U.S. Department of Homeland Security
United States Coast Guard

Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Toll-Free: 1-800-280-7118
Fax: 703-872-6113
Email: ARL-PF-NPFCCLAIMSINFO@uscg.mil

5890
May 28, 2013

CERTIFIED MAIL NUMBER:
7010 1060 0001 7083 2505

RE: N12062-0001

Douglas E. Renard
[redacted]

Dear Mr. Renard:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number N12062-0001 involving Hurricane Isaac.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N12062-0001.

Mail reconsideration request to:
Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard
Arlington, VA 20598-7100

Sincerely,
[redacted]

DAWN UNGLESBEE
Claims Manager
U.S. Coast Guard

Enclosures: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

**Claim Number:** N12062-0001
**Claimant:** Douglas E. Renard
**Type of Claim:** Real or Personal Property
**Claim Manager:** Dawn Unglesbee
**Amount Requested:** $22,230.00

BACKGROUND

On August 29, 2012, Hurricane Isaac made landfall over various states, including Louisiana, for over 60 hours causing substantial flooding and multiple waterway closures. Sector New Orleans opened FPN N12062. Initial assessments discovered over 90 actual and potential pollution and hazardous material incidents.

On September 2, 2012, Sector New Orleans stood up a Unified Command with EPA, LOSCO, and LDEQ, focusing on pollution and hazardous material incidents. In collaboration with Oil Spill Responders (OSROs) and partners from the Unified Command, the operations section responded and mitigated several incidents, while assessing potential and /or actual pollution incidents. Operations were conducted on a daily basis.

The Unified Command with the assistance of the NOAA SSC continuously assessed the impact of pollution on the Louisiana shoreline.[1]

CLAIM

On September 25, 2012, Mr. Douglas Renard (Claimant) submitted documentation to the NPFC for removal costs ($2,500.00), real or personal property ($19,480.00), and lost subsistence use of natural resources ($250.00) for a total sum certain of $22,230. All of these losses are claimed to have resulted from oil spilled during Hurricane Isaac.

The Claimant, Mr. Renard, has a home in Lafitte, Louisiana. During Hurricane Isaac the Claimant's property was damaged by the floodwaters. The claimant indicates that the facility responsible for the claimed damages was Edward Oil Company (Responsible Party or RP). The United States Coast Guard Marine Safety Laboratory Oil Sample Analysis Report, dated September 14, 2012, concludes that the samples taken from the scene "are not derived from [MC252 Deepwater Horizon] DWH" oil, and additionally they "do not contain enough petroleum oil for conclusive comparison to the source sample" obtained from Edward Oil Company. [2]

Claimant has not communicated with the RP nor has the Claimant submitted their claim to the RP.[3]

---

[1] FPN N12062, SITREP-POL ONE, ACTUAL, HURRICANE ISAAC RESPONSE
[2] *See,* Oil Spill Analysis Report, Sector New Orleans, Case/Activity Number 4438391, Marine Safety Laboratory Case Number 12-237, dated September 14, 2012.
[3] *See,* Optional OSLTF Claim Form, line item # 4-5.

Claimant's sum certain of $22,230.00 is based on the following alleged losses from Hurricane Isaac and the subsequent alleged contamination by Edward Oil Company. Claimant did not provide an outline of his costs. However, below is a summary of the Claimant's alleged damages[4].

| Description | Costs | Comments |
|---|---|---|
| Grass | | Claimant did not provide a breakdown of cost. |
| Trees | | Claimant did not provide a breakdown of cost. |
| Banana Trees | | Claimant did not provide a breakdown of cost. |
| Palm Trees | | Claimant did not provide a breakdown of cost. |
| Flowering Bushes | | Claimant did not provide a breakdown of cost. |
| Wood Storage Building | | Claimant did not provide a breakdown of cost. |
| Metal Out-Buildings | | Claimant did not provide a breakdown of cost. |
| Pool | | Claimant did not provide a breakdown of cost. |
| Hot Tub | | Claimant did not provide a breakdown of cost. |
| Concrete Driveway | | Claimant did not provide a breakdown of cost. |
| Tiled Patio | | Claimant did not provide a breakdown of cost. |
| Concrete Pool Area | | Claimant did not provide a breakdown of cost. |
| Privacy Fence | | Claimant did not provide a breakdown of cost. |
| Vegetable Garden | | Claimant did not provide a breakdown of cost. |
| Pond | | Claimant did not provide a breakdown of cost. |
| **Total Loss:** | | |
| **Total Claimed:** | $22,230.00 | |

APPLICABLE LAW:

General Claim Requirements

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

[4] *See,* Claimant's handwritten narrative on the back of the OSLTF Claim Form.

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Claims to the OSLTF for damages resulting from oil spills must be: (a) in writing for a sum certain (33C.F.R. § 136.105(b)), (b) submitted to the NPFC within three years after the date on which the injury and its connection with the incident were reasonably discoverable (33 C.F.R. § 136.101 (a)), and (c) presented first to the RP or guarantor and that claim is denied or not settled after 90 days before submission to the NPFC for payment (except as noted in 33 C.F.R. § 136.103(a)). In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination.

Subsistence Use Loss Claim Requirements

The claims regulations (33 C.F.R. §§136.219-223) provide additional requirements for claims for loss of natural resources relied upon for food (i.e., subsistence use claims). Specifically, each claim for loss of subsistence use of natural resources must:

1) be for lost subsistence use and submitted by an eligible claimant;
2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
4) describe efforts to mitigate the subsistence use loss;
5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity.

