

The Deepwater Horizon Oil Spill: Overview of Governmental Claims Under The Oil Pollution Act of 1990



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The Oil Pollution Act (OPA) of 1990

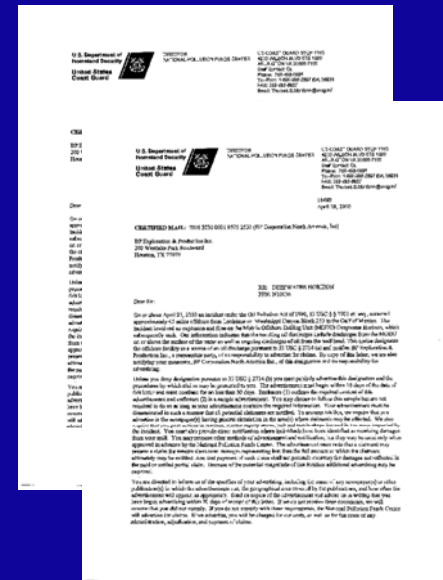
33 U.S.C. §§ 2701 et seq.

- Passed in response to the 1989 Exxon Valdez disaster.
- Chapter 376, The Pollutant Discharge Prevention and Control Act, actually predated OPA.



Responsible Parties

- The Coast Guard has notified Transocean and BP of their potential liability under OPA.
- OPA defines who the Responsible Parties are; also allows actions for contribution against others. (33 USC § 2702)





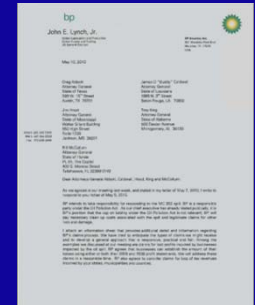
Remedies

- Removal / response costs (33 USC 2702(b)(1))
- Damages (33 USC § 2702(b)(2))
 - Natural resources (compare to Fla. Stat. § 376.121)
 - Real or personal property
 - Governmental revenues (net loss of taxes, etc.)
 - Increased cost of providing public services



Liability caps

- Generally capped at removal costs plus \$75 million (33 USC § 2704(a)(3))
- BP has repeatedly stated, in writing, that any statutory caps are “not relevant.”
- This cap does not apply if the incident was proximately caused by:
 - gross negligence or willful misconduct; or
 - the violation of an applicable federal safety, construction or operating regulation.





Presentation of Claims

- Generally, claims must be denied by the Responsible Party before they are presented to the Oil Spill Liability Trust Fund.
- The Governor can directly present removal cost claims to the Oil Spill Liability Trust Fund. (33 USC § 2713(b)(1)(c))
- The Oil Spill Liability Trust Fund is limited to \$1 billion per incident, with no more than \$500 million for natural resource damages.



Interest and Claims

- Interest begins to accumulate 30 days after a claim is presented to the Responsible Party. (33 USC § 2705(b)(1))
- If the Responsible Party does not pay a claim within 90 days of presentment, the claim is considered to be denied. (33 USC § 2705(c)(2))
- BP has already paid more than \$18 million in claims to over 22,000 Floridians. BP has also provided another \$83 million in grants to the State of Florida. To date, BP has incurred total costs of \$2.65 billion from this disaster.

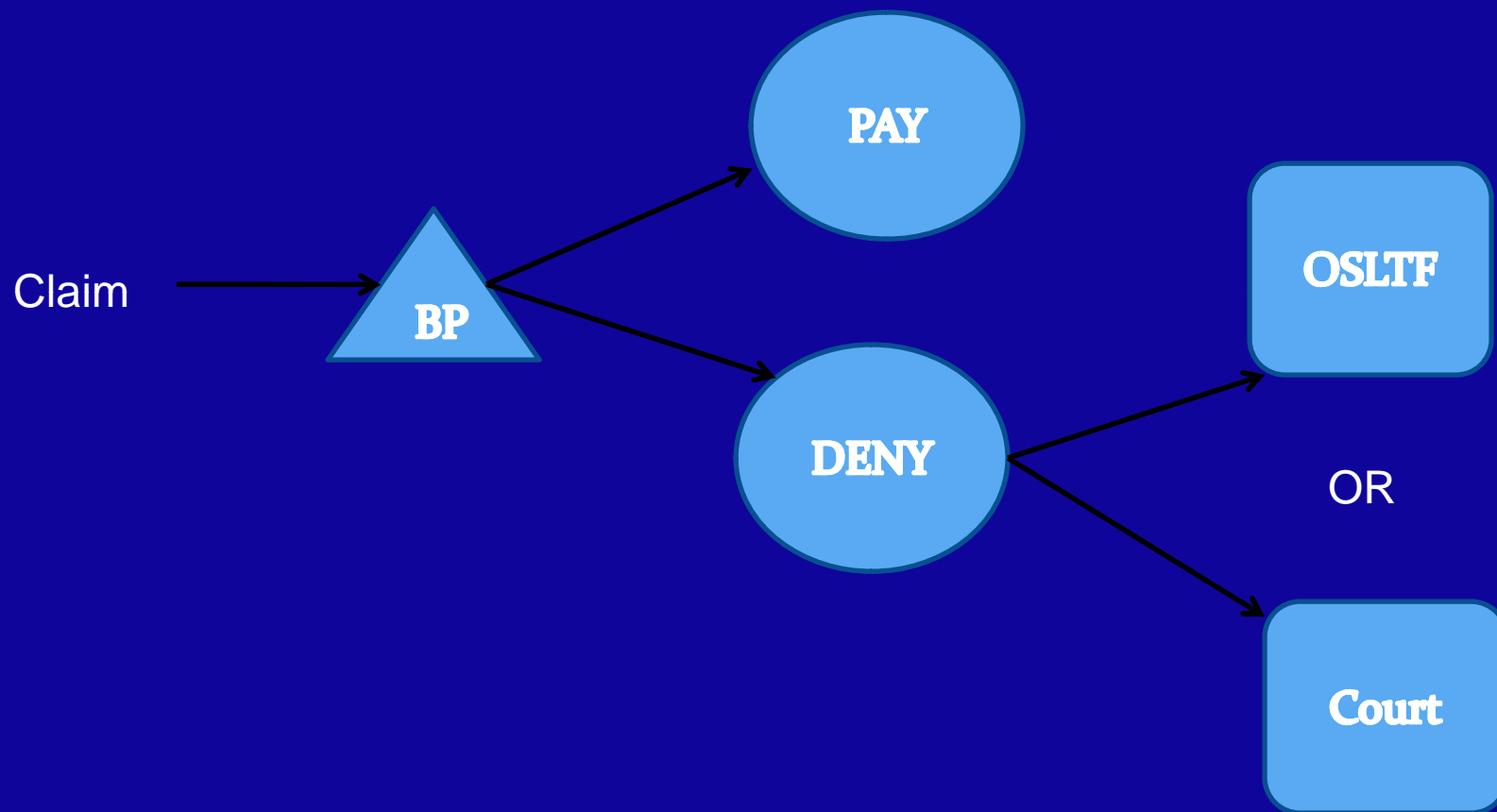


Statute of Limitations

- Natural resource damage claims must be brought within three years of the discovery of the loss or the completion of the natural resource damage assessment. (33 USC § 2712(h)(2))
- Damage claims must be brought within three years of the date on which the loss is reasonably discoverable with the exercise of due care. (33 USC § 2712(h)(2))
- Removal cost claims must be brought within six years of the completion of all removal actions. (33 USC § 2712(h)(1))



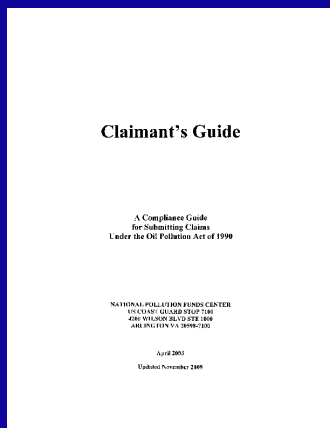
Claims Process



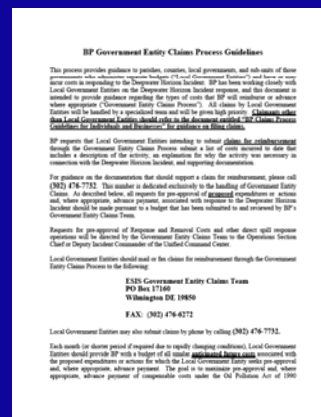


Guides

The Coast Guard and BP have written guides to help governmental entities navigate the claims process. The guides can be read by double clicking on each icon.



Coast Guard



BP



Escrow Account

- BP has agreed to fund a \$20 billion escrow account to pay claims, to be overseen by Kenneth Feinberg.
 - \$3 billion will be added during this quarter
 - \$2 billion in 4Q 2010
 - Then \$1.25 billion in each subsequent quarter
- BP will set aside sufficient assets to secure the undeposited balance of the escrow fund.
- Governmental claims will continue to be processed by BP's adjusters but can be paid out of the \$20 billion fund.



Conclusion

QUESTIONS?