

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]  
Donna [REDACTED]  
Fax: 202-493-6937

5890  
3/22/2011

VIA EMAIL: [REDACTED]@gmail.com

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Number: [REDACTED]

[REDACTED]  
Niceville, FL 32578

RE: Claim Number: N10036-0087

Dear [REDACTED]:

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 claim number N10036-0087 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[REDACTED]  
Chief, Claims Adjudication Division  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/11/2011
Claim Number	: N10036-0087
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$7,000.00

### ***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.

### ***CLAIM AND CLAIMANT:***

On 18 November 2010, [REDACTED] (Claimant) presented a loss of profits and impairment of earning capacity claim in the amount of \$7,000.00 to the National Pollution Funds Center (NPFC) for reimbursement.

Claimant asserted that at the time of the Deepwater Horizon oil-spill, the Claimant was employed at [REDACTED] in Niceville, FL. The Claimant is an independent hair stylist and rented a chair at [REDACTED] from January 2010 through early September 2010. The Claimant further indicated that [REDACTED] closed in September 2010 because of a lack of business caused by the Deepwater Horizon oil-spill. The Claimant stated that due to his employer closing down the business, he lost his clientele and was not able to find alternate employment until November 2010.<sup>1</sup> The NPFC denied the claim on March 8, 2011 on the grounds that Claimant did not establish that his alleged loss of profits was due to the injury or destruction of real or personal property or natural resources because he had not evidenced that the closure of [REDACTED] was due to the oil spill.

### ***REQUEST FOR RECONSIDERATION:***

On March 9, 2011, the Claimant sent an email request for reconsideration to [REDACTED] stating he would like the NPFC to reconsider his claim. The Claimant stated he is in a bad situation and desires to be paid. On March 14, 2011, the Claimant faxed the NPFC 25 pages of miscellaneous alleged sales receipts for what he contends supports his income.

### ***RECONSIDERATION CLAIM ANALYSIS:***

The claimant requested reconsideration via email on March 9, 2011. To support his request for reconsideration, the claimant provided sheets of sales receipts. The Claimant was an

<sup>1</sup> Letter of explanation from Claimant dated 14 December 2010.

independent hair stylist and rented a chair within his employer's business, [REDACTED] Claimant worked at the [REDACTED] from January 2010 through early September 2010 when the business closed down.

### NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. A request for reconsideration must be in writing and must state the factual or legal grounds for the request and must include any additional information to support the claim. 33 CFR 136.115(d). The NPFC considered all the documentation submitted by the Claimant.

The NPFC performed another analysis of the financial information the Claimant did provide in his original claim submission by way of bank statements. While it is not clear that the deposits associated with the bank statements were from clients, the Claimant did hand write on each providing a dollar amount he alleged was associated with income. Assuming the deposits were from clients as alleged by the Claimant, the NPFC created two tables itemizing pre-spill earnings and post-spill earnings.

**TABLE 1: Pre-spill Earnings**

<i>MONTH</i>	<i>GROSS EARNINGS</i>	<i>CHAIR RENTAL</i>	<i>NET EARNINGS</i>
January 2010	\$837	(\$500.00)	\$337
February 2010	\$690	(\$500.00)	\$190
March 2010	\$548	(\$500.00)	\$48
April 2010	\$908	(\$500.00)	\$408
TOTAL	\$2,983	(\$2,000)	\$983
AVERAGE	\$745.75	(\$500.00)	\$245.75

**TABLE 2: Post-spill Earnings**

<i>MONTH</i>	<i>GROSS EARNINGS</i>	<i>CHAIR RENTAL</i>	<i>NET EARNINGS</i>
May 2010	\$2,241	(\$500.00)	\$1,741
June 2010	\$1,331	(\$500.00)	\$831
July 2010	\$1,173	(\$500.00)	\$673
August 2010	\$1,409	(\$500.00)	\$909
TOTAL	\$6,154	(2,000.00)	\$4,154
AVERAGE	\$1,538.50	(\$500.00)	\$1,038.50

Based on the preceding tables, the NPFC has determined that the Claimant's earnings were overall better after the Deepwater Horizon incident than prior to the incident. While the information originally provided was minimal, the NPFC does not see how the Claimant has calculated a loss of profits and earning capacity as a result of the spill.

Additionally, on March 14, 2011, the Claimant faxed in some 15 pages of receipts that he again alleges is his reported sales pre-spill and post-spill. The receipts are not itemized by client name

identifying who the client(s) were/was nor do the receipts indicate that they were written contemporaneously. Furthermore, these receipts do not match what the Claimant alleged regarding income by way of previously presented bank statements that were marked and calculated by the Claimant through his submission. A good example is the Claimant's bank statement for October 2010, where he wrote a notation that stated he had an income amount of \$675.00 based on deposits made although in the Claimant's receipts that he faxed on March 14, 2011, his October 2010 receipts show zero income which contradicts previously submitted information.

Therefore, the NPFC again denies the claim because (1) the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil and (2) the Claimant has failed to demonstrate a loss of profits and earnings. This claim is denied upon reconsideration.

Claim Supervisor:

Date of Supervisor's review: *3/22/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: