CLAIM SUMMARY / DETERMINATION[1]

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| **Claim Number:** | UCGPN21033-URC002 |
| **Claimant:** | Texas General Land Office |
| **Type of Claimant:** | State |
| **Type of Claim:** | Removal Costs |
| **Claim Manager:** | [redacted] |
| **Amount Requested:** | $358.55 |
| **Action Taken:** | Offer in the amount of $358.55 |

***EXECUTIVE SUMMARY:***:

On July 23, 2021 at 9:00am local time, an oily tar mat was discovered at the water's edge between mile marker 249 and 250 of Padre Island, a tributary to the Gulf of Mexico, a navigable waterway of the US.[2] [redacted], Response Officer for the Texas General Land Office ("TGLO" or "Claimant") reported the incident the National Response Center via report #1311566.[3] Mr. [redacted], in his capacity as the State on Scene Coordinator (SOSC), found 106.208 gallons of oil in Texas Coastal waters. The TGLO Response Officer coordinated with the Federal On Scene Coordinator's Representative (FOSCR), Petty Officer [redacted] from United States Coast Guard Sector Corpus Christi.[4] The FOSC opened the Oil Spill Liability Trust Fund (OSLTF) under Federal Project Number (FPN) N21033 on July 21, 2018 when the initial tar balls/mats were discovered washing ashore between Mustand Island and Padre Island. The USCGcontracted with Miller Environmental to recover and dispose of all tar balls/mats discovered throughout tar ball/mat season.[5]

TGLO presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for $358.55 dated November 16, 2022. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that $358.55 is compensable and offers this amount as full and final compensation of this claim.

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[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] TGLO claim submission (page 6 of 20) on the TGLO Incident Report Form, under the Description of Incident section.

[3] National Response Center (NRC) Report #1311566 dated July 23, 2021.

[4] TGLO claim submission (pages 1 and 9 of 20) dated November 16, 2022.

[5] USCG SITREP One dated July 23, 2021.

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

### *Incident*

On July 23, 2021, TGLO Response Officer, [redacted] discovered a 6ft x 3ft x 6inch tar ball at the water's edge between mile marker 249 and 250 on Padre Island. He reported the incident to the National Response Center via report # 1311566.and then sampled the tar ball and entered the data into the TGLO system.[6]

### *Recovery Operations*

TGLO Response Officer collected a 6ft x 3ft x 6inch tar mat at the water's edge of Padre Island. While continuing patrol, he also collected a 1ft x 1 ft x 6inch tar mat; a 6inch x 6 inch x 1.5 inch tar mat; two 1ft x 1ft x 2inch tar mat; and a 3ft x 3ft x 6inch tar mat. At noon, the FOSC's representatives arrived on scene and met with TGLO. TGLO then loaded the tar mats and departed the scene headed for Miller Environmental so that Miller Environmental could dispose of the tar mats as contracted by the FOSC.

## *II. CLAIMANT AND RP:*

The Responsible Party is unknown. No source was found. The spill cleanup was federalized and disposed at Miller Environmental.[7]

## *III. CLAIMANT AND NPFC:*

On November 16, 2022, the NPFC received a claim for uncompensated removal costs from the Texas General Land Office (TGLO) dated on November 16, 2022 in the amount of $358.55. The claim included the daily invoiced costs for state personnel materials and equipment, TGLO Incident Report, NRC Report, photos, daily field notes from responding personnel. Additional information was obtained by the USCG MISLE Case #1270040 and the Federal Project file N21033.[8]

## *IV. DETERMINATION PROCESS:*

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).[9] 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

[6] TGLO claim submission, page 9 of 20, Daily field log for TGLO Response Officer.
[7] TGLO Claim Submittal to the NPFC dated November 16, 2022.
[8] TGLO Claim Submission to the NPFC dated November 16, 2022.
[9] 33 CFR Part 136.

evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.[10] The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.[11] 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:***

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.[12] An RP's liability is strict, joint, and several.[13] When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."[14] OPA was intended to cure these deficiencies in the law.

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]

[10] *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)).
[11] *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).
[12] 33 U.S.C. § 2702(a).
[13] *See,* H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.
[14] *Apex Oil Co., Inc. v United States,* 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (*citing* S. Rep. No. 101-94 (1989), *reprinted in* 1990 U.S.C.C.A.N. 722).
[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.

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]

Upon review and adjudication of the claim submission, TGLO's claim submission consisted of their detailed Incident Response Cost Invoice for costs claimed dated November 16, 2022. The costs regarding Spill #2021-2702 included GLO Personnel Expenses in the amount of $129.83 for response work performed on July 23, 2021 for four hours and 30 minutes. The State Equipment expenses for the 4x4 truck vehicle unit #306 in the amount of $142.95. Agency indirect expenses totaled $358.55.

The NPFC analyzed each of these factors and determined that all costs based n the supporting documentation provided. All costs approved for payment were verified as being invoicedat the appropriate state published rates and all approved costs were supported by adequate documentation and outlined as a joint assessment and response by the FOSC.

## ***VI. CONCLUSION:***

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, TGLO's request for uncompensated removal costs is approved in the amount of **$358.55.**

This determination is a settlement offer,[22] the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.[23] The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.[24] Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

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[20] USCG SITREP One dated July 23, 2021 and USCG SITREP Two and Final dated December 23, 2021.
[21] 33 CFR 136.203; 33 CFR 136.205.
[22] 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).
[23] 33 CFR § 136.115(b).
[24] 33 CFR § 136.115(b).

[redacted]

Claim Supervisor: [redacted]

Date of Supervisor's review: ***1/30/2023***

Supervisor Action: ***Offer Approved***

Supervisor's Comments: