

CLAIM SUMMARY / DETERMINATION

Claim Number:	N20041-0001
Claimant:	Port of Corpus Christi Authority
Type of Claimant:	Local Government
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$65,491.14
Action Taken:	Offer in the amount of \$50,130.72

EXECUTIVE SUMMARY:

On August 21, 2020, it was reported that an uninspected dredge, WAYMAN L. BOYD (O.N. 261512), struck a submerged propane pipeline while transiting the main ship channel in Corpus Christi Inner Harbor, resulting in a fire onboard the vessel.¹ The fire burned for over (8) hours as the remaining fuel in the line was consumed. The WAYMAN L. BOYD experienced extensive damage and continued to smolder until finally breaking into two and sinking in the channel. The sinking then caused the vessel to begin discharging oil into the Inner Harbor, a navigable waterway of the United States.² United States Coast Guard (USCG) Sector Corpus Christi was the Federal On-Scene Coordinator (FOSC).³

Orion Marine Group (“Orion” or “RP”), is identified as the owner/operator of the WAYMAN L. BOYD (O.N. 261512), and is the responsible party (RP) as defined by the Oil Pollution Act of 1990.⁴ The Claimant, Port of Corpus Christi Authority (“Port” or “Claimant”), provided the Ortiz Center as the location of the Unified Command after initial discussions with the FOSC.⁵ The Port presented its uncompensated removal costs to the RP.⁶ After ninety days following presentment and having not reached a settlement with the RP, the Port presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$65,491.14.⁷

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$50,130.72 of the requested amount is compensable and offers this amount as full and final compensation of the claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

¹ United States Coast Guard (USCG) Captain of the Port Order (COTP) #119-20 dated August 21, 2020.

² USCG SITREP-POLREP One dated August 24, 2020.

³ *Id.*

⁴ United States Coast Guard (USCG) Captain of the Port Order (COTP) #119-20 dated August 21, 2020.

⁵ June 10, 2021 email from FOSC to NPFC explaining how the Claimant’s Ortiz Center was used as the Unified Command (UC) location for this incident. See item #2 of this email.

⁶ The Port provided proof of presentment for invoices totaling \$65,491.14. See, claim submission documents and Claimant’s Counsel cover letter to Orion Marine Construction, Inc. dated February 5, 2021.

⁷ The Port of Corpus claim submission received May 20, 2021.

On August 21, 2020, the National Response Center (NRC) received two separate reports via reports # 128523 and # 1285164, which the first report stated that a fire was seen in the Corpus Christi Ship Channel when a dredging operation hit a 16” submerged steel transmission pipeline and the second report stated that there was an explosion at the Port earlier in the day and the fire was extinguished however the vessel then re-ignited causing the vessel to sink and discharge diesel fuel into the water. United States Coast Guard (USCG) Sector Corpus Christi was the Federal On-Scene Coordinator (FOSC).⁸

Ultimately, the pipeline was secured and the vessel fire was extinguished. Diesel from the vessel discharged into the ship channel and threatened to discharge a potential of 6000 gallons of fuel that was onboard.

Responsible Parties

In accordance with the Oil Pollution Act of 1990, the owner/operator of the WAYMAN L. BOYD (O.N. 261512), is the Responsible Party (RP) for the incident.⁹ On May 25, 2021, the NPFC issued a Responsible Party Notification Letter to Orion Marine Construction, Inc. via certified mail.¹⁰ A Responsible Party Notification letter notifies the RP that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

Recovery Operations

The Claimant incurred response costs for providing services as a member of the Unified Command and under the direct oversight of the FOSC. The costs include the services of third parties engaged by the Claimant who were directly involved during the removal activities. The Claimant called out the Refinery Terminal Fire Company to assist with the fire response.¹¹ In addition, the Corpus Christi Area Oil Spill Control Association was called out to assist with the resulting spill response. The Claimant provided use of its “Ortiz Center” as the location of the Incident Command Post. During the initial Command Post meeting, it was determined that the “Ortiz Center” would be the best place to stand up the Command Post because that location was the only location that would work considering required social distancing protocols for COVID 19.¹²

II. CLAIMANT AND RP:

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)¹³ require all claims for removal costs or damages must be presented to the RP

⁸ The Port of Corpus Christi claim submission received May 20, 2021.

⁹ USCG SITREP-POLREP One dated August 24, 2020.

¹⁰ NPFC RP Notification Letter sent to Orion Marine Construction, Inc dated May 25, 2021.

¹¹ The Port of Corpus Christi claim submission received May 20, 2021.

¹² June 10, 2021 email from the FOSC to the NPFC whereby it states the Unified Command agreed the Claimant’s Ortiz Center would be used as the Incident Command Post (ICP).

¹³ 33 U.S.C. § 2701 *et seq.*

before seeking compensation from the NPFC.¹⁴ When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.¹⁵

The initial claim to the NPFC came in confirming that the claimed costs were presented to the RP.¹⁶ The NPFC also made notification of the claim to the RP, to which it responded directly, requesting a copy of all the claimed costs.¹⁷

III. CLAIMANT AND NPFC:

When an RP denies a claim or has not settled a claim after 90 days of receipt, a Claimant may elect to present its claim to the NPFC.¹⁸ Claimant presented to the owner and the operator of the vessel. The owner, Orion Marine Construction Inc. (Orion), failed to settle the claim within the 90 days provided under OPA. On May 20, 2021, the Claimant submitted its claim to the NPFC for \$65,491.14.

The Port broke down its claim via the following invoicing/costs:

1. Spectra (Ortiz Center), \$15,726.46;
2. RTFC Invoice # ER 20-221, \$28,715.14;
3. CC Oil Spill Invoice # 5340, \$9,023.80;
4. Gillian Cox APRN FNP-C Invoice # 08-2020-1, \$1,000.00;
5. Port Personnel Overtime, \$2,329.42;
6. Food and Beverage, \$8,696.32.

Total claimed costs: \$65,491.14

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁹ 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.²⁰ The NPFC may rely upon, is not bound by the findings of fact, opinions,

¹⁴ 33 CFR 136.103.

¹⁵ 33 CFR 136.103.

¹⁶ The Port provided proof of presentment for invoices totaling \$65,491.14. *See*, claim submission documents and Claimant's Counsel cover letter to Orion Marine Construction, Inc. dated February 5, 2021.

¹⁷ NPFC Email to RP with Claim documents dated June 2, 2021.

¹⁸ 33 U.S.C. § 2713(a-c).

¹⁹ 33 CFR Part 136.

²⁰ *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.²¹ 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.²² An RP's liability is strict, joint, and several.²³ 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."²⁴ 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."²⁵ 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."²⁶

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁷ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁸ 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.²⁹

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;

²¹ 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).

²² 33 U.S.C. § 2702(a).

²³ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

²⁴ *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).

²⁵ 33 U.S.C. § 2701(31).

²⁶ 33 U.S.C. § 2701(30).

²⁷ See generally, 33 U.S.C. §2712(a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁸ 33 CFR Part 136.

²⁹ 33 CFR 136.105.

- (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.³⁰

Upon review of the claim, the Port of Corpus Christi responded to each part of the disaster, engaging both the Refinery Terminal Fire Company (RTFC) and Corpus Christi Oil Spill Control Association (CC Oil Spill), as well as facilitating third-party food and beverage vendors at its Ortiz conference center.³¹

Corpus Christi Spill Control Association was activated by the Port to pre-position assets in anticipation of a spill from the pipeline and/or dredge. CC Oil Spill activated four people from its shop as well as five additional contractors to assist on-scene. It also provided two vessels, a 24' and 20' boat, to respond immediately when given the all clear. Approximately 1,200 feet of boom at the Bulk Material Docks, 1,200 feet of boom at the Citgo Dock 3 location and 1,300 feet of boom at a Magellan site on the East side of Navigation Boulevard at the Ship Channel. CC Oil Spill also hooked up and removed tarps from three trailers at its shop, with each holding 3,000 feet of containment boom. Its 30' Barge Boat was prepared for launching if needed as well. The 20' boat was used to survey the shorelines, both North and South and from the Bulk Material Docks to the Resins Dock further to the West.³²

RTFC prepared a team to deploy to the fire early the morning on August 21, 2020. RTFC initially responded with foam, a tractor, a skid pump and a hose tender. A full call out was requested by the Command of Brush 1, Utility 4 and Special Unit 2 to also respond for assistance with the grass fire and skid pump operations. The crews worked to extinguish the grass fire around the affected areas. Additional RTFC personnel assisted with the grass fire operations.³³

RTFC was called out again later that evening to assist with two structures that were either connected to or on the barge that started to drift away, attempting to stop the structures before heading out further into the channel. A few hot spots on the grass area around the dock were put out at this time as well.³⁴ Third-party food and beverage costs/vendors were provided by the Claimant to the members of the Unified Command.

