

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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5890
May 23, 2013

CERTIFIED MAIL NUMBER:
7011 1570 0001 2445 2545

RE: N12062-0002

Michael and Deana Chiasson

Dear Mr. or Ms. Chiasson:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N12062-0002 involving Hurricane Isaac.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

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 N12062-0002.

Mail reconsideration request to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard
Arlington, VA 20598-7100

Sincerely,

DAWN UNGLESBEE
Claims Manager
U.S. Coast Guard

Enclosures: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

Claim Number: N12062-0002
Claimant: Michael and Deana Chiasson
Type of Claim: Real or Personal Property
Claim Manager: Dawn Unglesbee
Amount Requested: \$44,500.00

BACKGROUND

On August 29, 2012, Hurricane Isaac made landfall over various states, including Louisiana, for over 60 hours causing substantial flooding and multiple waterway closures. Sector New Orleans opened FPN N12062. Initial assessments discovered over 90 actual and potential pollution and hazardous material incidents.

On September 2, 2012, Sector New Orleans stood up a Unified Command with EPA, LOSCO, and LDEQ, focusing on pollution and hazardous material incidents. In collaboration with Oil Spill Responders (OSROs) and partners from the Unified Command, the operations section responded and mitigated several incidents, while assessing potential and /or actual pollution incidents. Operations were conducted on a daily basis.

The Unified Command with the assistance of the NOAA SSC continuously assessed the impact of pollution on the Louisiana shoreline.¹

CLAIM

On September 25, 2012, Michael and Deana Chiasson (Claimant) submitted documentation to the NPFC requesting reimbursement for their removal costs (\$7,500.00), and real or personal property damage costs in (\$37,000.00) for a total sum certain of \$44,500.00 All of these losses are claimed to have resulted from oil spilled during Hurricane Isaac.

Mr. and Mrs. Chiasson have a home in Lafitte, Louisiana. The claimant indicates that the facility responsible for the claimed damages was Edward Oil Company. The United States Coast Guard Marine Safety Laboratory Oil Sample Analysis Report, dated September 14, 2012, concludes that the samples taken from the scene "are not derived from [MC252 Deepwater Horizon] DWH" oil, and additionally they "do not contain enough petroleum oil for conclusive comparison to the source sample" obtained from Edward Oil Company.²

Claimant has not communicated with the RP nor has the Claimant submitted their claim to the RP.³

¹ FPN N12062, SITREP-POL ONE, ACTUAL, HURRICANE ISAAC RESPONSE

² See, Oil Spill Analysis Report, Sector New Orleans, Case/Activity Number 4438391, Marine Safety Laboratory Case Number 12-237, dated September 14, 2012.

³ See, Optional OSLTF Claim Form, line item # 4- 5.

Claimant's sum certain of \$44,500.00 is based on the following alleged losses from Hurricane Isaac and the subsequent alleged contamination by Edward Oil Company. A summary of Claimant's sum certain is as follows⁴:

Description	Costs	Comments
Driveway	\$3,200.00	2 loads of rocks and labor to spread and discard the contaminated rocks
Pressure Washer	\$2,800.00	Includes the cost of paying someone to help
Front and Back Yard		Claimant states that he cannot put a price on this line item.
Plants and Trees	\$12,000.00	Plants + labor
2 Doors on Shed and Walls	\$2,000.00	Materials + labor
Riding Lawn Mower	\$2,700.00	Replacement
Deck	\$5,400.00	Wood Deck Replacement
Pool Deck	\$2,500.00	Replacement
Hot Tub	\$6,400.00	Replacement
Removal	\$7,500.00	\$12.00 an hour (Contractor name not provided)
Total Loss	\$44,500.00	Alleged Loss
Total Claimed	\$44,500.00	

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"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".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "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 an incident".

⁴ See, Claimant's Narrative

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

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 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination.

Removal

Under 33 CFR 136.203, “a claimant must establish -

- (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;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable 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.” [Emphasis added].

Real or Personal Property

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.

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:

Analysis

The documentation that was provided by the Claimant failed to demonstrate Claimant's loss in respect to the alleged damages. Therefore, on March 26, 2013, the NPFC reached out to Mr. Chiasson by telephone and explained to him what was needed in order to support his claim and advised that the NPFC would follow up with a letter. The NPFC sent Mr. and Mrs. Chiasson a letter requesting additional information, via certified mail,⁵ and articulated that certain requirements had to be met in order to support their claim. The letter also provided the Claimant with the NPFC Claims Adjudication website.⁶

As of April 29, 2013, the NPFC had not heard from the Claimant and sent an email to Mr. and Mrs. Chiasson, asking for the supporting documentation that was requested in the previous March 26, 2013, letter, so that the Fund could move forward with the adjudication process. In the email, the NPFC asked if the Claimant had any questions or concerns. To date, the NPFC has not heard from the Claimant.

After several attempts to acquire the necessary documentation the NPFC had no choice but to move forward with the adjudication of this claim on its own merits.

The administrative record provides no evidence that this claim has been properly presented to the RP (Edwards Oil Company). OPA provides that except under certain circumstances, a claim for removal costs or damages must be first presented to the responsible party or guarantor. 33 U.S.C. § 2713(a).

For a claim to be OPA compensable it must show that the damages are directly caused by the oil in the water. The documentation that was provided to the Fund lacks that evidence. "Oil" is defined at 33 U.S.C. § 2701(23), to mean "oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged

⁵ The NPFC received the signed certified mail receipt on April 14, 2013.

⁶ See, letter to Claimant from the NPFC, dated March 26, 2013.

spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101 (14) of the Comprehensive Environmental Response Compensation, and Liability Act (42 USC 9601) and which is subject to the provisions of the Act.”

Removal

This claim lacks substantial documentation to support their removal claim as required by OPA.⁷ Also, Claimant’s documentation fails to provide the name of the contractors used to remove the oil as well as invoices and proof of payment to support the \$7,500.00 in removal costs. The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the claims regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages.

Real or Personal Property

The Claimant established that the property was damaged by providing pictures; however, it is difficult for the NPFC to ascertain whether the damage to the property was caused by the flood waters, oil, or mixed substances. Additionally, the claimant has not established an ownership or leasehold interest in the property, the cost of repair or replacement or the value of the property both before and after the injury occurred⁸.

Conclusion

The Claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. 33 CFR 136.105(a) and 136.105(e)(6). Claimant has failed to provide additional information required by the NPFC.

Additionally, the Claimant has failed to demonstrate their alleged uncompensated removal costs and damages. Claimant also failed to establish by a preponderance of the evidence that the damages were caused solely by oil, as defined by OPA. Finally, Claimant has not responded to the NPFC’s correspondence nor have they provided the documentation to support their claim. Therefore, this claim is denied.

Claim Supervisor:  Robert C. Rioux

Date of Supervisor’s review: 5/23/2013

Supervisor Action: *Approved*

Supervisor’s Comments:

⁷ Per the National Contingency Plan, the Claimant must evidence that the oil was removed by HAZWOPER trained technicians and then disposed of properly by providing the disposal facility’s invoice and proof of payment.

⁸ 33 CFR 136§215