

U.S. Department of
Homeland Security

United States
Coast Guard



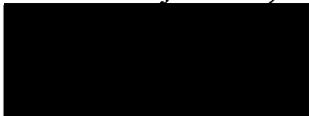
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4666 8772

5890/DWHZ
12 October 2011

Manatee Bay Marine, Inc



RE: Claim Number: N10036-1328

Dear Ms. Westphal:

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 claim number N10036-1328 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-1328.

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	N10036-1328
Claimant	Manatee Bay Marine, Inc
Type of Claimant	Private (US)
Type of Claim	Removal Costs
Amount Requested	\$8965.95

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 24 August 2011, Loretta Westphal, on behalf of Manatee Bay Marine, Inc (collectively Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$8,965.95 in removal costs¹ to the National Pollution Funds Center (NPFC) asserting uncompensated removal costs resulting from the Deepwater Horizon oil spill.

Claimant is a full-service boat yard and marina located in Key Largo, Florida.² The Claimant indicated that it received press releases around 1 May 2010 from two major paint manufacturers regarding how to treat boat bottom paint that has been contaminated with oil. During the same time frame, the Claimant also received a fax from the United States Coast Guard concerning the possibilities of oil entering the loop current. After these events, the Claimant "felt that there was a good chance" oil would reach the marina.³

Given the threat of oil, the Claimant sought to comply with its marina owner's insurance policy and avoid potential litigation with its dockage tenants and governmental entities. Because the Claimant was concerned about the effect that oil would have on the environment and wetlands in the area, the Claimant made inquiries to containment boom manufacturers, but was advised that there was a waiting list to procure boom. Thus, the Claimant bought raw materials for the boom and had its own employees construct enough boom to protect all of its dockage customers and shoreline.⁴

The Claimant is requesting compensation for the cost of the supplies for the boom as well as the cost of labor for its employees to make the boom.⁵

¹ The Claimant did not notate a damages category on her OSLTF Claim Form. During the phone conversation between the NPFC and the Claimant on 30 August 2011, the NPFC inquired as to the claim type desired by the Claimant. The Claimant indicated that the GCCF treated her claim as Removal Damages, thus the NPFC classified the claim likewise.

² PHONECON between the NPFC and the Claimant on 30 August 2011.

³ Letter of claim explanation from the Claimant to the GCCF, undated.

⁴ Letter of claim explanation from the Claimant to the GCCF, undated.

⁵ Letter of claim explanation from the Claimant to the GCCF, undated.

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.

“Removal costs” are the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such incident. 33 U.S.C. § 2701(31).

The Fund shall be available for the payment of claims in accordance with section 2713 for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. § 2712(a)(4).

Under 33 C.F.R. § 136.203 a claimant seeking reimbursement for removal costs must establish the following:

- a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- b) That the removal costs were incurred as a result of these actions; and
- c) That the actions taken were determined by the FOSC (Federal On-Scene Coordinator) to be consistent with the National Contingency Plan or were directed by 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. § 136.205, the amount of compensation allowable for a removal cost claim 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- 1) Optional OSLTF Claim Form, dated 11 August 2011;
- 2) Letter from the Claimant to “whom it may concern,” dated 9 August 2011;
- 3) Letter of claim explanation from the Claimant to the GCCF, undated;
- 4) Various pictures of the boom;
- 5) Map titled “Teall’s Guides Key Largo to Conch Key;”
- 6) Various work receipts for Lee Baker, employee of Manatee Bay Marine, Inc.;
- 7) Various work receipts for Ambrosio Perez, employee of Manatee Bay Marine, Inc.;
- 8) Various receipts for boom supplies from Euroglass, Miami Cordage/Florida Wire & Rigging Works, Land’N’ Sea Distributing, Inc, and Donovan Marine, Inc.;
- 9) Google map print outs of marina location;
- 10) Copy of internet article titled “BP reimburses Fort Lauderdale for oil spill expenses”;
- 11) AT&T Real Yellow Pages Area Map with Zip Codes;
- 12) Letter from the Claimant to Dave O’Connor, dated 9 June 2010;

- 13) Notice from Kop-Coat Marine Paint dated 1 May 2010;
- 14) Notice from Interlux and Awlgrip, dated 6 May 2010;
- 15) Internet Printout of 33 U.S.C. § 1251; and
- 16) List of Documents.

Prior to presenting this claim to the NPFC, Claimant filed a Full Review Final (FRF) claim for Removal and Clean-Up Costs with the GCCF on 23 June 2011 in the amount of \$8,965.95.⁶ The Claimant was assigned GCCF Claimant ID # 1189235 and Claim # 9403986. The FRF claim was denied by the GCCF.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of the claim before the NPFC, i.e., that Claimant incurred removal costs in the process of constructing boom to protect the marina from the potential spread of oil to the Florida Keys. Accordingly, this Claim Summary determination for NPFC Claim N10036-1328 considers and addresses the removal costs in the claim presented to the responsible party, specifically; GCCF Claim # 9403986.

NPFC Determination

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 U.S.C. § 2702 (b)(1)(B) and 33 C.F.R. Part 136, a Claimant must prove that any removal costs incurred by the Claimant were for removal actions taken by the Claimant which are consistent with the National Contingency Plan (NCP).

The NPFC considered all documentation presented by the Claimant. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC contacted the Claimant on 30 August 2011 to gain additional information regarding the Claimant’s assertions. When asked by the NPFC why the marina constructed the boom, the NPFC was informed that the Claimant relied solely on a notice she received via fax from the United States Coast Guard (USCG) in May of 2010.⁸ The NPFC asked for a copy of this notice, but the Claimant indicated that she no longer had it in her possession.⁹ Notably, although the USCG is the Federal On Scene Coordinator (FOSC) for this incident, the Claimant did not report a substantial threat of a discharge of oil to the subject property nor discuss potential mitigation efforts with the FOSC to ensure that the Claimant’s actions were coordinated with the FOSC or were determined consistent with the NCP. Furthermore, because the Claimant did not coordinate its intended response actions and because oil never hit the shoreline associated with this claim, it is not clear that the actions taken were reasonable or necessary.¹⁰

⁶ Report from the GCCF, dated 6 October 2011.

⁷ Report from the GCCF, dated 6 October 2011.

⁸ PHONECON between the NPFC and the Claimant on 30 August 2011.

⁹ PHONECON between the NPFC and the Claimant on 30 August 2011.

¹⁰ The NPFC contacted the Prevention Department of the USCG Sector Key West, who informed that NPFC that no faxes were sent out to the Claimant’s area indicating the likelihood of oil reaching the Florida Keys.

This claim is denied because the Claimant has failed (1) to comply with the National Contingency Plan, and (2) the Claimant failed to comply with 33 C.F.R. § 136. 205, which states that the amount of compensation allowable for a removal cost claim 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.

Should the Claimant decide to request reconsideration, the Claimant will need to obtain a coordination statement from the United States Coast Guard in support of their actions.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/12/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: