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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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
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5890/DWHZ
13 October 2011

Rig-Chem, Inc.
Attn: Jan Brunet
132 Thompson Road
Houma, LA 70363

Re: Claim Number: N10036-1286

Dear Ms. Brunet:

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 N10036-1286 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 N10036-1286.

Mail reconsideration requests to:

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

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1286
Claimant	Rig-Chem, Inc.
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity and Real or Personal Property Damages
Amount Requested	$1,267,009.00

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 10 August 2011, Jan Brunet, on behalf of Rig-Chem, Inc. (collectively Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking $1,238,809.00 in loss of profits and impairment of earnings capacity, as well as $28,200.00 for real or personal property damages, that allegedly resulted from the Deepwater Horizon oil spill. Claimant's alleged combined loss is $1,267,009.00.

With respect to the alleged loss of $1,238,809.00 in loss of profits and earnings capacity, the Claimant is a company in Houma, Louisiana that sells chemicals and additives for use in the offshore oil field.[1] The Claimant stated that prior to the Deepwater Horizon oil spill, approximately 65-70% of the company's business came from deepwater locations in the Gulf of Mexico.[2] The Claimant asserted that it suffered a loss of revenue because the Deepwater Horizon caused a closure of the Gulf of Mexico for drilling activities.[3]

With respect to the alleged loss of $28,200.00 in real or personal property damages, the Claimant leases a property in Grand Isle, Louisiana that is used as a secondary office site and facility for entertaining customers.[4] The Claimant asserted that, when oil washed up onto the beaches of Grand Isle, the leased property was no longer available to the Claimant but that the Claimant was still responsible for making the required lease payments.[5]

APPLICABLE LAW

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[1] PHONECON between the NPFC and the Claimant on 25 August 2011.
[2] Affidavit of Lori Davis regarding the Claimant's loss of earnings, notarized by Jan Brunet on 22 November 2010.
[3] Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 01 August 2011.
[4] Affidavit of Lori Davis regarding the real property damages, notarized by Jan Brunet on 22 November 2010.
[5] Affidavit of Lori Davis regarding the real property damages, notarized by Jan Brunet on 22 November 2010.

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 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).

Loss of Profits or Impairment of Earnings Capacity

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 earnings 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 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.

Real or Personal Property Damage

Pursuant to the claims regulations, 33 C.F.R. 136.215, a claimant must establish the following to prove damage to real or personal property:

(a) An ownership or leasehold interest in the property;
(b) That the property was injured or destroyed;
(c) The cost or repair or replacement;
(d) The value of the property both before and after injury occurred.

In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish:

(a) That the property was not available for use and, if it had been, the value of that use;
(b) Whether or not substitute property was available and, if used, the costs thereof;
(c) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

Under 33 C.F.R. § 136.217, the amount of compensation allowable for a claim involving real or personal property damage is limited to:

(a) The amount of compensation allowable for damaged property is the lesser of—
 (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
 (2) The difference between value of the property before and after the damage; or
 (3) The replacement value.
(b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable.
(c) Compensation for a claim for loss of profits or impairment of earning capacity under §136.213(b) is limited to that allowable under §136.235.

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.

DETERMINATION OF LOSS

The Claimant's Submission to the OSLTF

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

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 01 August 2011;

- Calculations by the Claimant titled "Losses for June 2010 to March 2011 Due to BP Oil Spill";
- Affidavit of Lori Davis regarding the real property damages, notarized by Jan Brunet on 22 November 2010;
- Commercial Lease for the property located at 135 Tropical Landing, Grand Isle, LA 70358, dated 24 September 2010;
- Lease Agreement for Slip 77 at Pirate Cove Marina, dated 11 March 2010;
- GCCF Denial for Emergency Advance Payment claim, dated 6 December 2010;
- GCCF Denial for Emergency Advance Payment claim, dated 3 December 2010;
- Affidavit of Lori Davis regarding the Claimant's loss of earnings, notarized by Jan Brunet on 22 November 2010;
- List of the Claimant's work projects titled "Deepwater Work History";
- Calculations by the Claimant titled "Losses for June to September 2010 Due to BP Oil Spill";
- Denial letter on Interim Payment/Final Payment Claim, dated 21 May 2011; and
- GCCF Interim Payment Claim Form, generated as of 5 May 2011.

The Claimant's Optional OSLTF Claim Form indicates that Claimant filed a claim in the multidistrict litigation now pending in the United States District Court for the Eastern District of Louisiana (MDL-2179 In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf Of Mexico, on April 20, 2010) against BP (the "MDL"). Although the NPFC may not approve and certify the payment of a claim during the pendency of an action by the person in court to recover costs which are the subject of the claim, the NPFC may adjudicate such a claim to determine whether it may be compensable. Where appropriate, such a claim may be denied.

