



FEMA

W-10065a

June 7, 2010

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators and the National Flood Insurance Program (NFIP) Servicing Agent

A handwritten signature in black ink, appearing to read "James A. Sadler".

FROM: James A. Sadler, CPCU, AIC  
Director of Claims  
National Flood Insurance Program  
Federal Insurance and Mitigation Administration  
DHS/FEMA-MT-RN-CA

SUBJECT: Oil in Flood Water

FEMA has been asked to provide a position on potential oil mixed with flood waters. The following are bullet points that have been used to respond to specific questions. This is not a comprehensive claims procedure, and, if needed, FEMA will provide a more in-depth process description. The current claims process relies upon the expertise of flood certified adjusters, adjusting firm expertise, and insurer expertise, supported by engineering or other expert opinions regarding causation and damages.

Oil in flood water is not new for the NFIP, especially in riverine flooding. In the past, the mixing of oil and other pollutants in flood waters resulted from damage caused by a storm.

Below are some bullet points that address the concerns of the Gulf Coast:

- There must first be a defined flood\* (see below) as described in the Standard Flood Insurance Policy (SFIP). Damage caused by the oil in flood waters is covered subject to the provisions of the SFIP.
- Under the terms of the *General Property Form* of the SFIP (commercial buildings and contents coverages must be purchased separately), damage caused by pollutants is limited to \$10,000.
- The *Dwelling Form* and the *Residential Condominium Building Association Policy Form* limit damage to the building and contents (both coverages must be purchased separately)

from pollutants to the policy limits. This coverage does not increase the Coverage A or Coverage B limit of liability.

- Damage to ground, soil, or land caused by flood, oil, or flood water mixed with oil is not covered.
- The cost of complying with any local or State ordinance including one that requires special removal methods for oil is specifically excluded (certain floodplain management mitigation requirements are exceptions). This exclusion would also apply to local or state condemnations; the NFIP only pays for direct physical loss by or from flood\*.
- For all three forms there is no coverage for testing or monitoring of pollutants unless there is a law or ordinance requiring it.
- If payment is made, FEMA or the WYO is automatically subrogated to the policyholder's right to recover the payment from a responsible party. The policyholder may not give up the right of FEMA or the WYO to recover or do anything to impede recovery. If the policyholder makes a claim against an entity who caused a loss and recovers any money, the policyholder must pay FEMA or the WYO back before they may keep any of the money.

\*Flood is a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or two or more properties (parcels of land) at least one of which is the policyholder's property (parcel of land) from:

- Overflow of inland or tidal waters
- Unusual and rapid accumulation of runoff or surface waters from any source
- Mudflow

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Suggested Routing: Claims, Training, Underwriting, Adjusting Firms