

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 8954

5890/DWHZ
20 March 2013

Bikram Naskar



Re: Claim Number: N10036-1894

Dear Mr. Naskar:

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 N10036-1894 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 N10036-1894.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1894
Claimant	Bikram Naskar
Type of Claimant	Private (US)
Type of Claim	Removal Costs
Amount Requested	\$250,000.00

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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 16 May 2012, Mr. Bikram Naskar, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$250,000.00 in removal costs allegedly incurred as a result of the Deepwater Horizon oil spill.¹

The Claimant resides in Calcutta, India. He has not provided an explanation as to how the Deepwater Horizon oil spill caused him to sustain \$250,000.00 removal costs. However, the Claimant stated that emails between the Claimant and the NPFC have been forwarded to the GCCF, indicating that the Claimant is attempting to recover losses allegedly sustained as a result of the Deepwater Horizon oil spill.²

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

¹ Optional OSLTF Claim Form, signed on 24 April 2012.

² Handwritten letter from the Claimant to the NPFC, 20 March 2012.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. One type of damages available pursuant to 33 C.F.R. § 136.1 is a claim removal costs.

Under 33 C.F.R. § 136.203 a claimant must establish the following:

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That removal costs were incurred as a result of the incident;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC;

Furthermore, according to 33 C.F.R. § 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.

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.

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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the NPFC

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 24 April 2012;
- NPFC ClaimantGuide(2), blank;
- Letter from the Claimant to the NPFC, 24 April 2012;
- Emails between the Claimant and the NPFC;
- NPFC ClaimantGuide(2), partially completed;
- Photo of male;
- Handwritten letter from the Claimant to the NPFC, 20 March 2012;

The Claimant has not provided evidence to prove that this claim was first presented to the Responsible Party or its representative. As such, the NPFC shall adjudicate this claim only to the extent that presentment requirements have been met. Any costs or damages now before the NPFC which were not properly first presented to the Responsible Party, are denied for failing to meet OPA presentment requirements.³

The NPFC notes that the Claimant is likely excluded from the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement) by virtue of his geographic location.⁴

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

In order to prove a claim to recover removal costs, a Claimant must provide evidence sufficient to prove (1) that the Claimant incurred certain removal costs as a result of the Deepwater Horizon oil spill and (2) that the removal actions taken by the Claimant were consistent with the National Contingency Plan or were directed by the FOSC.

The Claimant has failed to provide any evidence to indicate that he incurred removal costs as a result of the Deepwater Horizon oil spill. Before this claim was submitted, the NPFC provided the Claimant with certain guidance regarding the types of losses payable through the OSLTF, and the nature of the evidence required to support a claim under OPA.⁵ However, the Claimant failed to provide any documentation which would meet the requirements of law explained in the Claimant Guide. Rather than providing evidence to support or explain his claim, the Claimant provided instructions regarding how payments should be issued. As such, the Claimant has failed to prove that he incurred compensable removal costs as a result of the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that this claim has been properly presented to the Responsible Party or (2) that he incurred removal costs in the amount \$250,000.00.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *3/20/13*

Supervisor's Action: *Denial approved*

³ 33 C.F.R. § 136.103(a).

⁴ The Claimant resides in India.

⁵ See, e.g., email correspondence submitted with this claim, 18 April 2012.