CLAIM SUMMARY / DETERMINATION FORM

Claim Number	A15017-0005
Claimant	Mr. [redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[redacted]
Amount Requested	$40,000.00

FACTS

On May 19, 2015, USCG Sector LA/Long Beach (LA/LB) received a report of an oil spill originating 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] ExxonMobil suspended operations from their offshore platforms Hondo, Heritage and Harmony as they were dependent on Plains Pipeline lines 901 and 903 to transport their crude oil from the offshore platforms to their on-shore refinery in Kern County, CA.[4]

CLAIM AND CLAIMANT

On April 7, 2016, Mr. [redacted], (Claimant) presented a claim to the NPFC seeking $40,000.00 in lost profits and earning capacity. Claimant states that as an employee of Irwin Industries and West Coast Logistics, he had been providing contracting services for ExxonMobil offshore platforms Hondo, Heritage and Harmony for the past 20 years. He further states that the suspended operations on these offshore platforms resulting from the Plains Pipeline line 901 oil spill had resulted in the loss of his job and the loss of $40,000.00 of profits and earnings.[5]

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

[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 LA Times Article written by Mr. [redacted] dated June 23, 2015.
[5] See Optional OSLTF Claims Form dated April 4, 2016.

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 provided the following to support its claim:

1. Calendar year 2010 W-2 documenting an adjusted gross income of $88,836.30 while working for Irwin Industries, Long Beach, CA.
2. Calendar year 2011 W-2 documenting an adjusted gross income of $77,005.80 while working for Irwin Industries, Long Beach, CA.
3. Calendar year 2013 W-2 documenting an adjusted gross income of $85,735.33 while working for Irwin Industries, Long Beach, CA.
4. Calendar year 2014 W-2 documenting an adjusted gross income of $90,188.17 while working for West Coast Logistics, Lafayette, LA, and $11,869.56 while working for Irwin Industries, Long Beach, CA.

5. Calendar year 2015 W-2 documenting an adjusted gross income of $39,754.37 while working for West Coast Logistics, Lafayette, LA
6. Invoice from West Coast Logistics to ExxonMobil dated October 3, 2015, billing Mr. [redacted] time from September 27, 2015 – October 3, 2015 in the amount of $5,397.66 for services provided as an offshore safety supervisor. My [redacted] claims that October 3, 2015, was the last day he worked for West Coast Logistics.[6]
7. A letter from Plains Pipeline, L.P. dated February 24, 2016, in which his lost profits claim #080167762 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 ExxonMobil's offshore platforms Hondo, Heritage and Harmony depend on Plains Pipeline lines 901 and 903 to transport its oil to its refinery in Kern County, CA; its discontinued use was not because of the Plains Pipeline oil spill but because of the mandated closure of Plains Pipeline lines 901 and 903 by PHMSA due to purging, testing and repair of lines. As a result, any related loss of profits or earnings Claimant incurred or may 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 states that he was a contractor working for ExxonMobil but failed to provide a signed contract or some type of binding agreement with ExxonMobil. Without a signed contract proving continued work, it's impossible to accurately predict or forecast any type of future income. Additionally, Claimant did not provide an explanation as to how he came to the $40,000.00 loss.

Claimant has also not evidenced any saved overhead or normal expenses not incurred as a result of the incident. 33 C.F.R. 136.235 (d).

Lastly, 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, or other employment found, that information would have to be disclosed to the NPFC.

[6] See Optional OSLTF Claims Form dated April 4, 2016.
[7] See letter from Plains Pipeline, L.P. to Mr. [redacted] dated February 24, 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.

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.

[redacted]

Claim Supervisor: [redacted]

Date of Review: ***4/13/2016***

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

Supervisor's Comment