

U.S. Department of
Homeland Security

**United States
Coast Guard**



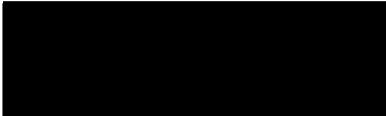
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail:
arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
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5890/DWHZ
Claim # N10036-1341
14 September 2011

Emerald Coast Hair Care, Inc.



Re: Claim Number: N10036-1341

Dear Mr. Flaar:

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 N10036-1341 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 N10036-1341.

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 Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1341
Claimant	Emerald Coast Hair Care, Inc.
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$15,028.00

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.

CLAIM AND CLAIMANT

On 29 August 2011, Mr. Dan Flaar, on behalf of Emerald Coast Hair Care, Inc. (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,028.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant is located in Navarre Beach, Florida, and “is a no-appointment, walk-in hair salon that caters to about 60% locals and 40% tourists.”² The Claimant alleged that the salon “lost profits from a drop in sales due to the strain on the local economy from our local customer who work in the Restaurant, Bar, Hotel, Condominium, Beach Rental, Boat Rental and fishing industry, along with the loss of sales due to the decrease in tourists because of the oil spill . . .”³

The Claimant seeks \$15,028.00 in profits lost allegedly lost due to the Deepwater Horizon oil spill, from the period of May – December 2010.⁴

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.

¹ Optional OSLTF Claim Form dated 25 August 2011.

² Optional OSLTF Claim Form dated 25 August 2011.

³ Letter from Claimant to NPFC, 25 August 2011.

⁴ Optional OSLTF Claim Form, dated 25 August 2011; Letter from the Claimant to the NPFC, 25 August 2011.

- (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 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

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form, dated 25 August 2011;
- Letter from the Claimant to NPFC, 25 August 2011;
- Document showing monthly income, 2008, 2009, 2010;
- Email from the Claimant to NPFC, 27 August 2011;
- Google map print-out, showing location of hair salon;
- Record of bed tax collections, Santa Rosa County, May – September, 2009, 2010;
- Gamblin, Bill, *Navarre Beach Feeling Oil Impact*, Santa Rosa Press Gazette, 2 July 2010;
- Emails between the Claimant and radio station, noting cancellation of radio advertisements, 27 October 2010, 6 June 2011;
- Letter from Cumulus Broadcasting FWB, noting cancellation of radio advertising in November 2010, 6 June 2011;
- Email from the Claimant, cancelling radio advertisements, 3 November 2010;
- Letter from Qantum Communications, LLC, noting cancellation of radio advertisements, 6 June 2011;
- Letter from Paula Motzko, noting low sales of beauty products, May – July 2010;
- Monthly Income Statements, 2008 – 2010;

- 2008 Form 1120S;
- 2008 Schedule K-1 (Form 1120S);
- 2009 Form 1120S;
- 2009 Form 4562;
- 2010 Form 1120S;
- 2010 Form 4562;
- 2010 Schedule K-1 (Form 1120S).

Prior to presentment to the NPFC, the Claimant presented a First Quarter Interim Claim (ICQ12011) and Second Quarter Interim Claim (ICQ22011) to the RP/GCCF for loss of profits and earning capacity damages. The Claimant was assigned ID 3379717; ICQ12011 was assigned claim # 9172586, and; ICQ22011 was assigned claim #9395962. These claims were denied by the RP/GCCF on 24 May 2011 and 20 July 2011.

The Claimant also submitted two Full Review Final Claims (FRF1) and (FRF2) to the RP/GCCF. FRF1 was assigned claim # 9064214 and FRF2 was assigned claim # 9172453. These claims were also denied.

On 29 August 2011, the Claimant presented this claim for \$15,028.00 in loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon Spill. This NPFC determination addresses this claim in the amount of \$15,028.00 to the extent that this amount has been first presented to the RP/GCCF. Any amount now before the NPFC, which was not contained in ICQ12011, ICQ22011, FRF1 or FRF2 is denied.

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.

In order for a Claimant to prove a claim for loss of profits and earnings capacity, a Claimant must provide sufficient evidence to demonstrate that the Claimant suffered (1) an actual net reduction in profits, and (2) that the loss was the direct result of the Deepwater Horizon oil spill.

According to profit and loss statements provided by the Claimant, the Claimant's business income was decreasing in the period leading up to the oil spill.⁵ The months of January – May 2010 show that the rate of decrease in the Claimant's profits actually slowed in the months following the oil spill, compared to the months prior to the oil spill.⁶ Because the rate of decrease in the Claimant's profits actually slowed down in the months following the oil spill when compared to pre-spill, the Claimant has not sufficiently demonstrated that he sustained a loss in profits as a result of the Deepwater Horizon oil spill.

The NPFC reviewed all information and documentation provided by the Claimant. This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount claimed, and (2) that the alleged loss is due to the injury, destruction

⁵ From 2009 to 2010, the Claimants profits decreased approximately: 25% in January, 36% in February, and 178% in March. The Claimant's profits increased about 42% in April. In May, the Claimant's profits increased 262%, decreased 53% in June, 18% in July, and 9% in August.

⁶ Calculations made based on 2009 and 2010 income statements provided by Claimant.

or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *9/14/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: