

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
25 October 2011

Mr. Richard Paul Hough
[REDACTED]

Re: Claim Number: N10036-1509

Dear Mr. Hough:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1509 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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 N10036-1509.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1509
Claimant	Mr. Richard Paul Hough
Type of Claimant	Private (US)
Type of Claim	Real or Personal Property
Amount Requested	\$1,800.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 17 October 2011, Mr. Richard Paul Hough (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$1,800.00 in real or personal property damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was storing his personal boat in a dry storage facility in Venice, Louisiana.² The Claimant paid a fee of \$1,800.00 to store the boat for a six-month period, from 1 January 2010 to 30 June 2010 which was paid in advance.³ The Claimant alleged that the oil spill caused the closure of offshore waters, which prevented the Claimant from using his boat for an unspecified period of time.⁴ The Claimant further noted that the storage fee was non-refundable, so the Claimant could not have recovered any portion of the fee had he chosen to move his boat to another location.⁵

The Claimant seeks the entirety of the six-month rental storage fee in the amount of \$1,800.00, due to the Deepwater Horizon oil spill.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA. The OSLTF, which is administered by the NPFC, is available pursuant to 33 U.S.C. § 2712(a)(4) and § 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 U.S.C. § 2702(b)(2)(B) and the promulgating regulations under 33 C.F.R. § 136.213 is a claim for real or personal property damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

¹ Optional OSLTF Claim Form, dated 5 October 2011.

² Optional OSLTF Claim Form, dated 5 October 2011.

³ Invoice, Cyprus Cove Marina, 31 October 2009 for dockage 1/1/10 – 6/30/10

⁴ Optional OSLTF Claim Form, dated 5 October 2011.

⁵ Optional OSLTF Claim Form, dated 5 October 2011.

33 C.F.R. §136.213 states:

- (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.
- (b) Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under §136.233.

33 C.F.R. § 136.215 establishes additional proof requirements:

- (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.
- (b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish—
 - (1) That the property was not available for use and, if it had been, the value of that use;
 - (2) Whether or not substitute property was available and, if used, the costs thereof; and
 - (3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

Under 33 C.F.R. § 136.217, the amount of compensation allowable for a claim involving real or personal property damage is limited to:

- (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.
- (b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the

substitute commercial property, or the property lost, whichever is less. *Compensation for loss of use of noncommercial property is not allowable* (emphasis added).

- (c) Compensation for a claim for loss of profits or impairment of earning capacity under §136.213(b) is limited to that allowable under §136.235.

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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 5 October 2011;
- Invoice, Cyprus Cove Marina, 31 October 2009 for dockage 1/1/10 – 6/30/10.

Prior to presentment to the NPFC, the Claimant presented this claim to the RP/GCCF.⁶ The Claimant was assigned Claimant ID 3037792.⁷ The Claimant alleged that this claim was denied by the RP/GCCF prior to presentment of this claim to the NPFC.⁸

On 17 October 2011, the Claimant presented this claim to the NPFC, seeking \$1,800.00 under OPA's real or personal property damage category. The NPFC may adjudicate this claim to the extent that these damages have first been presented to and denied by the RP/GCCF.⁹ Any damages now claimed before the NPFC, which have not first been presented to the RP/GCCF are denied for improper presentment.

NPFC Determination

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA. One such damage is real or personal property damage pursuant to 33 U.S.C. § 2702(b)(2)(B), which includes "damages for injury to, or economic losses resulting from destruction of real or personal property," which shall be recoverable by a claimant who owns or leases that property.

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

The Claimant alleged that the Deepwater Horizon oil spill caused the closure of certain offshore waters, which prevented the Claimant from using his personal boat for an unspecified period of time.¹⁰ However, the Claimant's loss of use of his personal boat is not compensable under OPA,

⁶ Optional OSLTF Claim Form, dated 5 October 2011.

⁷ Optional OSLTF Claim Form, dated 5 October 2011.

⁸ Optional OSLTF Claim Form, dated 5 October 2011.

⁹ 33 C.F.R. §136.103(a).

¹⁰ Optional OSLTF Claim Form dated 5 October 2011.

which specifically states that “[c]ompensation for loss of use of noncommercial property is not allowable.”¹¹

Furthermore, the Claimant has not provided evidence to indicate which waterway he usually used his boat, nor has the Claimant provided documentation to show that he was actually unable to use his boat following the Deepwater Horizon oil spill. Additionally, the Claimant paid the six month storage fee of \$1,800.00 in advance of the period it covered (January 2010 through June 2010) not to mention the invoice clearly stated the storage fee is non-refundable therefore the Claimant would not have been able to recover any amount of storage regardless of whether the Deepwater Horizon oil spill occurred or not therefore the payment of the storage fee is irrelevant.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained an OPA compensable loss in the amount of \$1,800.00, and (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *10/25/11*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹¹ 33 C.F.R. § 136.217(b).