CLAIM SUMMARY / DETERMINATION FORM

Claim Number	A15017-0004
Claimant	Rudy's Oilfield Welding Services, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[redacted]
Amount Requested	$688,000.00

FACTS

On May 19, 2015, USCG Sector LA/Long Beach (LA/LB) received a report of an oil spill 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] At least three oil and gas production companies were affected by these pipeline closures and suspended operations from their platforms off the coast of Santa Barbara. ExxonMobil and Freeport McMoRan platforms suspended operations as they were dependent on Plains Pipeline lines 901 or 903 to transport their crude oil from their platforms to refineries in Kern County, CA, while operations on the Venoco platform Holly were suspended as their line 96 was connected to Plains Pipeline line 901.[4]

CLAIM AND CLAIMANT

On March 23, 2016, Mr. [redacted], owner of Rudy's Oilfield Welding Services, Inc (Claimant) presented a claim to the NPFC seeking $688,000.00 in lost profits and earning capacity. Claimant states that he had been providing welding services for onshore and offshore platforms in southern California for the past 40 years. He further states that Venoco, Inc, DCOR, LLC, and Fleetcor were his primary customers providing 99% of his revenue and that these companies stopped operations because of the oil spill which resulted in all of his welding/maintenance work scheduled for fall 2015 and 2016 to be cancelled.[5]

[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 Optional OSLTF Claims Form dated March 10, 2016.

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 undertake, 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 claimed losses in the amount of $688,000 due to the oil spill. This includes 6 months of lost wages totaling $36,000, current loss of personal contributions totaling $48,000, potential income loss over 3 years of $117,000 and potential loss of property sale totaling $111,000. In addition, claimant provided business debt information and other bills that show amounts overdue. The total of all of these costs are approximately $595,810; far less than the claimed $688,000.

Claimant provided the following to support its claim:

1. Current business debt accruing information with supporting documents.
2. Invoice summary reports documenting accounts receivable from Venoco, Inc, for calendar years 2014 and 2015.
3. A printout of Rudy's Oilfield Welding Services profit & loss summary for periods Oct 2011 – Sep 2012 and Dec 2013 – Dec 2014.
4. Examples of personal loans to Rudy's Oilfield Welding Services as well as payroll details for himself as well as his daughter, Ms. [redacted]
5. A copy of his business license from the City of port Huenene expiring June 30, 2016.[6]
6. A letter from Plains Pipeline, L.P. dated January 28, 2016, in which his lost profits claim #080167739 was denied due to "materials and documentation submitted are insufficient to establish your claim under OPA."[7]

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.[8][9] Since Venoco's line 96 was connected to Plains Pipeline 901, its discontinued use was not because of the Plains Pipeline oil spill but because of the mandated closure of Plains Pipeline line 901 as required by PHMSA. Therefore, Claimant's loss was not a result of the oil spill, but because of the mandated closure of Plains Pipeline lines 901 and 903 and subsequent closure of Venoco line 96. Claimant asserts that oil platforms owned or operated by DCOR, LLC, and Fleetcor that Claimant worked with were directly affected by the Plains Pipeline line 901 oil spill. However, the Claimant provided no evidence of this and the NPFC was unable to verify this information through their own research. If these two businesses were connected to Plains Pipeline lines 901 or 903, they too were disrupted by the PHMSA order. As a result, any related loss of profits or earnings Claimant incurred or may

[6] See Optional OSLTF Claims Form dated March 10, 2016, 2015
[7] See letter from Plains Pipeline, L.P. to Rudy's Oilfield Welding Service dated January 28, 2016.
[8] See PHMSA Corrective Action Order issued to Plains Pipeline, LP dated May 21, 2015.
[9] See PHMSA Amended Corrective Action Order issued to Plains Pipeline, LP dated November 21, 2015.

incur is considered a consequence of PHMSA's order and the subsequent stoppage of work by Claimant's employers. The asserted losses are not the result of an OPA incident or injury to a natural resource and are therefore not compensable under OPA.

In addition, the Claimant is requesting reimbursement for the loss of three years of future wages totaling $117,000.00 and not actual lost wages. 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. As the Claimant focused this portion of the claim on the loss of projected future earnings and not an actual loss of profits or earnings, those projected future earnings are not compensable under OPA. Additionally, the Claimant states that Venoco, Inc, DCOR, LLC, and Fleetcor were his primary customers providing 99% of his revenue but failed to provide signed contracts with any of these vendors. Without a signed contract proving continued work, it's impossible to accurately predict or forecast any type of future income.

Six months of lost wages totaling $36,000.00 are claimed by the Claimant. Aside from not being compensable as the asserted losses were not a result of an OPA incident or injury to a natural resource, the Claimant's submission of a single payroll record for pay period Sep 14, 2015 – Sep 27, 2015 isn't adequate to evaluate lost wages for a six month period of time. At a minimum, the NPFC would need three years of payroll documents as well as business and personal tax records for calendar years 2013, 2014 and 2015.

The Claimant is also requesting reimbursement for his use of personal funds to pay off business related debt as well as providing a monetary thank you to his employees totaling $48,000.00. Aside from not being compensable as the asserted losses were not a result of an OPA incident or injury to a natural resource, the Claimant failed to provide any detailed documentation to support the payment of business related debt or how money provided to employees as a monetary thank you is compensable under OPA.

Projected losses, including loss of business value as well as the projected loss of business related asset value totaling $200,000.00 are claimed. Additionally, Claimant is claiming an $111,000.00 "potential loss sale of property". Aside from not being compensable as the asserted losses were not a result of an OPA incident or injury to a natural resource, the Claimant failed to provide any detailed documentation to support how these projected business value or business related asset value losses, and potential loss of sale of property were calculated.

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). In addition, 33 C.F.R. 136.233 (d) requires the Claimant to disclose whether alternative employment or business was available and undertaken and, if so, the amount of income received. It's unclear to the NPFC if the Claimant filed for and received unemployment benefits, or if other job opportunities have been found. If any employment benefits were received, that information would have to be disclosed to the NPFC.

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]

Date of Review: ***3/31/2016***

Supervisor's Actions: ***Denial approved***

Supervisor's Comment