

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPN23013-URC001
Claimant:	Texas General Land Office
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$284.50
Action Taken:	Offer in the amount of \$284.50

EXECUTIVE SUMMARY:

On December 28, 2022 at approximately 9:30 am local time, a Response Officer from the Texas General Land Office (TGLO), in his capacity as the State On Scene Coordinator (SOSC) and while conducting a routine patrol at Sea Rim State Park, discovered 30 tar balls on the East Beach along the surfline that were threatening the Gulf of Mexico in Jefferson County, TX, a navigable waterway of the United States (US).²

The United States Coast Guard (USCG) Marine Safety Unit (MSU) Port Arthur in its capacity as the Federal On Scene Coordinator (FOSC) for the incident, opened a Federal Project Number USCGPN23013 in the amount of \$5,000 to cover the costs of removal and disposal activities undertaken by American Pollution Control Corporation (AMPOL), as the USCG's Oil Spill Response Contractor.³ AMPOL disposed of 30 tar balls, equating to an estimated .5844 gallons of oil. No responsible party has been identified by either the SOSC or the FOSC.⁴

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$284.50 on February 15, 2023. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$284.50 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On December 28, 2022, while conducting a routine beach patrol of Sea Rim State Park in Jefferson County, Texas, a Texas General Land Office (TGLO) Response Officer found tar balls along 3 miles of the surfline that threatened the Gulf of Mexico, a navigable waterway of the US.

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 # 1356161 dated December 28, 2022.

³ USCG SITREP-Pol One dated December 29, 2022.

⁴ *Id.*

The Response Officer reported that the 30 tarballs ranged in size from 5 cm to 25 cm and varied in age from old and weathered to pliable and more recently formed. TGLO sampled one of the tarballs.⁵

The United States Coast Guard (USCG) Marine Safety Unit (MSU) Port Arthur in its capacity as the Federal On Scene Coordinator (FOSC) for the incident, opened a Federal Project Number USCGPN23013 in the amount of \$5,000 to cover the costs of removal and disposal activities undertaken by American Pollution Control Corporation (AMPOL), as the USCG's Oil Spill Response Contractor.⁶ AMPOL disposed of 30 tar balls, equating to an estimated .5844 gallons of oil. No responsible party has been identified by either the SOSC or the FOSC.⁷

Responsible Party

The responsible party is unknown as no source was found.

Recovery Operations

On December 28, 2022, the SOSC discovered 30 tarballs on Sea Rim State Park beach. He collected one sample prior to contacting the FOSC.⁸ The FOSC hired a Coast Guard contractor, American Pollution Control Corporation (AMPOL) under Federal Project Number UCGPN23013 on December 28, 2022 to handle recovery and disposal of all tarballs.⁹

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 15, 2023 in the amount of \$284.50.¹⁰

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, or conclusions

⁵ TGLO claim submission dated and received on February 15, 2023.

⁶ USCG SITREP-Pol One dated December 29, 2022.

⁷ *Id.*

⁸ TGLO claim submission dated and received on February 15, 2023. See SOSC activity log found on page 8 of 13.

⁹ USCG FPN Notification message dated December 28, 2022.

¹⁰ Claimant Original Submission dated February 15, 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)).

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 claimant's submission provided a detailed cost breakdown of claimed expenses, including TGLO personnel expenses and a table providing employee payroll rates and an explanation of the agency's equipment expenses. The claimant requested \$141.55 for personnel labor costs during the 4 hours and 45 minutes that staff was onscene coordinating cleanup and removal and \$142.95 in equipment expenses for the 4x4 truck used by TGLO staff used during the response. The total amount requested of \$284.50 is supported by the documentation provided by the claimant in their submission and has been determined to be consistent with the National Contingency Plan (NCP).¹⁸

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's request for uncompensated removal costs is approved in the amount of \$284.50.

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.

¹⁸ USCG SITREP-Pol One dated December 29, 2022.

This determination is a settlement offer,¹⁹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.²⁰ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.²¹ 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: 3/30/23
Supervisor Action: <i>Offer Approved</i>

¹⁹ 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).

²⁰ 33 CFR § 136.115(b).

²¹ 33 CFR § 136.115(b).