

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP923027-URC001
Claimant:	State of Louisiana
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$1,133.43
Action Taken:	Offer in the amount of \$1,133.43

EXECUTIVE SUMMARY:

On July 26, 2021, the National Response Center (NRC) received a report of a rainbow sheen in the Tchefuncte Marina, located on the Tchefuncte River, a navigable waterway of the United States.² The caller stated that the sheen smelled of diesel.³ The United States Coast Guard (USCG) Sector New Orleans, in its capacity as the Federal On Scene Coordinator (FOSC), received the NRC report and spoke with the reporting party to gather information on the incident.

On July 28, 2021, Louisiana Department of Environmental Quality (LDEQ) and the Louisiana Spill Coordinator's Office (LOSCO), as the State On Scene Coordinators (SOSCs), arrived at the Tchefuncte Harbor to assess the incident site and look for a responsible party (RP).⁴ No source or RP was found.

The State of Louisiana presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$1,133.43 on July 24, 2023.⁵ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that 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 National Response Center (NRC) Incident Report #1311806 dated July 26, 2021

³ State of Louisiana claim submission dated and received on July 24, 2023.

⁴ *Id.*

⁵ Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form dated

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On July 26, 2021, a homeowner from the Tchefuncte Harbor Homeowner's Association called the NRC and reported an unknown sheen in the Tchefuncte Marina, located on the Tchefuncte River, a navigable waterway of the United States.⁶ The caller reported that the sheen smelled of diesel fuel.⁷

The USCG Sector New Orleans, as the Federal On Scene Coordinator (FOSC) for the incident, contacted the reporting party to gather additional information. On July 28, 2021, LDEQ and LOSCO, as the SOSC, arrived at the Tchefuncte Harbor to assess the incident site and look for a responsible party (RP). They noted a slight sheen on the surface water of the Tchefuncte Harbor Marina.⁸

Recovery Operations

On July 26, 2021, the SOSCs arrived at the Tchefuncte Harbor Marina. They took photos of a faint sheen in the marina and looked to see if it migrated to the Tchefuncte River.⁹ Since the sheen was not reaching the Tchefuncte River and seemed to be dissipating naturally, no further action was taken.

II. CLAIMANT AND NPFC:

The State of Louisiana submitted their claim to the NPFC on July 24, 2023. Included in the submittal was the Oil Spill Liability Trust Fund (OSTLF) claim form; the NRC report; the LDEQ incident report; hourly staff and incidental rates; equipment usage and rate documentation; and photos of the incident.¹⁰

III. DETERMINATION PROCESS:

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

⁶ National Response Center (NRC) Incident Report #1311806 dated July 26, 2021

⁷ NRC Incident Report #1311806 dated July 26, 2021

⁸ State of Louisiana claim submission dated and received on July 24, 2023.

⁹ *Id.*

¹⁰ State of Louisiana claim submission dated and received on July 24, 2023.

¹¹ 33 CFR Part 136.

¹² *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.¹³ 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).¹⁴ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.¹⁵ 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.¹⁶

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.
- (d) That the removal costs were uncompensated and reasonable.¹⁷

The NPFC analyzed each of these factors and determined all the costs incurred and submitted by the State of Louisiana are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate personnel labor rates, equipment rates, and agency indirect costs.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the State of Louisiana's request for uncompensated removal costs is approved in the amount of \$1,133.43.

¹³ 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).

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

¹⁵ 33 CFR Part 136.

¹⁶ 33 CFR 136.105.

¹⁷ 33 CFR 136.203; 33 CFR 136.205.

This determination is a settlement offer,¹⁸ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.¹⁹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.²⁰ 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: <i>9/14/23</i>
Supervisor Action: <i>Offer Approved</i>

¹⁸ 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).

¹⁹ 33 CFR § 136.115(b).

²⁰ 33 CFR § 136.115(b).