



Victim Resource Guide:

Oil Pollution Act Claims

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Sheller, P.C. Law Firm

www.Gulf-Oilspill-Sheller-Attorneys.com

800-883-2299



BP Oil Spill Resource Guide: Oil Pollution Act Claims

The law firm of Sheller, P.C. provides this guide for individuals, businesses, organizations and government entities affected by what is commonly known as the “BP oil spill.” The contents herein are a brief summary of the regulations and processes updated June 25, 2010 and should not be construed as complete, final or official.

What Claims may be Submitted?

Oil Pollution Act (OPA, Oil Pollution Act of 1990, 33 U.S.C. 2701 et. seq.) incidents involve a **discharge or substantial threat of a discharge** of oil from a vessel or facility into or on the navigable waters of the U.S., adjoining shoreline, or the exclusive economic zone. Claim types allowed under OPA include:

- Real or Personal Property Damage
- Loss of Profits and Earning Capacity
- Subsistence Loss
- Loss of Government Revenue
- Cost of Increased Public Services
- Natural Resource Damage
- Removal Costs

Who is Eligible to Submit a Claim?

A claimant can be—

- An individual
- A business, employee(s), services provider
- A corporation, partnership, or association
- The United States government
- Federal, state, foreign, or Indian tribe trustee
- States, the District of Columbia, municipalities, and political subdivisions of States
- The Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Marianas Islands, and any other territory or possession of the United States
- Certain foreign claimants, in accordance with Section 1007 of OPA (33 U.S.C. 2707)
- An RP (responsible party, BP or other companies involved in the oil spill) who establishes entitlement to a defense to liability or limitation of liability in accordance with Section 1008 of OPA (33 U.S.C. 2708)

Claim Format

There is no required format for OSLTF (Oil Spill Liability Trust Fund) claims. ***Claims must be made in writing; and must be supported*** by and include evidence, information, and documentation. Verbal claims are not accepted. **An optional claim form and instructions are available from Sheller, P.C.** You do not need a lawyer to file a claim. You will not be compensated for any attorney's fees if you use a lawyer to assist in preparing or filing a claim.

Claim requirements

Claims should including the following information:

- Total amount claimed
- Your full name, street and mailing address(es), and telephone numbers for your home and business
- Time, date, and geographic location of the oil spill; identification of the navigable water impacted; and an explanation of how the oil impacted the water
- Identify the vessel, facility, or person causing or suspected of causing the spill, if possible, and include an explanation of why you suspect the vessel, facility, or person to have caused the spill
- A general description of the impact of the spill, including the removal costs or damages claimed by category
- Explanation of how the damage happened, the location, and the date and time (this may/may not be the same as the location, date, or time of the spill)
- Descriptions of actions taken to minimize or avoid damages
- Costs of assessing the damage (do not include attorney's fees or other costs for claim preparation or filing)
- Name, street and mailing address(es), and telephone numbers of any witnesses and a brief description of what the witness knows
- Copies of any written communications and content of any verbal communications with the RP (responsible party, BP or other companies involved in the oil spill), including any claims submitted to the RP (responsible party, BP or other companies involved in the oil spill)
- Information on any attempts to submit claims to the person or company responsible for the oil pollution
- Information on any insurance claim made for removal costs or damages
- Any compensation you have received for removal costs or damages from the spill
- • Statement that no action has been taken in court or, if action has been taken, the status of the pending court case
- Certification statement of the accuracy of the claim to the best of your knowledge and belief
- Your signature and, if applicable, your legal representative's signature
- If necessary, the NPFC (National Pollution Funds Center) may ask you for additional information.

Reimbursement for Costs of Accountant

- You will be reimbursed for reasonable removal costs and damages covered under OPA, including the reasonable cost of assessing your damages. For example, you can be reimbursed the costs of an accountant's assessing your business losses, but you will not be reimbursed for the accountant's costs of assisting you in preparing the claim.

Mitigation

The Coast Guard considers that each claimant has a responsibility to make reasonable efforts to mitigate—that is, to avoid or minimize—the losses from an oil spill incident. Additional expenses related to avoiding or minimizing losses by a claimant can be included in the claim as additional expenses. The claimed amount of a direct loss will be adjusted for extra expenses and/or income related to avoidance/minimization efforts.

A. Removal Costs

Removal Costs: “Removal Costs” means 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 an incident.

Example of a Typical Claim: You own waterfront property where a boat and dock were oiled from an OPA incident. You notified the National Response Center of the incident, discussed it with the FOSC (Federal On-Scene Coordinator, either U.S. Coast Guard or EPA), and hired a local contractor to remove the oil. You may have a claim for the cost of the contractor used to remove the oil from your property.

Eligible Claimant: Anyone incurring removal costs.

What you Must Prove: In addition to the information required in Part III, you must provide information that is specific to removal cost claims to prove that—

- Necessary actions were taken to prevent or reduce the effects of the spill.
- Removal costs resulted from these actions.
- Actions taken were reasonable and consistent with the National Contingency Plan.

Examples of Supporting Information:

Evidence of Spill:

- FOSC report (Federal On-Scene Coordinator, either U.S. Coast Guard or EPA)
- Information on EPA or U.S. Coast Guard notification
- Newspaper reports describing the spill
- Witness(es) statement(s)

General Information:

- Detailed description of actions
- Dates on which work was performed
- Analysis of spill substance
- Map of area
- Pictures of area, damage, and spill

Costs:

- Receipts, invoices, or similar records with description of work
- How rates were determined and any comparison of rates
- Daily records of personnel costs including details on labor rates, hours, travel, and transportation
- Daily records of equipment costs including description and use
- Signed disposal manifests and proof of payment for disposal
- Payroll verification of hourly rate at the time of spill
- Verification of standard equipment rates for equipment used

B. Real or Personal Property Damages

Real or Personal Property Damages: “Real or Personal Property Damages” means damages for injury to, or economic losses resulting from destruction of, real or personal property.

(NOTE: Injury to real or personal property does not include personal injury!)

Example of a Typical Claim: You own a recreational boat or waterfront property that was oiled by an OPA incident. You may have a claim for the cost of restoring your property to its pre-spill condition.

Eligible Claimant: Person or entity who owns or leases the property.

You Must Provide Information Showing:

- Your ownership or leasehold interest in the property
- That property was injured or destroyed
- Value of property both before and after injury
- Cost of repair or replacement of the property

If you lost money, show

- The property was not usable because of the oil spill
- The value of your property before and after the spill
- Whether or not substitute property was available, and, if you did use substitute property, what the costs were
- How you lost money from the damage to the property

Examples of Documentation to Support Claim:

Evidence of Spill:

- FOSC report (Federal On-Scene Coordinator, either U.S. Coast Guard or EPA)
- Information on EPA or U.S. Coast Guard notification
- Newspaper reports describing the spill
- Witness(es) statement(s)

General Information:

- Copy of title, deed, lease, or license to property in your name
- Pictures or videotape of property and/or damage
- Maps or legal documents showing the location of the property within the spill area
- If you sold the property, professional property appraisals for the value of the property prior to and after the spill, actual selling price of the property, and evidence connecting the depressed selling price to the oil spill rather than to other economic or real property factors
- Copies of bills paid for repair of damage or two estimates showing activities and costs to repair the damage
- Any expenses or money lost while the property was unavailable because of spill damage
- Lease or rental agreement of any substitute property used

Examples of Documentation to Support Claim:

Evidence of Spill:

- FOSC report (Federal On-Scene Coordinator, either U.S. Coast Guard or EPA)
- Information on EPA or U.S. Coast Guard notification
- Newspaper reports describing the spill
- Photos of damaged property (before and after the spill)
- General Information for Employee Claims:
- Statement on how the spill caused a loss in income
- Affidavit from your employer on the impact on your work or income due to the spill and if the company will be filing a claim for lost profits
- Copies of pay stubs, receipts, etc., from before, during, and after the spill
- Personnel records from your employer before, during, and after the spill, showing employment
- Description of efforts to reduce your loss, including job search
- Copies of any job-hunting expenses (e.g., travel costs)
- Signed copies of income tax returns and schedules for at least two years prior to spill
- Details of employment expenses not paid during period being claimed (e.g., commuting costs)
- Copies of pay stubs, etc., from alternative employment during time of spill

C. Loss of Profits and Earning Capacity

Loss of Profits and Earning Capacity: “Loss of profits and earning capacity” means damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources.

You do not have to own the damaged property or resources to submit a claim under this category.

Example of a Typical Claim: You lease a commercial charter boat that was trapped in port when the Coast Guard closed the river to remove oil. You may have a claim for lost profits or earnings during the time the river was officially closed. The recreational fishermen whose trip was cancelled would not have a loss of profits or earnings.

Eligible Claimant: Anyone with loss of profits or income.