Upon adjudication of the claim, the NPFC determined which of the costs incurred and submitted herein were compensable removal costs based on the supporting documentation provided. The NPFC determined that all approved costs were invoiced at the rate sheet pricing and were billed in accordance with the rate schedule(s) provided. All approved costs were supported by adequate documentation, which included invoicing, relevant IAPs for this incident and FOSC statements.

The amount of compensable costs is \$50,130.72, while \$16,144.42 is deemed not compensable for the following reasons:

³⁰ 33 CFR 136.203; 33 CFR 136.205.

³¹ Claimant Letter to Orion, dated February 5, 2021.

³² Email from Claimant, date July 22, 2021.

³³ RTFC Incident Report # 2020413.

³⁴ *Id.*

The Claimant states that the premise for it providing both food and beverage services during the spill response was largely due to the COVID-19 pandemic. At the time, restaurants were not providing regular services. Additionally, the Unified Command (UC) wanted to limit exposure of incident management personnel to the general public. Since the Ortiz Center did not have a general-use galley to store or prepare personal food brought in to the facility, the Claimant said it was necessary to provide food for the UC through third-party sources.

The Incident Action Plans (IAPs) for this response, signed by the FOSC and other members of the UC (to include the Claimant) clearly state that “All entities will provide their own food”. If the Claimant entered into an official agreement to provide food for the UC, it has not provided credible evidence to support the costs incurred outside of the scope of the IAPs.

Typically, food is not provided by a member of a Unified Command during a cleanup response, except for a Responsible Party who does so at its own expense. However, understanding that this incident response took place during a time when local, state and Federal COVID social distancing and other safety protocols were in place, it was determined to be reasonable that food would be provided, including for those that were home-based within 50 miles of the —incident location for the safety of the employees. The IAPs are the FOSC’s official documentation for mapping out and executing the UC response, therefore when the Claimant provided and paid for food for the UC as a whole, it did so on its own volition. For this reason, the Claimant may only be reimbursed food and beverage costs for its own personnel.

The NPFC finds it reasonable to allow the standard Meal and Incidental Expenses (M&IE) rate for the Claimant’s personnel.³⁵ The government M&IE rate for the Corpus Christi area in August of 2020 was \$56.00 per day.³⁶ Applying this, rate to the Claimant’s personnel by date yields the following:

<u>Date</u>	<u>Employee</u>	<u>Per Diem</u>
8/22/2020	(b) (6)	\$56.00
8/23/2020	(b) (6)	\$56.00
8/22/2020	(b) (6)	\$56.00
8/23/2020	(b) (6)	\$56.00
8/22/2020	(b) (6)	\$56.00
8/23/2020	(b) (6)	\$56.00
8/22/2020	(b) (6)	\$56.00
8/23/2020	(b) (6)	\$56.00
8/22/2020	(b) (6)	\$56.00
8/23/2020	(b) (6)	\$56.00
8/22/2020	(b) (6)	\$56.00
8/23/2020	(b) (6)	\$56.00
8/22/2020	(b) (6)	\$56.00
8/23/2020	(b) (6)	\$56.00
Total Per Diem Allowed		\$784.00

³⁵ Payroll Cards for Port of Corpus Christi Employees.

³⁶ <https://www.gsa.gov/travel/plan-book/per-diem-rates>

While all claimed food and beverage costs from the Claimant via its Ortiz Center invoicing (Invoice # 12138) and third-party receipts are denied, based on the above, the NPFC finds \$784.00 in claimed food and beverage costs for the Claimant's personnel compensable.

Should the Claimant seek reconsideration of these costs, it would either need to provide documentation that shows what each of its employees ate from each of the third-party food and beverage providers/restaurants, identifying a name and date for each claimed cost or, it would need to provide documentation that it was at the direction of the FOSC to provide these services to the entire UC.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the Port's request for uncompensated removal costs is approved in the amount of **\$50,130.72**.

This determination is a settlement offer,³⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁹ 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:	8/23/21	(b) (6)
Supervisor Action:	<i>Approved</i>	
Supervisor's Comments:		

³⁷ 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).

³⁸ 33 CFR § 136.115(b).

³⁹ 33 CFR § 136.115(b).