

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
2/2/2011

VIA MAIL and EMAIL: [REDACTED]@att.net

[REDACTED]
Marrero, LA 70072

RE: Claim Number: N10036-0049

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0049 involving Deepwater Horizon. Please see the attached Claim Summary / determination Form for an explanation regarding this denial.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[REDACTED]
[REDACTED] Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/1/2011
Claim Number	: N10036-0049
Claimant	: [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$30,000.00

FACTS:

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT:

On 4 November 2010, Mr. [REDACTED], President of [REDACTED] (Claimant) presented a claim for lost profits and earnings in the amount of \$30,000.00. The Claimant asserted that his lost profits and earnings resulted from the loss of his customer base as a direct result of the Deepwater Horizon incident. The Claimant started a new business, [REDACTED], an independent cell phone retailer business on February 21, 2010.

Claimant asserted that his alleged loss of profits associated with [REDACTED] was due to the Deepwater Horizon incident. The NPFC denied the claim on November 22, 2010, on the grounds that the Claimant had not established that the loss of profits resulted from the Deepwater Horizon incident. Documentation submitted reflected that the business did not sustain an identifiable loss of sales. From the start of the business in February 2010, [REDACTED] sales increased every month through July 2010. Sales during the months of August, September, and October 2010 were lower than July 2010, but were still consistent with the level of sales earned during prior months. Lower sales earned during August, September, and October 2010 may be indicative that the business' startup growth reached a plateau and began to level off. Seasonality may have also affected [REDACTED] increases and decreases in monthly sales.

Additionally, the Claimant provided a letter that stated many of the local residents were fishermen who were re-employed as oil-spill responders working offshore however the Claimant has failed to establish how the fishermen's re-employment negatively impacted his business sales. The Claimant also provided notes on the Statement of Revenue and Expenses whereby he suggests there is a loss based on their negative cash flows. The Statement of Revenue and Expenses appears to be prepared on a cash basis rather than an accrual basis and in doing so, a cash basis statement does not indicate the month in which income and related expenses were

earned or incurred. Evidence of this is shown in the [REDACTED] cost of goods sold from the Statement of Revenue and Expenses.

During the first month of operation, February 2010, the cost of sales were \$31,281.00 compared to total sales of \$464.00. It is likely the Claimant recorded the initial purchase of product inventory or business startup costs within the cost of sales. In nearly every month since inception, the cost of sales have been greater than actual sales which is not an indication that the business activity has declined.

Reconsideration Claim Analysis

The claimant requested reconsideration via facsimile on December 23, 2010. To support his request for reconsideration, the claimant provided no new information other than a request for the NPFC to reconsider his claim with the utmost consideration.

NPFC Determination on Reconsideration

The NPFC again denies the claim because the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. The Claimant has failed to meet his burden to establish that the [REDACTED] has suffered an economic loss as a direct result of the Deepwater Horizon incident.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *February 1, 2011*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: