

CLAIM SUMMARY / DETERMINATION

Claim Number:	A15018-0003
Claimant:	[REDACTED]
Type of Claimant:	Private Individual
Type of Claim:	Real or Personal Property
Claim Manager:	[REDACTED]
Amount Requested:	\$499.95

FACTS:

Oil Spill Incident

On May 27, 2015, US Coast Guard Sector LA-LB received notice of tarballs and tar patties covering a significant portion of the shoreline along the beach in LA County, CA.¹ On June 3, 2015, under direction of the federal on-scene coordinator (FOSC), a oil spill response organization (OSRO), Ocean Blue Environmental, responded to Manhattan Beach and began pollution removal operations.² The waters along Manhattan Beach are part of the Pacific Ocean; a navigable waterway of the United States. On July 17, 2015, the FOSC determined that cleanup efforts were complete and concluded pollution removal operations on Manhattan Beach.³

Claimant and the Claim

[REDACTED] is an individual who surfs in the waters along El Porto Beach, California. On July 11, 2016, he submitted a Real or Personal Property claim to the NPFC in the amount of \$499.95, alleging oil damage to his wet suit on March 3, 2016, resulting from the May 19, 2015, Plains Pipeline oil spill. [REDACTED] alleges that while surfing in the ocean near El Porto, Manhattan Beach, California, oil globs made contact with his wet suit. Additionally, [REDACTED] asserts that “The globs of oil on my wet suit are substantially larger than the quarter size stains you would find on your heels from a day at the beach. I have never experienced anything like this in my 40 years surfing. My wet suit is not salvageable.”⁴ As evidence for the claim, [REDACTED] provided three photographs of the alleged oiled wet suit and the Plains Pipeline Claim denial determination Notification letter dated April 29, 2016.⁵

Responsible Party: Plains Pipeline is the owner of the crude oil discharge from the Line 901 Pipeline.⁶ [REDACTED] made presentment of the damages associated with this claim to Plains Pipeline’s Claims Program on March 15, 2016. Plains Pipeline denied [REDACTED] claim by letter dated April 29, 2016, concluding “that, based on the information submitted,

¹ See FPN A15018 POLREP 1 dated May 15, 2015.

² See FPN A15018 POLREP 5 dated June 15, 2015.

³ See FPN A15018 POLREP 6 And Final dated August 15, 2015.

⁴ Id.

⁵ See Optional OSLTF Claim Form from [REDACTED] dated July 11, 2016.

⁶ On May 19, 2015, a portion of Plains Pipeline’s crude oil pipeline ruptured, discharging approximately 143,000 gallons of oil into the Pacific Ocean. The portion of the pipeline known as Line 901 is located near Refugio State Beach in Santa Barbara, California. See US National Oceanic and Atmospheric Administration, *Refugio State Beach Oil Spill Near Santa Barbara, California*, <http://response.restoration.noaa.gov/oil-and-chemical-spills/significant-incidents/refugio-state-beach-oil-spill-near-santa-barbara-calif>

you have not established a right to compensation under the Oil Pollution Act of 1990 (“OPA”).”⁷

On July 14, 2016, the NPFC issued a RP notification letter to Plains Pipeline notifying them of the pending claim from [REDACTED]. In response to this letter, the NPFC received an email from a representative of Plains Pipeline, Mr. [REDACTED] ([REDACTED]), acknowledging receipt of the NPFC RP notification letter. Also, [REDACTED] stated that “he will be researching the claim and will follow up with my review results.”⁸ On July 27, 2016, [REDACTED] notified the NPFC that the responsible party denied the claim because the claimed losses were not proven to have resulted from the Plains Pipeline spill.⁹

APPLICABLE LAW:

Under 33 U.S.C. § 2701(7) of OPA, a “discharge” is defined as “any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking pumping, pouring, emitting, emptying, or dumping;”

“Oil” is defined in relevant part, at 33 USC § 2701(23), to mean “oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil”.

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 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 CFR 136.213(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.

Under 33 CFR 136.215(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.

⁷ See Plains Pipeline, L.P. letter from [REDACTED], Plains Pipeline, L.P., to [REDACTED] Claimant dated April 29, 2016.

⁸ See email from [REDACTED], Senior Vice President – Worley, to [REDACTED], NPFC Claims Manager, dated July 14, 2016.

⁹ See Phone log between [REDACTED] dated 7/27/2016.

Under 33 CFR 136.217(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.

DETERMINATION OF LOSS:

Prior to submitting his claim, ██████████ contacted the NPFC by email dated July 8, 2016, stating that his wet suit was damaged by globs of oil present in the Pacific Ocean and, consequently, a claim for damages was submitted to Plains Pipeline, L.P. Claimant states he provided photos of the damaged wet suit and also states the cost of replacing the wet suit is \$499.95.¹⁰

The NPFC responded to ██████████ by email on July 11, 2016, stating that no photos were attached to his email. We also informed him that the NPFC would most likely not provide full replacement value of his wet suit, if it was found compensable. Instead, the NPFC would depreciate according to age and condition. The NPFC also provided ██████████ with the Claims Regulations pertaining to a loss of Real or Personal Property, which included Proof and Compensation requirements.¹¹ Finally we requested that he provide a signed claim submission, sum certain (claim total) and any relevant documentation he would like considered during the evaluation of the claim.¹²

██████████ responded the same day¹³ stating that photos were attached to evidence the alleged oil damage to his wet suit, as well as Plains Pipeline’s denial letter. He also indicated that the wet suit was purchased in November, 2014, approximately one year, five months before the damage. Mr. ██████████ goes on to state that he does not have a receipt for the wet suit purchase and asks if the NPFC can conditionally approve payment so he does not have to go back to the store unless his claim is approved.

The NPFC responded by stating that again, photos were not attached. Nor was the Plains Pipeline denial letter. Mr. ██████████ was again reminded that a signed claim submission had to be provided in order for a claim to be adjudicated. Finally, the NPFC stated that it cannot conditionally approve a claim and that, again, all evidence Claimant would like considered would need to be provided with the claim.¹⁴

Claimant submitted his formal claim on July 11, 2016.¹⁵ Claimant’s submission consisted of three pictures of the wet suit and the RP denial letter.

¹⁰ See email from ██████████ (Claimant) to ██████████, NPFC dated July 8, 2016. Claimant’s proof of replacement cost was a Google search for “O’Neil Psycho Freak Z.E.N. Zip 4/3 Wet suit – Men’s.

¹¹ See 33 CFR 136.215 and 33 CFR 136.217.

¹² See email from ██████████ dated July 11, 2016..

¹³ See email from ██████████ dated July 11, 2016.

¹⁴ See email from ██████████ dated July 11, 2016.

¹⁵ See Optional OSLTF Claim Form from ██████████ dated July 11, 2016.

The NPFC reviewed the pictures and found obvious wear marks in several places with what appeared to be black spots inside of the wear marks. It is unclear whether those black marks are oil or part of the wet suit. No other information, was provided to substantiate the claim.

The NPFC reviewed the Coast Guard Pollution Reports related to this spill. Subsequent to the 901 Pipeline Spill, tar balls and tar patties were discovered on Manhattan Beach, California. The US Coast Guard Federal On-Scene Coordinator Representative (FOSCR) responded to reports of significant tar balls and tar patties on Manhattan Beach and, consequently, coordinated pollution removal activities. Pollution removal activities were completed on July 17, 2015, and the FOSCR “determined there is no need for continued operation.”¹⁶

The NPFC finds that the claimed damage took place 230 days after the FOOSC documents completion of pollution removal activities on Manhattan Beach.¹⁷ Additionally, it is unclear from the black and white photos provided in the claim, whether the worn portions of the wet suit contain oil. Additionally, claimant’s submission states, “the globs of oil on my wet suit are substantially larger than the quarter size stains you would find on your heels from a day at the beach”.

The NPFC requested additional information on July 14, 2016 from the claimant. First, the NPFC requested [REDACTED] provide a sample analysis of the oil present on the wet suit. This is necessary because it is clear the Plains Pipeline spill was deemed clean by the FOOSC several months before claimant’s wet suit was damaged. Also, claimant acknowledges oil does get on his wet suit during regular use, which may be the result of naturally occurring seeps known to leave tar balls in that area. Additionally, the NPFC requested that [REDACTED] provide witness statement(s) (not previously provided with his claim form), proof of the invoiced purchase date and price for the wet suit, the documented estimate of the lifespan of the wet suit, or the value of the property both before and after the damage, to include the cost to repair.¹⁸

By email dated July 15, 2016, [REDACTED] requested that the NPFC contact him by phone.¹⁹ On July 19, 2016, the NPFC conducted a phone conference with [REDACTED] who stated that he did not keep any of the oil that damaged his wet suit; therefore, he is unable to provide the oil sample analysis requested by the NPFC.²⁰ Subsequently, by email dated July 19, 2016²¹, [REDACTED] again contacted the NPFC. [REDACTED] stated:

“Unless the NPFC is will [sic] to waive requirement #1’ below, namely, “1. Oil sample analysis. Please provide a lab tested sample analysis of the oil present on the wet suit which we can then compare to the samples obtained from the Plains Pipeline spill.” – since I tried cleaning the oil off the wet suit I will not be able to perform this test (which would also likely be cost prohibitive given the claim amount); I am hereby withdrawing my claim for damages.”

¹⁶ See FPN A15018 POLREP 6 and Final dated August 21, 2015.

¹⁷ See Claimant’s Optional OSLTF Incident Claim Form “Incident Information” date of March 3, 2016.

¹⁸ See email from [REDACTED] NPFC, to [REDACTED], dated July 14, 2016.

¹⁹ See email from [REDACTED], to Mr. [REDACTED], NPFC, dated July 15, 2016.

²⁰ Id.

²¹ See email from [REDACTED], to [REDACTED], NPFC, dated July 19, 2016.

The NPFC finds there is no evidence in the record to support the alleged oil damage to claimant's wet suit. Additionally, the FOSCR deemed the Plains Pipeline discharge response efforts complete over five months earlier than the claimed damages occurred. Finally, claimant notes that tar balls are common in the area where he surfs.

Without an oil sample, the NPFC cannot determine if the alleged damage to claimant's wet suit was caused by an OPA compensable oil. Additionally, [REDACTED] has not provided evidence as requested by the NPFC on July 14, 2016 as discussed above. Therefore, this claim is denied.

AMOUNT: \$0.00

Claim Supervisor: [REDACTED] [REDACTED]

Date of Supervisor's review: 8/02/2016

Supervisor Action: Denial Approved.

Supervisor's Comments: