

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	A 15017-0001
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$140,000.00

FACTS

On May 19, 2015, USCG Sector LA/Long Beach (LA/LB) received a report of an oil spill originated from a 24 inch pipeline belonging to Plains Pipeline LP, on 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 The ruptured pipeline carried oil from Exxon Mobil offshore platforms Hondo, Harmony and Heritage to onshore refineries in Las Flores Canyon approximately 15 miles west of Santa Barbara. Exxon Mobil continued producing oil at a slower rate until their storage tanks were full, at which time they halted operations on the three offshore platforms as they could no longer deliver oil to the refineries. During this time, Exxon Mobil proposed a plan to have eight trucks per hour haul oil to a Phillips 66 refinery approximately 70 miles away but that plan was rejected by Santa Barbara County as Exxon Mobil's emergency application to truck oil to those refineries was denied. As such, Exxon Mobil has temporarily suspended oil production operations from those offshore platforms.²

CLAIM AND CLAIMANT

On December 30, 2015, Mr. [REDACTED] (Claimant) presented a claim to the NPFC seeking \$140,000.00 in lost profits and earning capacity resulting from the loss of his job at URS Energy and Construction, Inc (URS). Claimant was a dispatcher and materials coordinator for URS and is claiming that he lost his job as a direct result of suspended oil production operations from the Exxon Mobile offshore platforms Hondo, Harmony and Heritage.³

Claimant was employed by URS and provided documentation indicating that he had been with the company since August 30, 2012. URS was contracted by Exxon Mobil to provide material support to their onshore warehouses and offshore platforms Hondo, Harmony and Heritage. With the stoppage of oil from the Exxon Mobil offshore platforms to their refineries, the need to provide material support to the onshore warehouses and offshore platforms was greatly reduced. As such, URS downsized their staff from sixteen to four personnel. The Claimant was one of twelve URS employees that lost their job as a result of the downsizing.^{4 5}

¹ See CG District 11 - Potential Medium Coastal Spill - Refugio Beach, CA dated May 25, 2015.

² See CNSNEWS.com news article published by [REDACTED] dated June 23, 2015.

³ See Optional OSLTF Claims Form dated November 30, 2015.

⁴ Id.

⁵ See email conversation between [REDACTED] AE Com program manager and [REDACTED] NPFC dated January 4, 2016.

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 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's Submission

To support his claim, Claimant provided federal tax returns from calendar years 2013 and 2014 and his last earning statement from URS with an end date of November 20, 2015. He also provided a copy of his URS performance evaluation ending January 2014; a letter of recommendation from [REDACTED] AE COM Program Manager dated November 12, 2015, and his conditional offer of employment from URS dated August 30, 2012.⁶ Lastly, the Claimant provided a letter from Plains Pipeline, L.P. dated November 17, 2015 in which his lost profits claim #080167689 was denied due to “materials and documentation submitted are insufficient to establish your claim under OPA.”⁷

NPFC Determination

Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that his 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. Various media sources and a conversation between the NPFC and [REDACTED] AE COM program manager confirmed the transportation of oil from the Exxon Mobil offshore platforms to their refineries was halted as a direct result of Santa Barbara County denying an emergency permit allowing Exxon Mobil to truck their oil from their offshore platforms to their onshore refineries. Therefore, Claimant’s loss was not a result of the oil spill, but because of a failed pipeline and then the subsequent Santa Barbara County denial of an Exxon Mobil request to truck their oil to onshore refineries. As a result, any related loss of profits or earnings Claimant incurred or may incur is considered a consequence of the failed transportation/delivery system for oil and the subsequent downsizing of his employer. 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 submitted this claim based upon 2 years of future wages and not actual lost wages, citing the following:

1. It took him 18 months to find his job at URS and he anticipates it taking at least that long to find another job.
2. He anticipated working at URS for 10 more years.
3. He is going to have to sell his house and move to another state to find a job. After paying off his mortgage, there will be no profit remaining. He’ll be forced to leave behind his kids, grandchildren and friends.
4. His wife will also have to quit her job and start over.
5. He also asserts that an associated loss of medical insurance could cost him up to \$406.00 a month for prescription.

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. As the Claimant focused this claim on the loss of projected future earnings and not an actual loss of profits or earnings, those projected future earnings are not compensable under OPA.

⁶ See Optional OSLTF Claims Form dated November 30, 2015

⁷ See letter from Plains Pipeline, L.P. to [REDACTED] dated November 17, 2015.

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 after the termination of his job at URS, or if other job opportunities have been found. If any employment benefits were received, that information would have to be disclosed to the NPFC.

Summary

This claim is denied because the claimed costs are not a result of the oil spill. For this reason and others stated above this claim is denied.

Claim Supervisor:



Date of Review: *1/20/2016*

Supervisor's Actions: *Denial approved*

Supervisor's Comment