

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 8558

5890/DWHZ
9 August 2012

Mr. Kent Cottrell


Re: Claim Number: N10036-1850

Dear Mr. Cottrell:

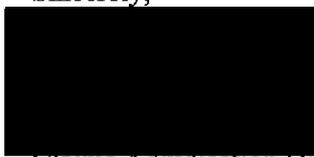
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1850 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-1850.

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	N10036-1850
Claimant	Mr. Kent Cottrell
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$45,000.00

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 26 June 2012, Mr. Kent Cottrell (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$45,000.00 in damage to real or personal property resulting from the Deepwater Horizon oil spill.¹

On 01 April 2010, the Claimant's home was appraised and valued at \$90,000.² After completing \$10,000 in kitchen and bathroom upgrades, the Claimant had his home appraised again.³ The second appraisal, conducted on 30 September 2011 valued the Claimant's home at \$55,000.⁴ This claim is for a loss based on "reduced real estate value" and as opposed to physical injury or damage to real or personal property.⁵ Because the Claimant is alleging to have sustained a financial loss due to the depreciation in his property value, the NPFC has reclassified this claim as a claim for lost profits or impairment of earnings capacity damages in the amount of \$45,000.00.

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 §2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims

¹ Optional OSLTF Claim Form dated 26 June 2012.

² Appraisal of Real Property dated 01 April 2010.

³ Optional OSLTF Claim Form dated 26 June 2012.

⁴ Appraisal of Real Property dated 30 September 2011.

⁵ Optional OSLTF Claim Form dated 26 June 2012.

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. § 136.105(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 OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Appraisal of Real Property, dated 01 April 2010
- Appraisal of Real Property, dated 30 September 2012

The Claimant asserts that this claim was previously presented to the GCCF on 20 May 2011.⁶ According to the Claimant, the GCCF denied payment on this claim.⁷

⁶ Optional OSLTF Claim Form, signed on 1 June 2012.

According to OPA, all claims presented to the NPFC must have been first presented to the RP/GCCF.⁸ Should the RP/GCCF deny payment on the claim or fail to issue a determination within 90 days of presentment, the Claimant may then present the claim to the NPFC.⁹

On 26 June 2012, the Claimant presented this claim to the NPFC, seeking \$45,000.00 in damages due to the alleged devaluation of his property.¹⁰ The NPFC shall issue a determination on this claim to the extent that these damages subject of this claim were previously presented to the RP/GCCF. Any damages now before the NPFC which were not first presented to the RP/GCCF are denied for improper presentment.

Furthermore, the NPFC notes that documentation included in this claim submission indicates that this claim is likely included in the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).¹¹

NPFC Determination

On 26 June 2012, Claimant presented this claim for \$45,000.00 in real or personal property damages. Under 32 U.S.C. § 2712(b)(2)(B), real or personal property, a Claimant may recover damages for injury to, or economic loss resulting *from the destruction of*, real or personal property, which shall be recoverable by a Claimant who owns or leases the property. In this case, the Claimant has not alleged that his property has been physically damaged by the oil spill. Rather, the Claimant has asserted that the property has lost value and has suffered decreased marketability. As the property itself was not physically damaged, this claim would be denied under OPA's real or personal property damage category. Accordingly, as discussed *supra*, the NPFC will analyze this claim under OPA's loss of profits or impairment of earnings capacity damage category.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the E&PD Settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the E&PD Settlement, he should then submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, this claim is denied under OPA's loss of profits damage category, as the Claimant has failed to prove that he has sustained a financial loss as a result of the Deepwater Horizon oil spill.

⁷ Optional OSLTF Claim Form, signed on 1 June 2012.

⁸ 33 C.F.R. § 136.103(a).

⁹ 33 C.F.R. § 136.103(c)(2).

¹⁰ Optional OSLTF Claim Form, signed on 1 June 2012.

¹¹ Instructions for Completing the Real Property Sales Claim Form, B.7, stating that parties that did not sell the parcel of land between April 21, 2010 and December 31, 2010, for which they are claiming to have sustained an economic loss, "may not file a claim for Real Property Sales.

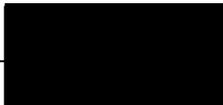
Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that any loss of income was due to the injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and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

In order to prove a claim for loss of profits damages, a Claimant must prove (1) that he has sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

A loss based on the diminution of property value is only realized if the Claimant has sold the property at a loss. If the property has been sold at a loss, the Claimant must then demonstrate that a certain amount of that loss was caused by the Deepwater Horizon oil spill. Here, the Claimant has not provided evidence to show that the property was sold at a loss, or was even being offered for sale at the time of the oil spill.¹² Rather, both property appraisals provided by the Claimant indicate that the Claimant had not attempted to sell the property in the twelve month periods preceding each appraisal. Because the Claimant has not sold the property, any alleged loss is both speculative and prospective, and is not compensable under OPA.

Furthermore, the Claimant has not provided any evidence that might indicate that the decrease in his property value was indeed caused by the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained an actual loss in the amount of \$45,000.00, (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil and (3), because the Claimant is considered to have settled his claim by virtue of belonging to the economic damages class associated with the CSSP.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/9/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² Optional OSLTF Claim Form signed on 1 June 2012.