Prior to presenting this claim to the NPFC, Claimant filed Emergency Advanced Payment (EAP) claims with the GCCF on 23 November 2010 in the amount of $28,200.00 for real property damages and $762,152.00 in loss of earnings.[6] The Claimant was assigned Claimant ID # 3446604 and Claim # 531370 (EAP1) for real property damages and Claim # 531441 (EAP2) for loss of earnings. The EAP claims were denied by the GCCF on 3 December 2010.[7] The Claimant also filed Interim 2 (ICQ22011) claims with the GCCF on 05 May 2011 in the amount of $28,200.00 for real property damages and $1,238,809.00 in loss of earnings.[8] The Claimant was assigned Claim # 9377038 for both Interim 2 claims. The GCCF denied the Interim 2 claims on 21 May 2011.[9]

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., the Claimant suffered a loss in revenue from selling chemicals and additives to deepwater drilling customers due to the Deepwater Horizon oil spill. As well, the Claimant was unable to use a leased property due to oil washing on the beaches of Grand Isle, Louisiana. The NPFC deems Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1286 considers and

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[6] Report from the GCCF, dated 06 October 2011.
[7] GCCF Denial for Emergency Advance Payment claim, dated 3 December 2010.
[8] Report from the GCCF, dated 06 October 2011.
[9] Denial Letter on Interim Payment/Final Payment Claim, dated 21 May 2011.

addresses the damages claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 531370 (EAP1), 531441 (EAP2), and 9377038 (ICQ22011).

NPFC Determination

Under 33 C.F.R. § 136.105(a) and 33 C.F.R. § 136.105(e)(6), the claimant bears the burden or providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation submitted by the Claimant.

LOSS OF PROFITS OR IMPAIRMENT OF EARNINGS CAPACITY

This claim is denied because the Claimant failed to prove that it suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant indicated that most of its business came from deepwater locations in the Gulf of Mexico[10] and provided the NPFC with a list of deepwater projects on which it had provided materials.[11] The NPFC contacted the Claimant on 25 August 2011 to gain additional information regarding the effects of the Deepwater Horizon oil spill on the Claimant's business. The NPFC was informed that the Claimant was affected by the shutdown of the oil rigs, but contended that if the oil spill had not happened then the moratorium on drilling would not have been initiated.[12] Additionally, the Claimant informed the NPFC that it had been waiting for permitting to come back, which didn't occur until early 2011.[13] Thus the Claimant failed to prove that its alleged financial loss was a result of the Deepwater Horizon oil spill, as opposed to other factors affecting the drilling industry in the Gulf of Mexico such as the deepwater oil drilling moratorium and permitting delays.

Accordingly, this claim is denied because the Claimant failed to meet its 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.

DAMAGE TO REAL OR PERSONAL PROPERTY

The Claimant asserted that its leased property was not available for use after oil washed up onto the beaches of Grand Isle, LA.[14] On 25 August 2011, the NPFC contacted the Claimant to gather additional information regarding the damage suffered to its property. The Claimant asserted that it was burdensome to reach the property with all the oil spill clean-up operations in the area and thus it was more convenient to use the home office for all operations.[15] Further, the NPFC was informed that there was no actual damage to the property or oil found on the property and the Claimant was solely seeking damages for loss of use.[16]

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[10] Affidavit of Lori Davis regarding the Claimant's loss of earnings, notarized by Jan Brunet on 22 November 2010
[11] List of the Claimant's work projects titled "Deepwater Work History."
[12] PHONECON between the NPFC and the Claimant on 25 August 2011.
[13] PHONECON between the NPFC and the Claimant on 25 August 2011.
[14] Affidavit of Lori Davis regarding the real property damages, notarized by Jan Brunet on 22 November 2010.
[15] PHONECON between the NPFC and the Claimant on 25 August 2011.
[16] PHONECON between the NPFC and the Claimant on 25 August 2011.

According to 33 C.F.R. § 136.215, a Claimant must present evidence to indicate (1) that the property was injured or destroyed, (3) the cost of repair or replacement; and, (4) the value of the property both before and after the injury occurred.

Based on the Claimant's statements, the property at issue did not actually suffer physical damage or injury from the Deepwater Horizon oil spill. Further, there was no decrease in property value alleged by the Claimant. As well, the Claimant indicated that no replacement property was required, as all business operations were able to be conducted at the home office.

33 C.F.R. § 136.215 also dictates that a Claimant must prove, (1) that the property was not available for use and, if it had been, the value of that use, (2) whether or not substitute property was available and, if used, the costs thereof, and (c) that the economic loss claimed was incurred as the result of the injury to or destruction of the property.

The Claimant indicated that the property was not completely unavailable for use, but that it was merely inconvenient to use the property because of the additional traffic caused by the oil spill clean-up efforts. Furthermore, the Claimant does not allege an actual economic loss or decrease in business revenues caused by the non-use of the property, but instead seeks the cost of its monthly rents. However, the monthly rents are an expense of the Claimant that pre-date the oil spill and do not constitute a compensable damage to real or personal property under OPA.

Accordingly, for all the above reasons, this claim is denied because the Claimant failed to demonstrate that it sustained damage to real or personal property, or economic losses resulting as a result of a discharge or substantial threat of a discharge of oil.

[redacted]

Claim Supervisor: ***NPFC [redacted] ion Division***

Date of Supervisor's Review: ***10/13/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments: