

U.S. Department of
Homeland Security

**United States
Coast Guard**

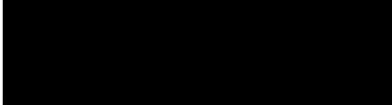


Director
National Pollution Funds Center
United States Coast Guard

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: 7012 2210 0001 7215 0285

5890/DWHZ
21 May 2013

Success Energy, LLC


Re: Claim Number: N10036-1919

Dear Mr. Toups:

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 N10036-1919 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 N10036-1919.

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

Enclosure: Claim Summary/Determination
cc: Success Energy, LLC
313 Timberwood Circle
Lafayette, LA 70508

By Certified Mail:
No. 7012 2210 0001 7215 0308

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1919
Claimant	Success Energy, LLC
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$3,500,000.00

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 claims for 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 15 April 2013, Mr. Mitchell A. Toups, legal representative of Success Energy, LLC (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$3,500,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

At the time of the Deepwater Horizon incident, the Claimant was engaged in the business of generating and selling oil and gas prospects (leases) to third-party companies.² The Claimant alleged that a prospective lease purchaser did not buy its leases because of the 2010 Deepwater Horizon oil spill. Specifically, the Claimant identifies "[t]he U.S. Government's recent deepwater drilling moratorium, its slow pace to provide shallow water drilling permits, the forthcoming increase the Financial Responsibility, and the landslide of new and proposed burdensome regulations on the offshore oil & gas industry" as the circumstances leading to its financial loss.³

The Claimant seeks \$3,500,000.00 in loss of profits damages. A portion of this amount is from Claimant's inability to sell its "offshore prospect at Main Pass for \$475,000"⁴ The balance of the alleged loss appears to be the result of unspecified and undocumented losses of "oil and gas revenue."⁵ It is not clear how loss amounts in excess of \$475,000.00 were calculated.

¹ BP Claims Program – Claim Form for Individuals and Businesses dated 15 April 2013 at p. 11.

² BP Claims Program – Claim Form for Individuals and Businesses dated 15 April 2013 at p. 11.

³ Affidavit of James Docherty dated 1 September 2010.

⁴ BP Claims Program – Claim Form for Individuals and Businesses dated 15 April 2013 at p. 12.

⁵ BP Claims Program – Claim Form for Individuals and Businesses dated 15 April 2013 at p. 12.

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 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF⁶

To support this claim, the Claimant submitted the following documentation:

- Cover Letter, signed by legal representative, 15 April 2013;
- BP Claims Program – Claim Form for Individuals and Businesses dated 15 April 2013;
- Plat of State Leases 19271, 19272, and 19680 (2 copies);
- GCCF Denial Letter dated 4 October 2010, Claimant ID 3005472;
- GCCF Emergency Advance Payment Denial Letter dated 23 October 2010, Claimant ID 3005472
- Claimant's "List of Attachments";
- Affidavit of Kenneth F. Tamplain, Jr. dated 19 August 2010;
- Affidavit of James Docherty dated 1 September 2010;
- Louisiana Secretary of State record for Success Energy, LLC;
- Copies of State Leases 19271, 19272, and 19680;
- Letter dated 27 February 2013 from Success Energy, LLC to the Coffman Law Firm;
- Three offshore maps identifying Success Energy, LLC lease locations;
- Contract for legal services between Success Energy, LLC, and the Coffman Firm and Weller, Green, Toups, & Terrell, LLP;
- Success Energy, LLC Main Pass Project Investment, Update 7/3/12;
- Letter from Success Energy, LLC to BP Claims Program dated 18 June 2012;
- Success Energy, LLC "Transactions by Account" dated 31 December 2012 (7 pages).

Prior to submitting this claim to the NPFC, the Claimant attempted to recover loss of profits or impairment of earning capacity damages through the GCCF and then the BP Claims Program. The GCCF denied the claim.⁷ The Claimant's submission does not indicate that the BP Claims Program either rendered a determination on the claim within 90 days of its presentment or denied the claim.⁸ For the purpose of this adjudication, it will be assumed that the claim to the BP Claims Program, dated 18 June 2012, was either denied or not acted upon within 90 days of presentment.

Because this claim has previously been presented to, and denied payment by, the Responsible Party, the Claimant has satisfied OPA presentment requirements.⁹ On 15 April 2013, the Claimant presented this claim to the NPFC, seeking to recover \$3,500,000.00 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.

Furthermore, evidence in this claim submission indicates that the Claimant is not a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).¹⁰

⁶ Claimant's documentation submission contains multiple copies of several items. Documents are listed once, regardless of the number of copies received.

⁷ GCCF Denial Letters dated 4 October 2010, and 23 October 2010.

⁸ Letter from Success Energy, LLC to BP Claims Program dated 18 June 2012.

⁹ 33 C.F.R. § 136.103(a).

¹⁰ The Claimant is alleging to have sustained losses due to the Gulf of Mexico drilling moratorium, which are excluded from the E&PD Settlement.

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) 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 this claim.

As an initial matter, any damages presented in this claim which represent future losses are denied as speculative in nature. The Claimant calculated his alleged losses as a sum certain total of \$3,500,000.00.¹¹ However, under 33 C.F.R. § 136.235, “the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*” (emphasis added). As noted above, it is unclear exactly how the Claimant arrived at his damages amount (beyond the \$475,000.00 attributable to the lease-sales deal which fell through). Therefore, any amount of this claim which represents damages not yet sustained by the Claimant is not payable by the OSLTF and is therefore denied.

In order to prove a claim for loss of profits and impairment of earnings capacity damages, a claimant must demonstrate that (1) he suffered a financial loss, and (2) that the loss was due to the discharge or substantial threat of discharge of oil. Furthermore, this claim must have been first presented to the Responsible Party prior to presentment to the NPFC.¹²

The NPFC reviewed all information and documentation provided by the Claimant. Though the Claimant asserts that they have sustained a financial loss, the Claimant has not demonstrated that the loss was a result of the discharge or substantial threat of discharge of oil.

The Claimant provided a copy of an affidavit from Mr. Kenneth F. Templain, Jr., of Rooster Petroleum, LCC (“Rooster”) -- the company Complainant asserts was going to purchase Claimant’s lease prospects.¹³ In his affidavit, Mr. Templain is clear that Rooster discontinued negotiations regarding Claimant’s leases due to the drilling moratorium and an uncertain legal and regulatory climate. The Claimant has not presented evidence to show that his losses were caused by oil released during Deepwater Horizon oil spill. Therefore, the Claimant has failed to demonstrate that his losses were due to destruction or loss of property or natural resources caused by the oil discharge resulting from the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate 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 nor has the Claimant demonstrated a loss in the amount claimed.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *5/21/13*

Supervisor’s Action: *Denial approved*

¹¹ BP Claims Program – Claim Form for Individuals and Businesses dated 15 April 2013 at p. 11.

¹² 33 C.F.R. § 136.103(a).

¹³ Affidavit of Kenneth F. Tamplain, Jr. dated 19 August 2010.