U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 3212 3971

5890/DWHZ
Claim # N10036-1299
18August 2011

Advanced Metal Systems of Alabama, Inc.
ATTN: Sandra Carden
26513 County Road 32
Elberta, AL 36530

Re: Claim Number: N10036-1299

Dear Ms. Carden:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1299 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-1299.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[redacted]
Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1299
Claimant	Advanced Metal Systems of Alabama, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$39,217.57

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. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 11 August 2011, Ms. Sandra Carden, on behalf of Advanced Metal Systems of Alabama, Inc., (collectively Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $39,217.57.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant is a construction company, in Elberta Alabama, specializing in seamless gutters. Claimant alleged that economic effects of the oil spill in Baldwin County, AL, resulted in losses to the Claimant's business.[2]

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

(a) That real or personal property or natural resources have been injured, destroyed, or lost.

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for

[1] Optional OSLTF Claim Form dated 12 May 2011.
[2] Id.

profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for—

(a) All income resulting from the incident;
(b) All income from alternative employment or business undertaken;
(c) Potential income from alternative employment or business not undertake, but reasonably available;
(d) Any saved overhead or normal expenses not incurred as a result of the incident; and
(e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Email from Claimant to NPFC, noting sum certain of $39,217.57, August 2011.
- Optional OSLTF Claim Form, 12 May 2011;
- Letter from Claimant to NPFC, 21 May 2011;
- Estimate by Claimant for Salvation Army Thrift Stores, dated 30 June 2010;
- Estimate by Claimant for Hammond Construction, dated 31 March 2010;
- Estimate by Claimant for Mrs. Stritzinger, dated 1 February 2010;
- Estimate by Claimant for Mr. John Coleman, dated 25 March 2010;
- Letter from Joshua Carden to NPFC, dated 21 May 2011;
- Letter from Congressman Jo Bonner, 25 April 2011;
- Privacy Act Request, from Claimant to Congressman Jo Bonner, 5 May 2011;
- GCCF Consent to Disclosure of Claimant Information, 5 May 2011;
- Letter from Congressman Bonner to Claimant, 9 May 2011;
- Email from GCCF Congressional Liaison to Congressman Bonner, 9 May 2011;
- Letters from Senator Jeff Sessions to Claimant, 19 May 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, Claimant ID 1141380, 22 April 2011;
- Confirmation of Claimant's joinder to Transocean and the Deepwater Horizon Lawsuit, MDL No. 2179, 5 April 2011;
- In Re: Oil Spill by "Deepwater Horizon" Direct Filing Short Form;
- Letter from Claimant to GCCF, 20 February 2011;
- Profit and Loss Statement, 2010;
- Profit and Loss Statement, 2009;

- Profit and Loss Statement, 2008;
- GCCF Claim Form, showing business claimant information, claiming $46,725.35 in lost earnings or profits;
- Letter from GCCF to Claimant, 18 November 2010;
- Letter from GCCF to Claimant, 23 September 2010;
- Letter from Claimant to GCCF, 18 September 2010;
- Letter from GCCF to Claimant, 23 August 2010;
- Various newspaper articles regarding GCCF claims process;
- Renewal of business license, showing gross receipts of $35,000.00;
- City of Foley business license;
- City of Daphne, Alabama, 2010 business license;
- Business License, Town of Elberta, AL;
- State Licensing Board for General Contractors, License No.: S-40969, 31 December 2010;
- Business License, Gulf Shores, AL;
- Business License, Orange Beach, AL;
- City of Foley, Business License Renewal Form;
- 2010 Form1040;
- 2010 Schedule A (Form 1040);
- 2010 Schedule C (Form 1040), showing gross receipts of $151,339.00 and profit of $-19,076.00;
- 2010 Schedule F (Form 1040);
- 2010 Form 8863;
- 2010 Form 4562;
- 2010 Schedule A (Form 40);
- 2010 (Form 40);
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Form 4562

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF, as well as a First Quarter Interim Claim (ICQ22011) to the RP/GCCF, and was assigned Claimant ID 1141380. The EAP claim was assigned claim # 3009595 and ICQ12011 was assigned claim # 9304820. In ICQ12011, Claimant sought $46,725.35 in lost profits and earning capacity due to economic effects of the Deepwater Horizon oil spill.[3] EAP and ICQ2011 were denied prior to presentment to the NPFC.

On 11 August 2011, Claimant presented this claim for $39,217.57 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Because this claim has been previously adjudicated by the RP/GCCF, the NPFC has the capacity to adjudicate the entirety of this loss of profits claim, in the amount of $39,217.57, as presented to the NPFC.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that her loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a)

[3] Copy of GCCF Claim Form, showing business claimant information, claiming $46,725.35 in lost earnings or profits, provided by Claimant.

and § 136.105(e)(6), the Claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support her claim.

In order to prove a claim for loss of profits and impairment of earnings capacity under OPA, the Claimant must demonstrate (1) an actual financial loss, and (2) that the loss was a result of the discharge or substantial threat of discharge of oil.

The NPFC reviewed all information and documentation provided by the Claimant. Profit and loss statements provided by the Claimant do not indicate that the Claimant's earnings were affected by the oil spill. For example, in April of 2010, the Claimant reported a loss of $4,153.90,[4] indicating that revenue was decreasing in the period leading up the oil spill. Furthermore, in the months of May – December 2008 compared to those months in 2009, the Claimant's profits decreased by 167.81%, indicating a clear downward trend in revenue in the year before the oil spill.[5]

Comparing 2010 to 2009, the Claimant's business in the months following the oil spill was actually more profitable than it was in those months during the previous year. For the period of May – December 2009, Claimant lost $16,332.75, with gross sales of $95,857.28.[6] During the period of May – December 2010, Claimant earned profits of $11,377.78 with gross sales of $116,333.30.[7] The evidence provided by the Claimant clearly indicates that the Claimant was significantly more profitable from May-December 2010 than during those same months the prior year. As such, the Claimant's past performance does not indicate that the Claimant's business was affected by the oil spill.

Furthermore, the Claimant does not provide evidence to indicate that any particular job(s) were lost or cancelled as a result of the oil spill. Claimant included estimates for work to be done for various clients, all marked with the notation "cancelled due to funds." However, the Claimant does not provide evidence to show that any of this work was ever scheduled for completion, nor does she provide information that would corroborate that those who sought estimates, but did not pursue work with Advance Metal Systems, did so because they were affected by the oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that there was an alleged loss in the amount of $39,217.57, and (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***8/18/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[4] Advance Metal Systems, Inc., Profit & Loss, 2010.
[5] Id.; Advance Metal Systems, Inc., Profit & Loss 2008. 2008 profits of $24,083.83, compared to 2009 losses of $16,332.75 for months of May – December.
[6] Totals calculated from Advance Metal Systems, Inc., Profit & Loss 2009.
[7] Totals calculated from Advance Metal Systems, Inc., Profit & Loss 2010.