

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	A15017-0006
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$42,600.00

FACTS

On May 19, 2015, USCG Sector LA/Long Beach (LA/LB) received a report of an oil spill that originated from Plains Pipeline line 901 onto the shore side of Highway 101 in Santa Barbara, CA. The ruptured pipeline discharged approximately 746 barrels of crude oil into the Pacific Ocean, a navigable waterway of the United States.¹

Following the discharge, the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a corrective action order to Plains Pipeline, LP to suspend operations and make safety improvements to line 901.² Shortly thereafter, PHMSA amended their corrective action order to Plains Pipeline, LP, suspending operations of line 903 as line 903 was connected to line 901 and showed similar corrosion characteristics to line 901.³ As a result of these line closures, ExxonMobil suspended operations on their offshore platforms Hondo; Harmony; and Heritage as they were dependent on Plains Pipeline lines 901 and 903 to transport their crude oil from their platforms to refineries in Kern County, CA.⁴ Following the closure, ExxonMobil identified and selected bargaining unit employees from their local Santa Ynez Unit to fill assignments outside of their bargaining unit but still within the Company.⁵

CLAIM AND CLAIMANT

On May 14, 2018, Mr. [REDACTED] (Claimant) presented a claim to the NPFC seeking \$42,600.00 in lost profits. Claimant states that he was employed by ExxonMobil and was working on the Hondo platform at the time of the closure. Claimant also states that he was offered and accepted a position to transfer to the ExxonMobil refinery in Baytown, TX, to avoid being laid off. However, that new position included a decrease in hourly pay rate. As such, Claimant’s lost profit claim is based upon the cumulative difference in base pay he received in 2015 as a full time employee of ExxonMobil on the Hondo platform in Bakersfield, CA, as compared to the cumulative base pay he received since transferring and becoming a full time employee at the ExxonMobil refinery in Baytown, TX.⁶

¹ See CG District 11 - Potential Medium Coastal Spill - Refugio Beach, CA dated May 25, 2015.

² See PHMSA corrective action order issued to Plains Pipeline, LP dated May 22, 2015.

³ See Plains Pipeline Information website dated June 3, 2015.

⁴ See Noozhawk online article written by [REDACTED] dated October 8, 2015.

⁵ See letter from Mr. [REDACTED], ExxonMobil USP HR Advisor dated September 7, 2016 included with claim submission dated May 5, 2018.

⁶ See letter from Mr. [REDACTED] submitted as part of claim submission dated May 5, 2018.

APPLICABLE LAW

Under 33 C.F.R. 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.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. §136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 C.F.R. 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for-

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

NPFC DETERMINATION

Claimant asserts losses in the amount of \$42,600.00 due to the Plains Pipeline oil spill based upon the cumulative difference in base pay he received in 2015 as a full time employee of

ExxonMobil on the Hondo platform in Bakersfield, CA, as compared to the cumulative base pay he received since transferring and becoming a full time employee at the ExxonMobil refinery in Baytown, TX. Claimant also asserts other lost profits to include the loss of cost of living increases at the Hondo platform in Bakersfield, CA, as well as decreases to holiday pay and 401k matching in Baytown, TX, but doesn't support those losses in this claim submission. As such, those claimed losses aren't evaluated in this determination.

Claimant provided the following to support his claim:

1. Pay Statement – payment date 31 Dec 2013 in the amount \$3,336.00 (CA)
YTD Amount for 2013 - \$125,922.17;
2. Pay Statement – payment date 15 Jan 2014 in the amount \$3,603.46 (CA);
3. Pay Statement – payment date 31 Dec 2014 in the amount \$3,378.50 (CA)
YTD Amount for 2014 - \$137,146.53;
4. Pay Statement – payment date 15 Jan 2015 in the amount \$3,137.87 (CA);
5. Pay Statement – payment date 31 Dec 2015 in the amount \$3,014.93 (CA)
YTD Amount for 2015 - \$133,962.67;
6. Pay Statement – payment date 15 Jan 2016 in the amount \$3,754.43 (CA);
7. Pay Statement – payment date 23 Dec 2016 in the amount \$2,384.34 (TX)
YTD Amount for 2016 - \$118,588.52;
8. Pay Statement – payment date 6 Jan 2017 in the amount \$2,860.52 (TX);
9. Pay Statement – payment date 22 Dec 2017 in the amount \$2,427.15 (TX)
YTD Amount for 2017 - \$130,807.78;
10. Pay statement – payment date 5 Jan 2018 in the amount \$1,986.74 (TX);
11. Pay statement – payment date 27 Apr 2018 in the amount \$5,698.80 (TX)
YTD Amount for 2018 - \$68,532.36;
12. Plains Pipeline, LP, claim denial letter addressed to Mr. [REDACTED] dated August 10, 2016, claim number 090167846.
13. ExxonMobil letter from Mr. [REDACTED], USP HR Advisor dated September 7, 2016.
14. Letter from Mr. [REDACTED] outlining his asserted loss.

NPFC Analysis

Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that its loss of income resulted from injury to or destruction of a natural resource. No evidence provided by the Claimant indicates that the loss of wages was due to the oil spill from Plains Pipeline, L.P. The NPFC obtained information from the PHMSA website that Plains Pipelines lines 901 and 903 were shut down as a direct result of their poor condition as well as the need to purge, test and repair the lines to the satisfaction of PHMSA.⁷⁸ Therefore, any stoppage of work or transfer of employees due to the stoppage of work and potential loss profits and earnings associated with those actions are considered a consequence of PHMSA's order to close lines 901 and 903. As such, the asserted losses associated with this claim are not the result of an Oil Pollution Act of 1990 (OPA) incident or injury to a natural resource and are therefore not compensable under OPA.

⁷ See PHMSA Corrective Action Order issued to Plains Pipeline, LP dated May 21, 2015.

⁸ See PHMSA Amended Corrective Action Order issued to Plains Pipeline, LP dated November 21, 2015.

Additionally, the Claimant based his claim submission on the cumulative difference in base pay he received in 2015 as a full time employee of ExxonMobil on the Hondo platform in Bakersfield, CA, as compared to the cumulative base pay he received since transferring and becoming a full time employee at the ExxonMobil refinery in Baytown, TX. However, he worked a significant amount of unscheduled overtime at the ExxonMobil Baytown refinery. As required by 33 C.F.R. 136.235, this additional income would have to be considered when evaluating a lost profit claim as allowable compensation is limited to the actual net reduction or loss of earnings or profits suffered. Specific to this claim, the Claimant provided a pay statement that documents a year to date gross income of \$130,807.78 for work performed in 2017 while fully employed in Baytown, TX. In comparison, the Claimant also provided a pay statement that documents a year to date gross income of \$133,962.67 for work performed in 2015 while fully employed in Bakersfield, CA. It's apparent that the Claimant failed to consider the additional income generated by working overtime and would have to re-evaluate his claim for lost profits if this were a compensable claim under OPA.

Lastly, the Claimant has not evidenced any saved overhead or normal expenses not incurred as a result of the incident. 33 C.F.R. 136.235 (d). When comparing cost of living expenses between Bakersfield, CA, to Baytown, TX, it appears that Baytown falls well under the national average for food; housing; utilities; transportation; and health; while Bakersfield falls above the national average for food; housing; utilities; transportation; and health.⁹ As such, the Claimant could have incurred saved overhead or normal expenses as a result of his relocation which would have to be re-evaluated if this were a compensable claim under OPA.

Summary

This claim is denied because the claimed costs are not due to the oil spill incident (injury, destruction, or loss of natural resources). Any claimed loss of profits or earnings Claimant incurred or may incur is considered a consequence of PHMSA's order and/or the subsequent stoppage of work by Claimant's employers. For this reason and others stated above this claim is denied.

Claim Supervisor: [REDACTED] [REDACTED]

Date of Review: *5/16/2018*

Supervisor's Actions: *Denial approved*

Supervisor's Comment:

⁹ See <http://www.bestplaces.net/cost-of-living/bakersfield-ca/baytown-tx/100000>