

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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16480

25 October 2012

CERTIFIED MAIL Number: 7011 1570 0001 4802 9501

Emmett John Ladner


RE: Claim Number: N10036-1855

Dear Mr. Ladner:

The National Pollution Funds Center (NPFC) has reviewed your claim for lost use of natural resources following the Deepwater Horizon oil spill. We have determined that you are not eligible to recover funds from the Oil Spill Liability Trust Fund (OSLTF) for this claim.

Background

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result, oil was discharged; the Federal Government and Gulf Coast states closed certain waters to commercial and recreational fishing. 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 individual and business claims on behalf of BP.

On or about 8 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 process to facilitate the transition of the claims from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted preliminary approval of the proposed settlement agreement on 2 May 2012, whereby claimants within each of four designated zones are subject to court jurisdiction and the Settlement Program unless they opt out. The CSSP began processing claims on 4 June 2012.

Facts

On 3 July 2012, the NPFC received your claim for \$19,800 for lost subsistence use of natural resources following the Deepwater Horizon oil spill.

Applicable Law

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.

OPA provides that the Oil Spill Liability Trust Fund (OSLTF) is available to pay claims for uncompensated removal costs and damages resulting from oil pollution incidents (33 U.S.C. §2712(a)(4)). Damages include loss of subsistence use of natural resources (33 U.S.C. §2702(b)(2)(C)) (i.e., resources relied upon for food). The regulations at 33 C.F.R. Part 136 include general claim requirements and requirements specific to lost subsistence use claims.

General Claim Requirements

Claims to the OSLTF must be: (a) in writing for a sum certain (33 C.F.R. §136.105(b)), (b) submitted to the NPFC within three years after the date on which the injury and its connection with the incident were reasonably discoverable (33 C.F.R. §136.101(a)), and (c) presented first to the RP or guarantor and that claim is denied or not settled by payment by any person within 90 days after the date the claim was presented before presentment to the Fund (33 U.S.C. §2713(c)(2); except as noted in 33 C.F.R. §136.103(a)).

Subsistence Use Loss Claim Requirements

The claims regulations (33 C.F.R. §§136.219-223) provide additional requirements for lost subsistence use claims. Specifically, each claim for loss of subsistence use of natural resources must:

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.

NPFC has provided more detail about these claim requirements at:
http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

Claim Submission and Documentation

The NPFC received your Optional OSLTF Claim Form on 3 July 2012 for lost subsistence use of natural resources. You did not provide any supporting documentation with your OSLTF Claim Form, instead requesting that the NPFC obtain the documentation that you submitted in support of your claim to the GCCF. The NPFC received documentation from the GCCF on 01 October 2012¹, which included:

- GCCF Full Review Final Payment Claim Form, dated 9 March 2012;
- Photocopy of your Mississippi Commercial Driver's License;
- Photocopy of your 2011/2012 Mississippi Residential Fishing License;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, dated 21 March 2012; and
- GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim, dated 8 May 2012.

In addition to requesting your documentation from the DHCC/GCCF, the NPFC sent you a letter on 20 August 2012 that provided guidance on the type of documentation you should submit to the NPFC to support your subsistence claim. To date, the NPFC has not received any additional information from you to support your claim.

Additionally, the NPFC notes that evidence presented in your claim submission indicates that you are a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).

NPFC Determination

Based on your claim submission, it appears that you are a member of the E&PD Settlement (i.e., within one of the four court designated zones) and there is no evidence that you have opted out of the court settlement process. As such, the NPFC considers you ineligible to recover funds from the OSLTF.

While your claim may not yet 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 you disagree that you are a member of the economic damages class of the E&PD Settlement, you should submit evidence upon reconsideration to indicate that you have either opted out or are excluded from the E&PD Settlement in a request for reconsideration of this claim. The NPFC notes, however, that providing such evidence will not guarantee payment as our initial review of your claim indicates that the documentation that you provided does not appear to satisfy OPA's statutory and regulatory requirements described above.

¹ The NPFC notes that the GCCF transitioned to the Deepwater Horizon Claims Center (DHCC) as part of the settlement process in *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010* (MDL 2179). However, the DHCC website states that "all of your claims-related information, files, and data that you previously submitted to the GCCF or the Transition Process have been transferred to the Settlement Program." Question 56 at: <https://cert.gardencitygroup.com/dwh/fs/faq?.delloginType=faqs>.

Request for Reconsideration

Under OPA, you may ask the NPFC to reconsider this determination. Reconsideration requests must be received by the NPFC in writing within 60 days of the date of this letter, and will be based upon the additional factual or legal information that you provide with your request. A claim may be reconsidered only once, and written disposition of a reconsideration request constitutes final agency action. If the NPFC fails to issue a written decision within 90 days after receipt of a request for reconsideration, this determination, at the option of the claimant, shall be deemed final agency action.

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-1855) to:

Chief (Cn)
National Pollution Funds Center
U.S. Coast Guard, Stop 7100
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you have any questions about reconsideration, please feel free to contact the NPFC at the above address or by phone at 800-280-7118.



RICHARD NANCE
Claims Manager
Natural Resource Damage Claims Division