

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGPN23008-URC001
<b>Claimant:</b>	Texas General Land Office
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$262.15
<b>Action Taken:</b>	Offer in the amount of \$262.15

### **EXECUTIVE SUMMARY:**

On December 6, 2022 at approximately 10:00 am local time, Texas General Land Office (“TGLO” or “Claimant”) notified the National Response Center (NRC) via report # 1354301 that they found twelve (12) tar patties that washed ashore on the beach of Sea Rim State Park in the Gulf of Mexico, a navigable waterway of the United States.<sup>2</sup> TGLO, in its capacity as the State On Scene Coordinator (SOSC), assisted and jointly monitored the activities of the response contractor.<sup>3</sup>

United States Coast Guard (USCG) Marine Safety Unit (MSU) Port Arthur, in its capacity as the Federal On Scene Coordinator (FOSC), arrived on scene and conducted an assessment of the affected areas and decided to open a Federal Project Number UCGPN23008 in the amount of \$5,000 to cover the costs of removal and disposal activities performed by Environmental Safety and Health Consultants, Inc. (ES&H), as the contracted Oil Spill Response Organization (OSRO).<sup>4</sup> The FOSC is unable to determine a responsible party for the incident.<sup>5</sup> The FOSC determined that the federal project would remain open through December 2022 in order to fund the removal and disposal of any additional tarballs/ tar patties.<sup>6</sup>

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$262.15 on February 17, 2023.<sup>7</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and

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<sup>1</sup> 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.

<sup>2</sup> National Response Center Report # 1354301 sated December 6, 2022.

<sup>3</sup> USCG SITREP-Pol Two and Final dated December 14, 2022.

<sup>4</sup> USCG SITREP-Pol One dated December 22, 2022.

<sup>5</sup> USCG SITREPS-Pol Two and Final dated December 14, 2022.

<sup>6</sup> Texas General Land Office claim submission letter dated February 17, 2023.

<sup>7</sup> Texas General Land Office claim submission letter dated February 17, 2023.

regulations, and after careful consideration has determined that \$262.15 is compensable and offers this amount as full and final compensation of this claim.<sup>8</sup>

### **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

#### ***Incident***

On December 6, 2022, during a routine patrol TGLO discovered 15 tar patties that had washed ashore along the surf-line of Sea Rim State Park East Beach in the Gulf of Mexico, a navigable waterway of the United States.<sup>9</sup> TGLO in its capacity as the State On Scene Coordinator (SOSC), collected the tar patties and USCG MSU Port Arthur, in its capacity as the FOSC, opened Federal Project Number UCGPN23008 in the amount of \$5,000 to fund the costs of removal and disposal activities performed by Environmental Safety and Health Consultants, Inc. (ES&H), as the contracted Oil Spill Response Organization (OSRO).<sup>10</sup>

#### ***Recovery Operations***

After notifying the NRC, TGLO Response Officer (b) (6), recovered approximately 2.72 gallons of oil from Sea Rim State Park and placed the tar balls in containers for disposal. USCG MSU Port Arthur to hired ES&H to handle the disposal.<sup>1112</sup>

### **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 \$262.15.<sup>13</sup>

### **III. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>14</sup> 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.<sup>15</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions,

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<sup>8</sup> 33 CFR 136.115.

<sup>9</sup> Claimant Original Submission dated February 17, 2023, page 5 of 14, TGLO Incident Report #2022-4045.

<sup>10</sup> USCG SITREP-Pol One dated December 8, 2022.

<sup>11</sup> Claimant Original Submission dated February 17, 2023, page 5 of 14, TGLO Incident Report #2022-4045.

<sup>12</sup> USCG SITREP-Pol Two and Final dated December 14, 2022.

<sup>13</sup> Claimant Original Submission dated February 17, 2023.

<sup>14</sup> 33 CFR Part 136.

<sup>15</sup> 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.<sup>16</sup> 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.”<sup>17</sup> 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.”<sup>18</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>19</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>23</sup>

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

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<sup>16</sup> 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).

<sup>17</sup> 33 U.S.C. § 2701(31).

<sup>18</sup> 33 U.S.C. § 2701(30).

<sup>19</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>20</sup> 33 CFR Part 136.

<sup>21</sup> 33 CFR 136.105.

<sup>22</sup> See USCG SITREP-Pol One dated December 22, 2022. The FOSC hired ES&H under FPN N23008 to recover and dispose of tar balls.

<sup>23</sup> 33 CFR 136.203; 33 CFR 136.205.

appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.<sup>24</sup>

**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 **\$262.15**.

This determination is a settlement offer,<sup>25</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>26</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>27</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: (b) (6)	(b) (6)
Date of Supervisor's review: 3/17/23	
Supervisor Action: <i>Offer Approved</i>	

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<sup>24</sup> Claimant Original Submission dated February 17, 2023.

<sup>25</sup> 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).

<sup>26</sup> 33 CFR § 136.115(b).

<sup>27</sup> 33 CFR § 136.115(b).