

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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Arlington, VA 20598-7100
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4666 9601

5890/DWHZ
Claim# N10036-1310
31 August 2011

Barbara Crisp


RE: Claim Number: N10036-1310

Dear Ms. Crisp:

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 N10036-1310 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

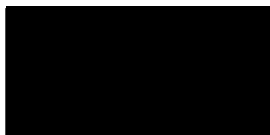
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1310.

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	N10036-1310
Claimant	Barbara Crisp
Type of Claimant	Private (US)
Type of Claim	Loss of Real or Personal Property
Amount Requested	\$510.43

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 16 August 2011, Barbara Crisp (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$510.43 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant drove 1,322 miles to Gulf State Park Campground in Alabama for the week of 03 June 2010 to 11 June 2010 with her husband and their granddaughter. By the third day of the trip, they were warned not to go in the water because of contaminants. The Claimant stated that due to the Deepwater Horizon oil spill, tar balls on the beach, and contaminants in the water, their use of the beach was diminished. The Claimant alleged damages for the cost of gasoline used on the trip and renting the campground lodging for the week.¹

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.
- (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.

¹ Letter from Claimant to BP Oil Spill Service Center explaining her claim dated 22 June 2010

- (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 undertake, 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 her claim, Claimant submitted:

- 1) Optional OSLTF claim form dated 13 August 2011;
- 2) Letter from Claimant to BP Oil Spill Service Center explaining her claim dated 22 June 2010;
- 3) Receipts for expenses incurred on their trip.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$510.43.

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) with the GCCF. She was assigned Claimant ID #1127422 and claim #4012336 for loss of personal property and claim #402661 for loss of real property.² Claim #4012336 for loss of personal property was denied on 09 December 2010.³ Claim #402661 for loss of real property is under review by the GCCF.⁴ Additionally, Claimant filed a Full Review Final (FRF) claim for the loss of personal property with GCCF #9170322. This claim was denied on 20 September 2010.⁵

² GCCF online claim status

³ GCCF Denial Letter dated 09 December 2010

⁴ GCCF online claim status

⁵ GCCF Denial Letter dated 09 March 2011

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that she and her family lost use and enjoyment of the beach as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1310 considers and addresses the personal property and real property claims presented to the responsible party, specifically; GCCF Claim #'s 4012336 (EAP), and #9170322 (FRF).

Furthermore, the NPFC considers and addresses the real property claim #402661 because ninety (90) days has lapsed since the Claimant filed with the GCCF and the claim was properly presented to the responsible party.

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.

Claimant alleged and claimed for lost travel and lodging expenses due to the Deepwater Horizon oil spill which resulted in tar balls on the beach and contaminants in the water at the Gulf Shores, Alabama beaches.⁶ The Claimant has provided receipts from her vacation to Gulf Shores for the week of 03 June 2010 to 11 June 2010. The receipts are for the costs incurred for gasoline purchased on the trip in the amount of \$365.06 and for campground lodging in the amount of \$145.77.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has sustained an actual loss in the amount claimed as alleged or, (2) that any 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/31/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ Letter from Claimant to BP Oil Spill Service Center explaining her claim