You Must Provide Information Showing:

- Property or natural resources that were damaged, destroyed or lost, resulting in your loss
- Your income was reduced due to the damage or loss of the property or natural resources and how much it was reduced
- Amount of profits and earnings in similar time periods
- If alternative employment or business was available, what, if any, income was received from it
- Savings to overhead and other normal expenses not paid as a result of the spill (e.g., commuting costs, utility fees)

Examples of Documentation to Support Claim:

Evidence of Spill:

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- Affidavit from your employer on the impact on your work or income due to the spill and if the company will be filing a claim for lost profits
- Copies of pay stubs, receipts, etc., from before, during, and after the spill
- Personnel records from your employer before, during, and after the spill, showing employment
- Description of efforts to reduce your loss, including job search
- Copies of any job-hunting expenses (e.g., travel costs)
- Signed copies of income tax returns and schedules for at least two years prior to spill
- Details of employment expenses not paid during period being claimed (e.g., commuting costs)
- Copies of pay stubs, etc., from alternative employment during time of spill

General Information for Claims by Businesses:

Description and documentation of business losses due to spill

- Copies of letters of business cancellations caused by the spill damage
- Maps or descriptions of the area showing the business location and the spill impact area
- Financial statements for at least two years prior to spill and from the year of the spill
- Signed copies of income tax returns and schedules for at least three years prior to spill
- Details on efforts to mitigate losses or why no efforts were taken
- Statement from you or witnesses on how the spill led to loss of income or earning capacity; explain any earnings anomalies
- For hotels, daily and monthly occupancy information for two years prior to spill and the year of the spill

General Information on Claims by Fishing or Marine Charters:

Description of business losses caused by the spill

- Evidence that vessel(s) were in the area impacted by the spill and were unable to carry on their business due to the spill
- Maps or descriptions of the area showing business location within spill area
- Statement from you or witnesses on how the spill caused the loss of income; explain any earnings anomalies
- Signed copies of income tax returns and schedules for at least three years prior to spill
- Details on expenses not paid out during period being claimed (e.g., wages)
- Booking records for three years prior to spill and year of spill
- List of charter rates, including any services the business specializes in (e.g., sport fishing)
- Copies of any logs relating to boating activities for the year prior to and the year of the spill
- Registration documents for the vessel(s), copies of business license, vessel license, fish-ing license, captain's license

Time Limits

Claims for Damages: Damage claims must be made within three (3) years after the date on which the damage and its connection with the spill was reasonably discoverable with the exercise of due care. The only exception is for natural resource damage claims – see the Natural Resource Damage Funding Guidelines link in Section G of Part IV.

Claims for Removal Costs: A removal cost claim must be made within six (6) years after the date of completion of all removal actions for the incident.

NPFC (National Pollution Funds Center) considers the claim as "presented" on the day it is received.

False Claims

If you submit a false claim you can be subject to civil and criminal prosecution under Federal law (18 U.S.C. 287 and 1001; 31 U.S.C. 3729).

**Resource guide prepared by Attorney Kenneth Smith of Sheller, P.C., June 2010*

About Sheller, P.C.

The firm of Sheller, P.C. is nationally recognized as committed to the aggressive and compassionate representation of its clients. Sheller, P.C. maintains a practice concentrating in areas of drug product and medical device liability, medical malpractice, pharmaceutical whistleblower cases, toxic tort and complex catastrophic personal injury litigation, consumer product safety and fraud, equality and compensation.

The BP Oil Spill Compensation Claims team is led by Attorney Ken Smith, licensed in Florida, Mississippi, Washington D.C. and Pennsylvania.

Attorneys from Sheller, P.C. have successfully litigated groundbreaking cases dealing with everything from [pharmaceutical products](#), [medical devices](#), [environmental issues](#) and [tobacco company fraud](#) to [Toyota motor vehicle injury](#) and [diminished value](#) to [consumer data privacy breach](#), [birth defects](#) and [more](#). In just fifteen months of 2009-2010, Sheller, P.C. attorneys were instrumental in the recovery of \$4.2 billion for the federal government [representing whistleblowers](#) in pharmaceutical fraud, failure to warn and off-label marketing cases. Their successes have garnered press coverage from the CBS Evening News, Fox News (National), CNN, MSNBC, Good Morning America, The New York Times, Wall Street Journal, Washington Post, Los Angeles Times and Philadelphia Inquirer, among many others.

Sheller, P.C.

home office:

1528 Walnut Street, 3rd Floor,

Philadelphia, PA 19102

(215) 790-7300

Toll Free: (800) 883-2299