

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3206

5890/DWHZ
26 April 2012

Cleaning by Alis, LLC.



Re: Claim Number: N10036-1722

Dear Ms. Lozano:

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 your claim number N10036-1722 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1605.

Mail reconsideration requests to:

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

Sincerely



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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1722
Claimant	Cleaning by Alis, LLC. – Ms. Alis Lozano
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,000.00

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. 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.

CLAIM AND CLAIMANT

On 16 March 2012, Ms. Alis Lozano on behalf of Cleaning by Alis, LLC (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) form to the National Pollution Funds Center (NPFC) seeking \$15,000.00 for loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.¹

The Claimant is owner of Cleaning by Alis, a cleaning business located in Sarasota, FL.² The Claimant asserts that as a result of the Deepwater Horizon oil spill, tourism decreased and consequently the company's business' workload of cleaning three local Chili's restaurants was reduced from three to two.³

The Claimant is seeking \$15,000.00.⁴

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

¹ Optional OSLTF form from Cleaning by Alis dated 16 March 2012.

² 2009 Schedule C (Tax Form 1040).

³ Optional OSLTF form from Cleaning by Alis dated 16 March 2012.

⁴ Optional OSLTF form from Cleaning by Alis dated 16 March 2012.

by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 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) 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.

DETERMINATION OF LOSS

The Claimant's Submission to the OSLTF

In support of her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Form dated 16 March 2012;
- Document titled "Letter of Recommendation" and signed by Claudia Becerro;
- Form W-9 Request for Taxpayer ID Number and Certification for Cleaning by Alis, Inc.;
- 2008 Form 1099-MISC for Cleaning by Alis;
- 2009 Form 1099-MISC for Cleaning by Alis;
- 2008 Schedule C (Form 1040);
- 2009 Schedule C (Form 1040);
- 2010 Schedule C (Form 1040);

- 2011 Form 1120;
- Document Titled "Profit and Loss Statement" for Cleaning by Alis, Inc. and dated 25 January 2012;
- Brinker Invoices ranging from 31 January 2008 through 31 December 2011.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$15,000.00.

Prior to presenting this Claim to the NPFC, the Claimant filed a Full Review Final (FRF) Claim with the GCCF as a business for loss of profits and impairment of earnings capacity.⁵ The Claimant was assigned Claimant ID # 3552663 and Claim ID # 9519895. The FRF Claim was denied on 01 March 2012.⁶

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 or destruction or loss of real or personal property or 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) 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. The NPFC considered all the documentation submitted by the Claimant.

In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant has not provided evidence to support that this loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. The Claimant indicated her business was reduced from cleaning three Chili's restaurants to two Chili's restaurants due to a reduction in tourism.⁷ The Claimant provided no documentation to establish her reduction in business was caused by a reduction in tourism and was a result of the oil spill. Furthermore, NPFC staff contacted the Sarasota County Tax Collector's office and found that 2010 did not have a reduction in tourism.⁸ The statistics show visitors and tourism spending increased in Sarasota County for 2010 compared year over year to 2009.⁹ As such, the Claimant has not established by a preponderance of the evidence that her alleged loss of earnings was due to the oil spill.

The Claimant also provided insufficient documentation to support her alleged loss in income; in fact, her income increased in 2010.¹⁰ The Claimant's net income documented on her 2009 taxes was negative (\$7,521.00) and increased in 2010 to \$17,240.00.¹¹ In 2011 the company's revenues continued to increase by \$5,680.00.¹² Accordingly, the Claimant has not demonstrated an alleged loss as presented to the NPFC by a preponderance of the evidence.

⁵ GCCF Denial Letter dated 01 March 2012.

⁶ GCCF Denial Letter dated 01 March 2012.

⁷ Letter from Claimant.

⁸ Sarasota County Tourist Development Tax for 2009 through 2011.

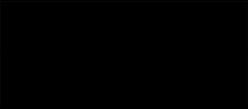
⁹ Sarasota County Tourist Development Tax for 2009 through 2011 and Visitor statistics prepared by the Sarasota County Tax Collector.

¹⁰ Document titled "Profit and Loss Statement" for Cleaning by Alis, Inc. dated 25 January 2012.

¹¹ Schedule C Profit and Loss From Business for 2009 and 2010.

¹² Schedule C Profit and Loss From Business for 2010 and 2011 at line 1. \$35,280.00 minus \$29,600.00 equals \$5,680.00.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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.

Claim Supervisor: *NPF*  *Claims Adjustment Division*

Date of Supervisor's Review: *4/26/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: