

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPN23014-URC001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$478.60
Action Taken:	Offer in the amount of \$478.60

EXECUTIVE SUMMARY:

On January 4, 2023 at approximately 10:30 am local time, Intercontinental Terminals Company (ITC) out of La Porte, Texas notified the National Response Center (NRC) via report # 1356775² that they found an unknown sheen from an unknown source located in Buffalo Bayou, which is a tributary of the Houston Ship Channel in La Porte, Texas., a navigable waterway of the United States.³

United States Coast Guard (USCG) Sector Houston-Galveston, in its capacity as the Federal On Scene Coordinator (FOSC), deployed its Pollution Investigators along with the Texas General Land Office (“TGLO” or “Claimant”) Response Officer (RO), (b) (6). In his capacity as the State On Scene Coordinator (SOSC), Mr. (b) (6) arrived on scene and verified the discharged oil to be 15-20 gallons of thick black oil, identified as Number 6 bunker fuel oil. No Responsible Party (RP) was identified by either the FOSC or the SOSC.⁴

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$478.60 on February 21, 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 \$478.60 is compensable and offers this amount as full and final compensation of this claim.⁶

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 Report # 1356775 dated January 4, 2023.

³ USCG SITREP-Pol Three and Final dated January 10, 2023.

⁴ *Id.*

⁵ Texas General Land Office claim submission letter dated February 17, 2023.

⁶ 33 CFR 136.115.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On January 4, 2023 at 1345 local time, TGLO RO (b) (6) received notification of a sheen at ITC Deer Park. The sheen was reported to TGLO by USCG Sector Houston-Galveston Incident Management Division (IMD). The USCG received NRC report # 1356775 at 1039.⁷ At 1410 local time, TGLO RO arrived on scene. He observed an area approximately 150ft by 34ft with debris and recoverable black oil, with the oil making up 5% of the surface area. No source was identified therefore the FOSC federalized the spill and opened Federal project Number N23014.⁸ The FOSC hired Oil Mop, LLC (OMI) to handle cleanup.⁹

Recovery Operations

After the FOSC opened a Federal Project and hired Oil Mop, LLC (OMI), the FOSC hired OMI to boom off the two pockets of oil to contain it near the shoreline and place snare within the boom to collect the heavy oil. On January 7, 2023, the USCG and TGLO concurred that all recoverable oil had been recovered and all cleanup operations could be secured. OMI removed the saturated snare, sorbent sweep and hard boom.¹⁰

II. CLAIMANT AND NPFC:

On February 21, 2023, the NPFC received a claim from Texas General Land Office for its uncompensated removal costs dated February 17, 2023 in the amount of \$478.60.¹¹

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹² 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.¹³ The NPFC may rely upon, is not bound by the findings of fact, opinions,

⁷ Claimant Original Submission dated February 17, 2023, page 8 of 17, Initial Contact section of TGLO Case #2023-4030.

⁸ Claimant Original Submission dated February 17, 2023, page 8 of 17, Investigation section of TGLO Case #2023-4030

⁹ USCG SITREP-Pol Three and Final dated January 10, 2023.

¹⁰ *Id.*

¹¹ Claimant Original Submission dated February 17, 2023.

¹² 33 CFR Part 136.

¹³ *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.¹⁴ 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:

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.”¹⁵ 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.”¹⁶

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).¹⁷ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.¹⁸ 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.¹⁹

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.²⁰
- (d) That the removal costs were uncompensated and reasonable.²¹

The NPFC analyzed each of these factors and determined all of the 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 rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.²²

¹⁴ 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).

¹⁵ 33 U.S.C. § 2701(31).

¹⁶ 33 U.S.C. § 2701(30).

¹⁷ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

¹⁸ 33 CFR Part 136.

¹⁹ 33 CFR 136.105.

²⁰ See USCG SITREP-Pol Three and Final dated January 10, 2023. The FOSC hired OMI under FPN N23014 to recover and dispose of number 6 bunker oil discovered at the ITC Deer Park location on the Houston Ship Channel.

²¹ 33 CFR 136.203; 33 CFR 136.205.

²² Claimant Original Submission dated February 17, 2023.

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's request for uncompensated removal costs is approved in the amount of **\$478.60**.

This determination is a settlement offer,²³ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.²⁴ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.²⁵ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p>(b) (6)</p> <p>Claim Supervisor: (b) (6)</p> <p>Date of Supervisor's review: July 20, 2023</p> <p>Supervisor Action: Approved.</p>

²³ 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).

²⁴ 33 CFR § 136.115(b).

²⁵ 33 CFR § 136.115(b).