

Tuesday, February 27, 2007

The “2/28” Obsession: Possible New Katrina Deadline to Preserve Rights



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Recently, Judge Duval ruled in a local federal case, Robinson v. U.S., C.A. 06-2268, that residents of St. Bernard, New Orleans East, and the lower Ninth Ward could sue the Corps of Engineers for the role “Mister Go” or Mississippi River Gulf Outlet (“MRGO”) had in Katrina flooding. This could open the door to other suits.

A predicate for filing a lawsuit like this is the filing of an administrative claim against the Corps of Engineers on a Standard Form 95 (attached). The government has reportedly interpreted the Federal Tort Claims Act (“FTCA”) as limiting the filing deadline to be “2/28” (February 28, 2007), even though the Act seems to allow two full years for administrative filing (or August 28, 2007). We were not able to confirm the February 28, 2007, deadline with the government (they did not return calls), but it is best to play safe and file early this Wednesday (reported on the news to be moved to this Thursday), to preserve rights to a lawsuit or a class action. However, some claims possibly involve maritime damages too (e.g., a government controlled barge hitting a levee and causing flooding). The announced deadline for filing a claim under the pertinent Admiralty Extension Act is only 18 months. So to be safe and covered by both Acts, administrative claims have to be presented to the Corps (not just mailed) very soon.

Some suggestions for the form can be found in other websites, but it must be filed with Angela Jean Drinkwitz, Claims Officer, Department of the Army, New Orleans District, Corps of Engineers, P.O. Box 60267, New Orleans, Louisiana 70160-0267. The claims officer’s physical address at the New Orleans District is 7400 Leake Avenue, New Orleans, Louisiana 70118. It may be best to hand deliver completed claim forms at the Corps “drop box,” presently inside the North gate at Burdette St. and Leake Ave. entrance, not later than 4:00 p.m., by the new reported deadline, March 1, 2007. Warning: there may be quite a crowd or traffic jam, and the drop box is small. It is also best to have any hand delivery witnessed in some way, if possible.

Consider these tips:

1. Allege government negligence in designing, building, maintaining and inspecting the floodwalls;
2. Cite the 1965 Flood Control Act or other laws the government violated;
3. Allege property damage or personal injury, or both, and maritime damages; and
4. State a sum certain (not a range) in damages in the SF 95.

The Corps has six months to investigate a FTCA claim before any lawsuit can be filed by a claimant, but after six months, a lawsuit can be filed if the Corps has not acted. A claim can also be administratively held open indefinitely with the Corps until it decides on a timely filed claim, if the claimant wishes. Note: there are government defenses to these claims, and it is uncertain at present if a maritime cause of action applies to many of them. Following the above steps only preserves rights; it does not guaranty success or damage awards.

For further information, see the article by Stan Millan on this general subject, "Cracking the Floodwall Code," at Vol. 20, No. 1 Tulane Environmental Law Journal 169 (2006).

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