

Deepwater Horizon Event

Oil Spill Documentation Guidance for Local Government Officials



Louisiana Legislative Auditor

In response to the Deepwater Horizon explosion and resulting oil spill in the Gulf of Mexico that occurred on April 20, 2010, the Louisiana Legislative Auditor developed information to help local government officials in the affected parishes with the process of submitting claims for costs incurred as a result of the oil spill.

As part of this effort, the Legislative Auditor prepared a packet of information that local government officials may use when documenting their removal costs and damage claims. The information packet is available on the Legislative Auditor's website at www.la.la.gov/disasterassistance. The forms are not mandatory but are intended to provide a consistent, structured format for developing claims.

The following pages highlight federal regulations and guidance from the U.S. Coast Guard National Pollution Funds Center concerning documentation to be submitted by local government entities for reimbursement of removal costs and damage claims. It is important to remember that every situation is unique and, as a result, each situation deserves careful individual review.



Courtesy of Times-Picayune

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What is the Oil Pollution Act of 1990?

The Oil Pollution Act of 1990 (33 U.S.C. 2701-2761) provides comprehensive prevention, response, liability, and compensation guidance to claimants affected by vessel- or facility-caused oil pollution.

Why is the Oil Pollution Act of 1990 important to local governments?

The Oil Pollution Act of 1990 authorized the Oil Spill Liability Trust Fund to pay for expeditious oil removal and uncompensated damages. The maximum size of the trust fund is \$2.7 billion. The National Pollution Funds Center (NPFC) administers the trust fund. The Oil Pollution Act provides a mechanism for states and local governments to obtain compensation for damages arising from oil spills.

The Oil Spill Liability Trust Fund can be used for the following purposes:

- Removal costs incurred by the U.S. Coast Guard and the Environmental Protection Agency
- Costs incurred by state and local governments for removal activities
- Payments to federal, state, and Indian tribe trustees to conduct natural resource damage assessments and restorations
- Payment of claims for uncompensated removal costs and damages
- Research and development
- Other specific appropriations

How do local government claims fit under the Oil Pollution Act of 1990?

The following conditions are required for claims to be eligible for reimbursement under the Oil Pollution Act of 1990:

- The spill involves oil.
- The spill or substantial threat of spill is to a navigable water of the United States or the adjoining shorelines.
- The spill or substantial threat of spill must have come from a vessel or facility.
- The responsible party for the spill has been identified by a state or federal agency or the Federal On-Scene Coordinator (FOSC).
- Removal activities must be consistent with the National Contingency Plan (NCP).

Are local governments' removal activities consistent with the NCP?

To ensure that removal activities are consistent with the NCP, local governments should coordinate their efforts with the FOSC. Contact the Joint Information Center at (985) 902-5240 for more information.

What are the federal regulations governing oil spill claims?

Federal regulation (33 CFR 136) governs the claims procedures for the Oil Spill Liability Trust Fund. Federal procedure requires local governments (and individuals and businesses) to first submit their claims to the responsible party, in this case BP. However, if the governor allows local government claims to be included with state claims, then local governments may submit their claims through the state to the NPFC.

Where do local governments file their claims?

Local governments should first present their claims to the responsible party, BP. If BP denies a claim or does not provide payment within 90 days, then the local government may submit its claim to the NPFC.

What types of costs and damages are eligible for reimbursement?

The following costs and damages are eligible for reimbursement under the Oil Pollution Act of 1990:

- Removal costs (e.g., personnel salary costs, including overtime; travel and per diem expenses; costs of using government agency-owned equipment or facilities; expenses for contractor- or vendor-supplied goods and services, etc.)
- Real or other property damage (e.g., costs to remove oil from property and restore property to previous condition, loss of property value, etc.)
- Boat damage (e.g., costs to remove oil stains from boat and restore boat to previous condition, etc.)
- Loss of government revenue (e.g., lost property tax revenues because of declines in property values, lost sales tax revenues, etc.)
- Increased public service costs (e.g., costs of providing emergency traffic control, costs of providing additional fire protection, costs of providing additional garbage collection, etc.)

The fact that a cost is ineligible under the Act does not preclude BP from reimbursing those costs.

What types of costs and damages are not eligible for reimbursement?

Eligible costs do not include ordinary administrative, personnel, or equipment and material costs (including costs to upgrade equipment) that a local government customarily incurs and would have incurred regardless of the Deepwater Horizon Event.

Also, if removal costs or damage claims have already been paid, no other claim for the same removal costs or damages can be paid from the Oil Spill Liability Trust Fund. For example, if a removal contractor accepts payment from the trust fund for his removal costs but then fails to pay the subcontractor, the subcontractor cannot be paid from the trust fund for the same removal activity.

What documentation do local governments need to support their claims?

The documentation needed depends on the type of claim filed, whether for removal costs or damage claims. Examples of supporting documentation may include:

- Photographs or videos
- Contractor and subcontractor invoices and receipts
- Cancelled checks
- Proof of ownership
- Log books
- Documents showing past years' revenues
- Time sheets
- Affidavits (if documentary proof does not exist)

Is there a form local governments must use to submit claims?

There is no required format for claims. However, the Louisiana Legislative Auditor has developed templates for submitting a claim including:

- Documentation Process Form
- Documentation Process Workbook

These templates are available on the Legislative Auditor's website at

www.la.la.gov/disasterassistance.

How long does a local government have to file a claim?

A removal cost claim must be filed within 6 years from the date of completion of all removal actions for the oil spill. Damage claims must be made within 3 years from the date on which the damage and its connection with the oil spill was reasonably discoverable.

What if the responsible party denies a claim or fails to act?

If the responsible party denies a local government's claim or does not provide payment within 90 days of the claim submission, the local entity may submit its claim to the NPFC. If the NPFC denies the claim, the local government may file suit.

What other Louisiana laws apply?

Local political subdivisions are required to budget and appropriate all funding received as a result of the oil spill. Therefore, the Local Government Budget Act (LGBA) must be complied with in regard to the dollars received. The local entity must amend its existing budget in accordance with the LGBA. Additional information related to this process is available on the Legislative Auditor's website at

www.la.la.gov/disasterassistance.

Once appropriations have been established by the local body, any monies expended for public works and/or materials and supplies must comply with the Louisiana Public Bid Law (R.S. 38:2211 *et seq*) and local ordinances. Professional services for local entities do not have to comply with the Louisiana Public Bid Law but should comply with all local ordinances and practices. Further information on the Louisiana Public Bid Law is available on the Legislative Auditor's website at

www.la.la.gov/disasterassistance.

Need more information?

Contact

John L. Morehead, CPA,
Director of Recovery Assistance,
at (225) 339-3800.

This document is available on the Legislative Auditor's Web site at

www.la.la.gov/disasterassistance.

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