Removal

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. 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".

Under 33 CFR 136.203, "a claimant must establish -

(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 determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC."

Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC." [Emphasis added].

Real or Personal Property

Under 33 CFR 136.213(a) a claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.

Under 33 CFR 136.215(a) In addition to the requirements of Subparts A and B of this part, a claimant must establish—

(1) An ownership or leasehold interest in the property;
(2) That the property was injured or destroyed;
(3) The cost of repair or replacement; and
(4) The value of the property both before and after injury occurred.

Under 33 CFR 136.217(a) the amount of compensation allowable for damaged property is the lesser of –

(1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
(2) The difference between value of the property before and after the damage; or
(3) The replacement value.

DETERMINATION OF LOSS:

Analysis

The documentation that was provided by the Claimant failed to demonstrate Claimant's loss in respect to the alleged damages. The NPFC attempted to contact the Claimant several times by telephone however he did not answer. On March 27, 2013, the NPFC sent Mr. Renard a letter, via certified mail.[5] The letter articulated that certain requirements had to be met in order to support his claim.[6] Additionally, the letter provided the Claimant with the NPFC Claims Adjudication website.

[5] The NPFC has not received the signed certified mail receipt. The letter has not been returned either.
[6] *See,* letter to Claimant from the NPFC, dated March 27, 2013.

As of April 29, 2013, the NPFC had not heard from the Claimant. Therefore, the NPFC sent Mr. Renard an email asking for the supporting documentation that was requested in the previous March 27, 2013 letter so that the Fund could move forward with the adjudication process.[7] In the email, the NPFC asked if the Claimant had any questions or concerns. To date, the NPFC has not heard from Mr. Renard. However, the NPFC Claims Manager did receive an automated "Read" receipt to the Claims Manager's electronic inbox, indicating that Mr. Renard has received and read the email.[8]

After several attempts to acquire the necessary documentation the NPFC had no choice but to move forward with the adjudication of this claim on its own merits.

The administrative record provides no evidence that this claim has been properly presented to the RP (Edwards Oil Company). OPA provides that except under certain circumstances, a claim for removal costs or damages must be first presented to the responsible party or guarantor. 33 U.S.C. § 2713(a).

For a claim to be OPA compensable it must show that its damages are directly caused by the oil in the water. The documentation that was provided to the Fund lacks the evidence to prove that the alleged damages were caused solely by oil as defined by OPA. "Oil" is defined at 33 U.S.C. § 2701(23), to mean "oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101 (14) of the Comprehensive Environmental Response Compensation, and Liability Act (42 USC 9601) and which is subject to the provisions of the Act."

Removal

This claim lacks substantial documentation to support the removal portion of Mr. Renard's claim as required by OPA.[9] Claimant's documentation fails to provide the name of the contractors used to remove the oil as well as invoices and proof of payment to support the $2,500.00 in removal costs. The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the claims regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan. These costs are not supported or proven to be uncompensated. In addition Claimant has not provided evidence that the removal actions allegedly conducted were consistent with the National Contingency Plan.

Real or Personal Property

The claimant established that the property was damaged by providing pictures; however it is difficult for the NPFC to ascertain whether the damage to the property was caused by the flood

[7] *See,* Email From the NPFC, dated April 29, 2013, to Mr. Renard a[redacted]@c-innovation.com
[8] Read receipt to Unglesbee, Dawn M CIV, from [redacted]@c-innovation.com, dated April 29, 2013.
[9] Per the National Contingency Plan, the claimant must evidence that the oil was removed by HAZWOPER trained technicians and then disposed of properly by providing the disposal facility's invoice and proof of payment.

waters, oil, or mixed substances. Additionally, the claimant has not established an ownership or leasehold interest in the property, the cost of repair or replacement or the value of the property both before and after the injury occurred.[10]

Subsistence Use

Mr. Renard has not met his burden of proving a subsistence use loss as defined by OPA (33 U.S.C. et seq.) and OPA claims regulations (33 C.F.R. Part 136). Specifically, he has not provided:

(1) An identification and description of the specific natural resource(s) for which compensation is being claimed.
(2) Sufficient evidence of a loss suffered due to the spill. He has not documented a pattern of subsistence use prior to the spill for which he seeks compensation; that is, what, where, how often, and how much food he and his family regularly consumed for subsistence purposes.
(3) Any basis to support his claim that he suffered a $250 loss of subsistence use. For example, the NPFC cannot determine the period of claimed loss or the actual increased costs incurred to replace any food that may have been purchased if the spill had not occurred (i.e., insufficient receipts or statements were provided to support damages incurred in the amount claimed).
(4) A description of how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource.

For these reasons, Mr. Renard's claim for subsistence loss is denied.

Conclusion

Although Mr. Renard's claim meets the general claim requirements for the loss of subsistence use of natural resources portion, the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. 33 CFR 136.105(a) and 136.105(e)(6). Mr. Renard has failed to provide additional information required by the NPFC.

Due to reasons annotated above, Mr. Renard's loss of subsistence use of natural resources portion is denied. Additionally, Mr. Renard has failed to demonstrate his alleged uncompensated removal costs and damages. Claimant also failed to establish by a preponderance of the evidence that the damages were caused solely by oil, as defined by OPA. Therefore this claim is denied.

Claim Supervisor: Robert Riou [redacted]

Date of Supervisor's review: 5/28/2013

Supervisor Action: ***Denial Approved***

Supervisor's Comments:

[10] 33 CFR 136§215