

U.S. Department of
Homeland Security

**United States
Coast Guard**



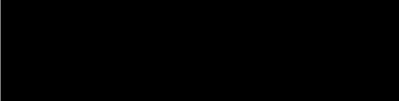
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 8947

5890/DWHZ
19 March 2013

The Floating Deck Shop, LLC



Re: Claim Number: N10036-1891

Dear Ms. Bennett,

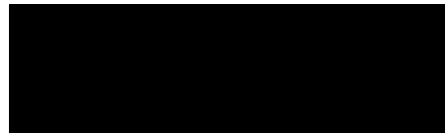
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1891 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-1891.

Mail reconsideration requests to:

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



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

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1891
Claimant	The Floating Dock Shop, LLC
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$160,000.00

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 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 certain individual and business claims on behalf of BP.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 6 February 2013, Ms. Dana Bennett on behalf of The Floating Dock Shop, LLC, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$160,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is a marine contractor whose offices were located in Greenwell Springs, Louisiana at the time of the oil spill. The Claimant alleged that the oil spill caused the cancellation of two marine construction projects and also caused a general decrease in business due to the economic effects of the oil spill on the state of Louisiana.

The Claimant stated that following the oil spill, the company "had to move to central Louisiana in order to continue operations" and also "spent great time, effort and monies in becoming a GSA contractor in order to make up for lost revenues."² The Claimant also stated that the company had to "re-align its businesses and concentrate on northern lakes and bayous in Louisiana as a direct result of the oil spill and its economic impact on the state."³

Following the oil spill, the Claimant applied for and was awarded a U.S. Small Business Administration Disaster Loan in the amount of \$144,000.00.⁴ The Claimant seeks to recover the

¹ Optional OSLTF Claim Form, signed on 23 January 2013.

² Company Statement Regarding Operation since BP Oil Spill, 14 December 2012.

³ Company Statement Regarding Operation since BP Oil Spill, 14 December 2012.

⁴ Optional OSLTF Claim Form, signed on 23 January 2013.

full amount of this loan plus any payments made toward repayment of the loan as of the time of this claim submission, for a total of \$160,000.00.⁵

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. 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 profits or earnings for the same or similar activities outside of the area affected by the incident also must be established; and
- (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 undertaken, 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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

⁵ Optional OSLTF Claim Form, signed on 23 January 2013.

DETERMINATION OF LOSS

Claimant's Submission to the NPFC

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 23 January 2013;
- The Floating Dock Shop, Company Information;
- "Narrative of economic impact from BP oil spill on The Floating Dock Shop, LLC" dated 21 May 2010;
- Letter from the U.S. Small Business Administration, granting loan approval, 24 June 2010, with attachments and Loan Authorization Agreement;
- U.S. Small Business Administration Note, 24 June 2010;
- Electronic Funds Transfer Document;
- SBA Security Agreement;
- Letter from the SBA to the Claimant, 18 June 2010;
- Deepwater Horizon Economic and Property Settlement, Business Economic Claim Form.
- Itemized response to NPFC request for additional information, emailed 8 March 2013;
- Form 4506-T Request for Transcript of Tax Return, Rev. January 2012;
- List of projects, 2008 – 2011;
- Copy of contract for customer, Delcambre;
- Copy of quotation for customer, Delcambre;
- Copy of contract for customer, Delcambre;
- Copy of contract for customer, Delcambre;
- Copy of contract for customer, Bayou Segnette, undated;
- Copy of contract for customer, Bayou Segnette, undated;
- Monthly Profit and Loss Statements, 2008 – 2011;

On 20 January 2011, the Claimant alleged to have presented this claim to the Responsible Party. According to the Claimant, the Responsible Party denied payment on the claim.⁶ The NPFC does not have enough information to verify that this same claim for the same amount of damages was first properly presented to the Responsible Party prior to its presentment to the NPFC. However, the NPFC will adjudicate the claim to the extent that the claim before the NPFC satisfies OPA presentment requirements.⁷ Any damages subject of this claim which were not included in a claim to the Responsible Party are denied for improper presentment.

Furthermore, evidence in this claim submission indicates that the Claimant may be a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).⁸

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any 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)

⁶ Optional OSLTF Claim Form, signed on 23 January 2013.

⁷ 33 C.F.R. § 136.103.

⁸ The Claimant has not provided evidence to indicate that they are excluded from or have opted out of the E&PD Settlement.

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

As an initial matter, it appears that the Claimant may be a member of the E&PD Settlement. If so, then this claim would be considered to have been settled, and the Claimant would be ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the claimant no longer has rights to the claim and therefore cannot subrogate the NPFC to those rights.

If the Claimant disagrees that she is a member of the economic damages class of the E&PD Settlement, she should submit evidence to indicate that she has either opted out or is excluded from the E&PD Settlement in her request for reconsideration of this claim.

Furthermore, this claim would also be denied on its merits. In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction in income, and (2) that the financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

Here, the Claimant alleged that the oil spill and its general economic impact in the state of Louisiana caused certain dock projects to be cancelled and also caused a general decrease in business. In support of these assertions, the Claimant provided evidence indicating that negotiations had been ongoing for two specific projects in Louisiana, which were allegedly cancelled as a result of the oil spill.

However, the Claimant has not provided evidence sufficient to prove that either of these projects had advanced the beyond initial negotiation phases, nor has the Claimant proven that bids were actually accepted which would have guaranteed that the Claimant would have indeed been contracted to perform the work. Furthermore, the Claimant has not provided evidence sufficient to prove that either project was indeed cancelled as a result of the discharge of oil caused from the Deepwater Horizon oil spill. Rather, it appears as though one project has been delayed several times since 2009, but has not been cancelled as of the date of this claim submission. As such, the delay of a project on which the Claimant may still earn income, is not a compensable loss under OPA.

In addition to the cancelled projects, the Claimant alleged that the oil spill caused a general decrease in business. However, the Claimant has not provided evidence sufficient to prove that their business in fact declined in the period following the oil spill. Rather, the Claimant's financial records indicate that the Claimant's earnings substantially increased for the period of May to December of 2010, following the oil spill. Records provided by the Claimant indicate that from May to December of 2010, the Claimant completed projects generating revenue of \$908,843.87, as compared to revenue of \$521,527.59 for the same period of 2009.⁹ Although the Claimant alleged to have sustained losses continuing through 2011, the Claimant has not provided any evidence to indicate how the oil spill may have affected the company in 2011, especially considering that no effects are evident in 2010.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that they sustained a financial loss in the amount \$160,000.00, or (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 discharge of oil. Additionally, this claim is

⁹ Records of completed projects, 2008 – 2011.

considered to have been settled by virtue of the Claimant failing to provide evidence to prove that that they are excluded or have opted out of the E&PD Settlement.

Claim Supervisor: *NP*

Date of Supervisor's Review: *3/19/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: