 2021.

⁸ NRC Report # 1302671 dated April 14, 2021.

⁹ TGLO Incident Summary for Case # 2021-1402 dated April 21, 2021

¹⁰ USCG Pollution Investigator statement of [REDACTED] dated May 25, 2021.

¹¹ TGLO Response Officer Summary Notes, Summary of the Cause, dated April 14, 2021.

¹² *Id.*

¹³ TGLO Response Officer Summary Notes, Investigation, dated April 14, 2021.

¹⁴ *Id.*

¹⁵ TGLO Response Officer Summary Notes, Investigation, dated April 14, 2021.

¹⁶ *Id.*

The RP did not speak to TGLO's Response Officers at the scene of the spill incident and has not returned any of TGLO's phone calls.¹⁷

III. CLAIMANT AND NPFC:

On June 14, 2021, the NPFC received a claim for uncompensated removal costs from Texas General Land Office in the amount of \$3,501.63 dated June 11, 2021. The claim included the Original Claim Submission, Texas Oil or Hazardous Substances Discharge or Spill Report, NPFC Incident Response Cost Invoice, six photos of the incident scene, Oil Spill Prevention & Response Program Incident Report, Response Officer Summary and Texas General Land Office Vessel Assessment Form.

IV. DETERMINATION PROCESS:

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

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."¹⁸ 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."¹⁹ 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."²⁰

¹⁷ TGLO Response Officer Summary Notes, Response Issues, dated April 14, 2021.

¹⁸ *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).

¹⁹ 33 U.S.C. § 2701(31).

²⁰ 33 U.S.C. § 2701(30).

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²² 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.²³

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.²⁴
- (d) That the removal costs were uncompensated and reasonable.²⁵

The NPFC analyzed each of these factors and determined that all costs incurred and submitted by TGLO herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate state published rates and all approved costs were supported by adequate documentation and outlined as a joint assessment and response by the FOSC.

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 **\$3,501.63**.

²¹ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²² 33 CFR Part 136.

²³ 33 CFR 136.105.

²⁴ USCG POLREP demonstrates the presence of MSU Texas City and TGLO Response Officer on scene overseeing the response actions that were determined to be consistent with the NCP. After reviewing the USCG POLREPs, the USCG Administrative Order, the TGLO Summary of actions, and all available incident documentation, the amounts claimed by TGLO are supported by the record. The FOSCR also confirmed through POLREP notes that the actions performed by Oil Mop LLC were determined to be consistent with the National Contingency Plan.

²⁵ 33 CFR 136.203; 33 CFR 136.205.

This determination is a settlement offer,²⁶ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.²⁷ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.²⁸ 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: *7/1/21*

Supervisor Action: *Approved*

Supervisor's Comments:

²⁶ 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).

²⁷ 33 CFR § 136.115(b).

²⁸ 33 CFR § 136.115(b).