

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPN22005-URC001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$664.91
Action Taken:	Offer in the amount of \$664.91

EXECUTIVE SUMMARY:

On November 10, 2021 at approximately 3:00 pm local time, an unknown sheen was discovered in the Gulf of Mexico on Padre Island, a navigable waterway of the United States.² An individual of the United States Coast Guard (USCG) from Sector Corpus Christi (SCC) made a notification to the National Response Center (NRC) on November 12, 2021, via report # 1321818.³ 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), jointly responded to the incident and found crude oil tar balls located on Padre Island.⁴ The FOSC determined that upon investigation, no source could be identified and that a discharge of oil in the form of crude oil tarballs occurred. The FOSC opened the Oil Spill Liability Trust Fund (OSLTF) via Federal Project Number (FPN) N22005 and contracted with Miller Environmental to conduct removal and disposal operations.⁵

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$648.13 dated May 13, 2022.⁶ On June 17, 2022, TGLO sent a revised invoice amending their sum certain from \$648.13 to \$664.91.⁷ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$664.19 is compensable and offers this amount as full and final compensation of this claim.

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 NRC Report #1321818 dated November 12, 2021.

³ Id.

⁴ SITREP-Pol One dated November 23, 2021 and TGLO Original Claim Submission page 1 of 37 dated May 13, 2022.

⁵ SITREP-Pol One dated November 23, 2021.

⁶ TGLO Original Claim Submission dated May 13, 2022.

⁷ See email from TGLO dated June 17, 2022 which contains a revised TGLO invoice with an amended sum certain.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On November 10, 2021, TGLO responded to the report of tar balls that washed up on Padre Island, a navigable waterway of the United States. TGLO observed 47 tar balls of various sizes, approximately 733.34 gallons.⁸ Miller Environmental was contracted for removal and cleanup operations as directed by the FOSC.⁹ TGLO jointly oversaw and monitored the removal and cleanup operations performed by Miller Environmental throughout the response.¹⁰

Responsible Party

TGLO and the FOSC determined that upon investigation, no source could be identified.¹¹

Recovery Operations

On November 10, 2021, 4 of the 47 tar balls were found and assessed. A large field of additional tar balls were located but darkness prevented further assessment at 1800 local time.¹²

On November 11, 2021, the FOSC hired Miller Environmental to conduct removal and disposal operations.¹³ Tar balls 5-47 were found and assessed. TGLO departed from the scene and will return the following day for jointly oversee clean-up.¹⁴

On November 12, 2021, TGLO, Miller Environmental, and USCG arrived to the scene and began clean-up. The tar balls/patties were located and removed by being placed in drums. USCG authorized roll off to be transported for disposal.¹⁵

II. CLAIMANT AND NPFC:

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$664.91 dated May 13, 2022¹⁶ and revised on June 17, 2022. The claim included a TGLO cover sheet, original invoice, revised invoice, rate schedule, spill case documentation, and a TGLO Incident Report.¹⁷

⁸ NRC Report #1321818 dated November 12, 2021 and TGLO Original Claim Submission page 1 of 37 dated May 13, 2022.

⁹ SITREP-Pol One dated November 15, 2021

¹⁰ See, USCG Incident Report and Transmittal (IRAT) dated November 15, 2021, page 5 of 58 identifies TGLO as a key partner in response for this incident.

¹¹ NRC Report #1321818 dated November 12, 2021.

¹² TGLO Original Claim Submission page 9 of 37 dated May 13, 2022.

¹³ SITREP-Pol One dated November 15, 2021 and TGLO Original Claim Submission page 9 of 37 dated May 13, 2022.

¹⁴ TGLO Original Claim Submission page 9 of 37 dated May 13, 2022.

¹⁵ SITREP-Pol One dated and TGLO Original Claim Submission page 9 of 37 dated May 13, 2022.

¹⁶ TGLO Original Claim Submission dated May 13, 2022.

¹⁷ TGLO Original Claim Submission page 9 of 37 dated May 13, 2022.

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁸ 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.¹⁹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁰ 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:

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

Upon review and adjudication of the claim, the NPFC contacted the TGLO and made an official request for additional information on the accuracy of the personnel time, rate and total

¹⁸ 33 CFR Part 136.

¹⁹ 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)).

²⁰ 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).

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 SITREP-Pol One dated November 15, 2021

²⁵ 33 CFR 136.203; 33 CFR 136.205.

amount claimed.²⁶ On June 17, 2022, TGLO sent an email revising the invoice as noted by the NPFC in its request for clarification on the amount claimed.²⁷ After receiving the revised calculations, the NPFC confirmed via the Federal Project opened by the FOSC that TGLO did in fact perform a joint response with the USCG, the NPFC confirmed that all rates charged by TGLO were in accordance with the State's pricing schedule in place at the time services were rendered.

V. 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 **\$664.91**.

This determination is a settlement offer,²⁸ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.²⁹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁰ 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: <u>6/29/2022</u>
Supervisor Action: <i>Offer Approved</i>

²⁶ See NPFC email to TGLO dated June 2, 2022 requesting additional information.

²⁷ See TGLO email dated June 17, 2022 with revised TGLO invoiced costs.

²⁸ 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).

²⁹ 33 CFR § 136.115(b).

³⁰ 33 CFR § 136.115(b).