

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPE24412-URC001
Claimant:	CDG, Inc. (CDG)
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$118,291.34
Action Taken:	Offer in the amount of \$92,043.78

EXECUTIVE SUMMARY:

On January 19, 2024, at approximately 0830 local time, the United States Coast Guard's National Response Center ("NRC") received notification from CDG, Inc. ("CDG" or "Claimant") that a broken product line ruptured, releasing 1,000-gallons of gasoline into a nearby ditch.² Later that same day, the NRC received an update from CDG stating approximately 5,000 gallons of off-road diesel had also been released.³

The United States Environmental Protection Agency Region IV ("EPA" or "FOSC") is the Federal On-Scene Coordinator ("FOSC") for the incident.⁴ Alabama Department of Environmental Management ("ADEM" or "SOSC") is the State On-Scene Coordinator ("SOSC") for the incident.⁵ The FOSC and SOSC responded to the incident on January 20, 2024.⁶ The FOSC issued a Notice of Federal Interest ("NOFI") to Mr. (b) (6) on January 20, 2024.⁷

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 with 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) Report # 1389350 dated January 19, 2024.

³ NRC Report # 1389368 dated January 19, 2024.

⁴ U.S. EPA Region IV POLREP #1 First and Final dated February 2, 2024.

⁵ U.S. EPA Region IV POLREP #1 First and Final, section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results, dated February 2, 2024.

⁶ USEPA POLREP #1 and Final, section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results, P.1 of 2, dated February 2, 2024.

⁷ USEPA Notice of Federal Interest issued to Mr. (b) (6) dated January 20, 2024.

The spill in this case occurred at an onshore facility as defined by the Oil Pollution Act of 1990 (OPA).⁸ Mr. (b) (6), is identified as the owner of the Dodson oil facility and identified as the Responsible Party (RP) by the FOOSC.⁹

On January 19, 2024, at 0800 local time, CDG received notification from Mr. (b) (6) (“Mr. (b) (6) or “RP”), requesting a response to a petroleum release that occurred at the Dodson Bulk Plant in Fayette, Alabama.¹⁰ CDG mobilized to the incident scene and dispatched a response contractor, Ambipar Response Alabama, LLC (“Ambipar” or “OSRO”) to respond to the release.¹¹

CDG submitted its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$107,942.24 on May 1, 2024.¹² On May 9, 2024, CDG submitted a revised sum certain in the amount of \$132,862.85¹³ and on June 18, 2024, CDG submitted a revised sum certain in the amount \$21,013.75.¹⁴ On September 13, 2024, CDG again submitted a revised sum certain in the amount of \$118,291.34,¹⁵ pursuant to a Tolling Agreement between the Claimant and NPFC.¹⁶

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that \$92,043.78 is compensable and offers this amount as full and final compensation of this claim.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁷ 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.¹⁸ The NPFC may rely upon, but is not bound by the findings of fact,

⁸ An “onshore facility means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 2701(24).

⁹ USEPA POLREP #1 and Final, section 2,1.3 Enforcement Activities, Identity of Potentially Responsible Parties (PRPs), P. 2 of 2, dated February 2, 2024.

¹⁰ See, CDG, Inc. Original Claim Submission dated April 18, 2024, and received at the NPFC on May 1, 2024. See also, CDG Incident Report dated January 19, 2024, p. 1 of 20, attached to the CDG claim submission.

¹¹ CDG Incident Report dated January 19, 2024, p. 1 of 20, attached to the CDG claim submission.

¹² CDG, Inc. Original Claim Submission dated April 18, 2024, and received at the NPFC on May 1, 2024.

¹³ Email from CDG to NPFC with updated sum certain dated May 9, 2024.

¹⁴ Email from CDG to NPFC with updated sum certain dated June 18, 2024. CDG removed the Ambipar invoices on the basis that they had not paid the contractor for the invoiced costs in the total amount of \$97,277.59.

¹⁵ Email from CDG to NPFC with updated sum certain for this claim submission dated September 13, 2024.

¹⁶ See, NPFC letter 5890 dated September 11, 2024; See also, signed Tolling Agreement dated September 11, 2024.

¹⁷ 33 CFR Part 136.

¹⁸ 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)).

opinions, or conclusions reached by other entities.¹⁹ 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.

II. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On January 19, 2024, at approximately 0830 local time, the NRC received notification from CDG that a broken product line ruptured releasing 1,000-gallons of gasoline into a nearby ditch.²⁰ Later that same day, the NRC received an update from CDG stating approximately 5,000 gallons of off-road diesel had also been released.²¹

The United States Environmental Protection Agency Region IV (“EPA” or “FOSC”) is the Federal On-Scene Coordinator (“FOSC”) for the incident.²² Alabama Department of Environmental Management (“ADEM” or “SOSC”) is the State On-Scene Coordinator (“SOSC”) for the incident.²³

On January 19, 2024, at 0800 local time, CDG received notification from Mr. (b) (6) requesting a response to a petroleum release that occurred at the Dodson Bulk Plant in Fayette, Alabama.²⁴ CDG mobilized to the incident scene and dispatched a response contractor, Ambipar to respond to the release.²⁵

Responsible Party

The spill in this case occurred at an onshore facility as defined by the Oil Pollution Act of 1990 (OPA).²⁶ OPA defines the Responsible Party (RP) for a discharge from an onshore facility as “any person or entity owning or operating such facility.”²⁷ Mr. (b) (6), is identified as the owner of the Dodson oil facility and identified as the Responsible Party (RP) by the FOSC.²⁸

The NPFC issued a Responsible Party (RP) Notification letter dated May 10, 2024, to Mr. (b) (6). A RP Notification letter notifies the RP that a claim was presented to the NPFC that is seeking reimbursement of uncompensated removal costs incurred as result of the incident in

¹⁹ 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).

²⁰ NRC Report # 1389350 dated January 19, 2024.

²¹ NRC Report # 1389368 dated January 19, 2024.

²² U.S. EPA Region IV POLREP #1 First and Final dated February 2, 2024.

²³ U.S. EPA Region IV POLREP #1 First and Final, section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results, dated February 2, 2024.

²⁴ See, CDG, Inc. Original Claim Submission dated April 18, 2024, and received at the NPFC on May 1, 2024. See also, CDG Incident Report dated January 19, 2024, p. 1 of 20, attached to the CDG claim submission.

²⁵ CDG Incident Report dated January 19, 2024, p. 1 of 20, attached to the CDG claim submission.

²⁶ An “onshore facility means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 2701(24).

²⁷ 33 U.S.C. § 2701(32)(b)

²⁸ USEPA POLREP #1 and Final, section 2,1.3 Enforcement Activities, Identity of Potentially Responsible Parties (PRPs), P. 2 of 2, dated February 2, 2024.

which a discharge or substantial threat of a discharge of oil from the tank battery at the Dodson Oil facility into the stormwater conveyance along 2nd Street, which flows to unnamed tributaries and to the Sipsey River, a navigable waterway of the United States.²⁹

Recovery Operations

On January 19, 2024, CDG mobilized to the incident scene and dispatched a response contractor, Ambipar to respond to the release. On January 19, 2024, free product was observed in the aboveground storage tank secondary containment area, and free product was also observed in a drainage ditch immediately north of the facility, along 2nd Street SE. Ambipar began constructing a dam across the ditch using sand. The dam was placed downgradient of the petroleum in the ditch. CDG placed numerous hydrocarbon absorbent booms and pads in the ditch.³⁰

Ambipar began recovering petroleum from the ditch using a vacuum truck, and once the petroleum was recovered, they began recovering the petroleum that was remaining in the secondary containment area using a second vacuum truck. Ambipar returned the next day to continue excavation of petroleum-impacted soil in the ditch, and the excavated soil was stored in roll-off dumpsters. They also replaced booms and pads in the ditch and in the secondary containment area.³¹

III. CLAIMANT AND NPFC:

When an RP denies a claim or has not settled a claim after ninety-days of receipt, a claimant may elect to present its claim to the NPFC.³² On May 1, 2024, CDG submitted its uncompensated removal cost claim to the NPFC in the amount of \$107,942.24.³³ The claim included an OSLTF claim form³⁴, an affidavit of non-payment³⁵, and a CDG incident report.³⁶

On May 9, 2024, CDG submitted a revised sum certain in the amount of \$132,862.85³⁷ and on June 18, 2024, CDG again revised their sum certain in the amount \$21,013.75.³⁸ Finally, on September 13, 2024, CDG submitted a final revision of their sum certain in the amount of \$118,291.34³⁹, pursuant to a Tolling Agreement between the Claimant and NPFC.⁴⁰

²⁹ See, RP Notification Letter dated May 10, 2024. See also, USEPA Notice of Federal Interest issued to Mr. (b) (6) dated January 20, 2024, describing the nexus to the navigable waterway.

³⁰ CDG Incident Report dated January 19, 2024, p. 1 of 20, attached to the CDG claim submission.

³¹ *Id.*

³² 33 CFR 136.103.

³³ CDG, Inc. Original Claim Submission dated April 18, 2024, and received at the NPFC on May 1, 2024.

³⁴ *Id.*

³⁵ Affidavit of non-payment by (b) (6) of CDG dated April 18, 2024.

³⁶ CDG Incident Report dated January 19, 2024, p. 1 of 20, attached to the CDG claim submission.

³⁷ Email from CDG to NPFC with updated sum certain dated May 9, 2024.

³⁸ Email from CDG to NPFC with updated sum certain dated June 18, 2024. CDG removed the Ambipar invoices on the basis that they had not paid the contractor for the invoiced costs in the total amount of \$97,277.59.

³⁹ Email from CDG to NPFC with updated sum certain dated September 13, 2024.

⁴⁰ See, NPFC letter 5890 dated September 11, 2024; See also, signed Tolling Agreement dated September 11, 2024.

The NPFC made three official requests for additional information and CDG responded to each providing narrative responses and additional support, on May 9, 2024⁴¹, June 3, 2024,⁴² and June 21, 2024⁴³, respectively.

IV. 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.⁴⁴ An RP's liability is strict, joint, and several.⁴⁵ 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."⁴⁶ 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."⁴⁷ 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."⁴⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁵⁰ 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.⁵¹

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.

⁴¹ NPFC request for additional information dated May 9, 2024, and email response from CDG dated May 21, 2024.

⁴² NPFC request for additional information dated June 3, 2024, and email response from CDG dated June 17, 2024.

⁴³ NPFC request for additional information dated June 21, 2024, and email response from CDG dated July 3, 2024.

⁴⁴ 33 U.S.C. § 2702(a).

⁴⁵ H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁴⁶ *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).

⁴⁷ 33 U.S.C. § 2701(31).

⁴⁸ 33 U.S.C. § 2701(30).

⁴⁹ *Sae generally*, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁵⁰ 33 CFR Part 136.

⁵¹ 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.⁵²

The NPFC analyzed each of these factors and determined that part of the costs incurred and submitted by the claimant 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.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$92,043.78 while \$26,247.56 is denied based on the following categories and detailed in the NPFC Summary of Costs (Enclosure 3).⁵³

Vendor	Invoice Number	Invoice Total	NPFC Approved	NPFC Denied
CDG, Inc.	5505	\$21,013.75	\$13,811.25	\$7,202.50
Ambipar	US024B0023-01A	\$74,622.49	\$65,303.25	\$9,319.24
Ambipar	US024B023-03	\$22,655.10	\$12,929.28	\$9,725.82
Total		\$118,291.34	\$92,043.78	\$26,247.56

CDG, Inc. Invoice 5505:

1. Labor hours invoiced for Administrative Professional I on 01/19/24 and Administrative Professional II on 02/20/24 are not supported by logs, narratives or detailed information that would demonstrate that these activities were in direct response to the oil pollution response and recovery. **\$72.50** is denied as unsupported.
2. Labor hours on 01/19/24 for (b) (6), Engineer VI total 10 hours on the invoice but only 8 hours are supported on the project detail provided. **\$580.00** is denied as unsupported.
3. Labor hours between 04/01/24 and 04/18/24 for Env Scientist II used to prepare the NPFC claim are not activities in direct response to the oil pollution response and recovery. **\$2,790.00** denied.
4. Labor hours on 02/01/24 for Env. Scientist VI (b) (6) are 12 on the invoice and 4 hours on the Time Accounting Report. The 4 hours shown for communications were not supported with details providing substance showing direct response to the oil pollution and recovery. 8 hours of the 12 on the invoice were not supported by any activity log, phone records, or report. **\$3,180.00** denied.
5. Labor hours on 03/21/24 for Engineer VI, (b) (6) were not supported by any daily activity or other log showing how the hours were related to the oil pollution response and recovery operations. **\$580.00** denied.

Total denied this invoice: **\$7,202.50**

⁵² 33 CFR 136.203; 33 CFR 136.205.

⁵³ Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.

Ambipar Invoices US024B0023-01A and US024B023-03

1. Misc tools – quantity reduced to one instance per shift as outlined on rate sheet. Total denied for this category is **\$171.00**.
2. Rates reduced based on the 2024 rate sheet for Level D PPE, 8” Disposable Absorbent Boom, Absorbent Pads, Caution Tape, Environmental, Energy and Security Fee, Disposal, Non-Haz Liquids. Total denied for this category is **\$19,044.32**.
3. Unidentified difference on invoice US024B0023-01A in the amount of **\$.47** that is denied.

Total denied for the Ambipar invoices: **\$19,045.06**

Overall Denied Costs: \$26,247.56⁵⁴

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, CDG, Inc.’s request for uncompensated removal costs is approved for the amount of **\$92,043.78**.

This determination is a settlement offer,⁵⁵ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵⁶ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵⁷ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)
Claim Supervisor: (b) (6)
Date of Supervisor’s review: <i>12/3/2024</i>
Supervisor Action: <i>Approved</i>

ACCEPTANCE / RELEASE AGREEMENT

⁵⁴ Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.

⁵⁵ 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).

⁵⁶ 33 CFR 136.115(b).

⁵⁷ *Id.*