

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
12/21/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6401

Air Specialty Inc
[REDACTED]

RE: Claim Number: N10036-1342

Dear Mr. Ezell:

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 N10036-1342 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
(1) NPFC Income tables for 2009 and 2010

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1342
Claimant	: Air Specialty Inc
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$95,000.00

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 23 August 2011, Air Specialty Inc., represented by Mr. T. Larry Ezell (collectively the Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$95,000.00 in loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant is a business which specializes in heating, cooling, indoor air quality, thermostats and zoning.¹ The Claimant has a marine division that serves offshore, onshore, marine vessels and other services to the Alabama and Mississippi Gulf Coasts and the Florida Panhandle.² The Claimant alleged lost earnings from the company overall and especially their Marine Industrial Division due to the oil spill.³

Prior to presenting its claim to the NPFC, Claimant filed a Full Review Final (FRF1) claim with the GCCF on 11 November 2010 in the amount of \$139,985.20.⁴ The Claimant was assigned Claimant ID #3382373 and claim #9063073. Additionally, the Claimant filed another Full Review Final (FRF2) claim with the GCCF and was assigned GCCF #9252599.⁵ FRF2 was filed on 27 January 2011 for \$139,985.20.⁶ These claims were denied on 12 July 2011.⁷ 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 its claim before the NPFC, i.e., that the company lost profits 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 N10036-1342 considers and addresses the profits claimed in both of the claims presented to the responsible party, specifically; GCCF Claim #'s 9063073 (FRF1) and 9252599 (FRF2).

¹ Company website <http://www.air-specialty.com/>.

² Optional OSLTF claim form dated 12 August 2011.

³ Optional OSLTF claim form dated 12 August 2011.

⁴ Report from the GCCF dated 06 October 2011.

⁵ Report from the GCCF dated 06 October 2011.

⁶ Report from the GCCF dated 06 October 2011.

⁷ GCCF Denial Letter dated 12 July 2011.

REQUEST FOR RECONSIDERATION:

On November 9, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on October 19, 2011 because the Claimant submitted 2009 income statements with net income in the amount of \$503,534.96⁸ while his 2009 form 1120 S tax return has a net loss of \$18,520.00 with depreciation making up \$36,116.00.⁹ Additionally, the NPFC asked for reconciliation of the 2010 income statements that showed a net income in the amount of negative \$171,894.78¹⁰ while its 2010 tax return showed a mere net loss of \$13,185.00 with depreciation equaling \$40,900.00.¹¹ (According to the 2010 tax return, net income actually shows a \$5,335.00 improvement over 2009.)¹²

Finally, the NPFC asked why the company lost revenues in the amount of \$533,357.94 prior to the oil spill occurring for the months of January through April 2010 when compared to January through April 2009.¹³ As of the date of the initial determination, the Claimant failed to address the reconciliations requested by the NPFC or the substantial decline in business revenue prior to the oil spill.¹⁴ Accordingly, the Claimant did not establish its sum certain as presented to the NPFC by a preponderance of the evidence.

With regard to causation of the alleged damages, the NPFC requested that the Claimant provide documentation showing cancellations or reasons why their larger customers had to reduce their installation and/or service needs.¹⁵ The Claimant did not address those questions or provided the requested contact information for its larger customers in order to evidence causation to the oil spill. The Claimant asserted that customers' ships could not come into port to be worked on but provided no documentation to support such assertions.¹⁶ The Claimant stated that they service the area of Alabama and Mississippi Gulf Coasts and the Panhandle of Florida. Without more documentation, the mere assertion that customers' ships could not come into port was insufficient to cover the large geographical area that is reportedly serviced by the Claimant. As such, the Claimant did not establish by a preponderance of the evidence that its alleged loss of earnings was due to the oil spill.

This claim was denied because the Claimant failed to meet its burden to demonstrate (1) that it had an alleged loss in the amount claimed, and (2) that its alleged loss was 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.

⁸ Total of 2009 Monthly Income statements pre and post oil spill.

⁹ 2009 Form 1120S U.S. Income Tax Return for a S Corporation.

¹⁰ Total of 2010 Monthly Income statements comparing pre and post oil spill.

¹¹ 2010 Form 1120S U.S. Income Tax Return for a S Corporation.

¹² 2010 net income (\$18,520.00) minus 2009 net income (\$13,185.00) equals \$5,335.00.

¹³ January through April 2009 revenue \$1,689,452.08 minus January through April 2010 revenue \$1,156,094.14 equals (\$533,357.94).

¹⁴ NPFC request for additional information, USPS tracking # 7011 1150 0000 4636 4643.

¹⁵ NPFC request for additional information, USPS tracking # 7011 1150 0000 4636 4643.

¹⁶ Response to NPFC's request for additional information 17 October 2011.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on November 18, 2011. The Claimant provided a two-page letter that requested his claim be reconsidered along with a six-page attachment of Sales by Department Summary which is actually a duplication of the information originally provided (just printed and sorted differently than the original submission documents).

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 and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The request for reconsideration was a two-page letter with a six-page attachment as described above.

In the Claimant's request for reconsideration, he answered three of the questions originally posed by the NPFC associated with the business revenues. On reconsideration, the Claimant sorted the Sales by Department data differently than how it was initially presented although it is important to note there is no new information actually presented within the Sales by Department summaries on reconsideration.

With respect to the NPFC's question(s) regarding the inconsistencies between the monthly income statements and the Claimant's tax returns for 2009 and 2010, the Claimant stated that the income statements are done on an accrual basis and the income tax returns are done on a hybrid method which means the income statements only show what they sold and not what they collected although to get a full picture of the financial status of the business, the burden is on the Claimant to produce ALL information with respect to income and sales which collectively determine what the actual financial status of the business is for the periods requested.

Upon review of the income statements provided, the Claimant produced the names of four different customers which he stated that any one of the listed customers could vouch for the times they were unable to have work performed within the shipyard(s) during the time of the spill. The Claimant at no time has provided a copy of any contracts or agreements that it had with any customer nor is it clear which of the items listed in the Sales by Department is associated with which customer. Furthermore, the Claimant did not adequately address the NPFC's question on an explanation for reduced revenues from 2009 to 2010 in the amount of \$533,357.94.

Upon further review of the Claimant's financial documentation provided, the NPFC created two tables depicting the financial data for 2009 and 2010 and when comparing the income tax return bottom lines for each year, the Claimant actually had less of a loss in 2010 than in 2009 based on

information submitted to the Internal Revenue Service (IRS)¹⁷ and the Claimant has failed to demonstrate that any reduced income in 2010 was the result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil as opposed to economic or business factors that may have affected any one of the Claimant's customers.

As such, the Claimant has again failed to demonstrate that he has suffered a loss 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.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor

Date of Supervisor's review: *12/21/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

¹⁷ See Enclosure 1 – NPFC income tables for claimant for 2009 and 2010

Encl (1)
N10036-1342

2009 Income Statement				
	Gross Income	COGS	Expense	Net Income
Jan	\$619,517.28	\$430,088.43	\$96,060.85	\$93,368.00
Feb	\$502,982.75	\$192,787.42	\$128,437.63	\$181,757.70
Mar	\$305,280.25	\$264,967.13	\$115,820.69	-\$75,507.57
Apr	\$261,671.80	\$167,381.88	\$123,618.39	-\$29,328.47
May	\$307,915.76	\$234,262.11	\$133,326.69	-\$59,673.04
Jun	\$392,462.67	\$199,046.10	\$116,289.90	\$77,126.67
Jul	\$348,216.53	\$229,019.43	\$129,706.97	-\$10,509.87
Aug	\$475,383.42	\$222,817.29	\$126,246.72	\$126,246.72
Sep	\$304,013.98	\$166,411.18	\$91,659.21	\$45,943.59
Oct	\$244,504.33	\$199,871.19	\$144,293.30	-\$99,660.16
Nov	\$366,577.81	\$208,509.96	\$102,494.23	\$55,573.62
Dec	\$558,169.46	\$211,744.35	\$148,227.34	\$198,197.77
Total	\$4,686,696.04	\$2,726,906.47	\$1,456,181.92	\$503,534.96
May-Dec	\$2,997,243.96	\$1,671,681.61	\$992,244.36	\$333,317.99
Jan - Apr	\$1,689,452.08	\$1,055,224.86	\$463,937.56	\$170,289.66

2009 Taxes			
Gross Income	COGS	Expense	Net Income
\$4,028,393.00	\$2,549,067.00	\$1,498,360.00	-\$18,520.00

2010 Income Statement				
	Gross Income	COGS	Expense	Net Income
	\$170,329.94	\$163,955.49	\$135,329.09	-\$128,954.64
	\$400,260.42	\$167,461.46	\$148,579.05	\$84,219.91
	\$206,320.70	\$121,609.27	\$136,060.91	-\$51,349.48
	\$379,183.08	\$186,939.10	\$143,840.37	\$48,403.61
	\$270,118.05	\$202,172.69	\$119,067.18	-\$50,609.32
	\$401,470.24	\$203,151.12	\$104,966.63	\$93,352.49
	\$272,059.47	\$172,828.41	\$157,020.53	-\$57,789.47
	\$423,033.88	\$210,044.23	\$113,233.52	\$99,756.13
	\$199,824.17	\$165,574.08	\$128,163.83	-\$93,913.74
	\$235,533.32	\$148,082.66	\$136,572.18	-\$49,121.52
	\$163,778.39	\$125,939.66	\$98,157.95	-\$60,319.22
	\$336,114.17	\$167,806.89	\$173,876.81	-\$5,569.53
	\$3,458,025.83	\$2,035,565.06	\$1,594,868.05	-\$171,894.78
	\$2,301,931.69	\$1,395,599.74	\$1,031,058.63	-\$124,726.68
	\$1,156,094.14	\$639,965.32	\$563,809.42	-\$47,680.60

2010 Taxes			
Gross Income	COGS	Expense	Net Income
\$3,675,678.00	\$2,066,755.00	\$1,622,621.00	-\$13,185.00