

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
Number: 7011 1150 0000 4636 2137

5890/DWHZ  
21 September 2011

Ms. Martha Rice  


Re: Claim Number: N10036-1390

Dear Ms. Rice:

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 N10036-1390 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 N10036-1390.

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	N10036-1378
Claimant	Ms. Martha Rice
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$26,555.88

### ***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 9 September 2011, Ms. Martha Rice (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$22,800.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup> The Claimant's submission also included a claim for damages to real or personal property, in the amount of \$3,675.88.<sup>2</sup>

At the time of the oil spill, the Claimant "was working at a couple small jobs and putting herself through school."<sup>3</sup> The Claimant then took a job working for the oil spill response and alleged that the job "ended much sooner than what she was promised."<sup>4</sup> The Claimant seeks \$22,880.00 from the OSLTF for compensation she allegedly would have earned had the job continued as the Claimant expected.<sup>5</sup>

The Claimant also seeks \$3,675.88 for real or personal property damage resulting from the Deepwater Horizon oil spill.<sup>6</sup> The Claimant alleged that she had been unable to make payments on her home after being let go from her oil spill response job.<sup>7</sup> The Claimant's overdue home payments from August 2010 to the date, total \$3,675.88.<sup>8</sup>

OPA's Real or Personal Property damage category requires a showing of actual damage to the Claimant's property.<sup>9</sup> The Claimant does not allege that her home was actually damaged by the Deepwater Horizon oil spill, but only that she was unable to make necessary payments on her home, due to economic effects of the oil spill. Therefore, the NPFC has reclassified this portion of the claim as a claim for loss of profits and impairment of earnings capacity, and has added the \$3,675.88 to the Claimant's loss of profits claim of \$22,880.00 bringing her total lost profits claim to \$26,555.88.

<sup>1</sup> Optional OSLTF Claim Form, received on 9 September 2011.

<sup>2</sup> Optional OSLTF Claim Form, received on 9 September 2011.

<sup>3</sup> Letter from Doyle Carter to NPFC, 31 January 2011.

<sup>4</sup> Letter from Doyle Carter to NPFC, 31 January 2011.

<sup>5</sup> Letter from the Claimant to the NPFC, dated 31 August 2011.

<sup>6</sup> Optional OSLTF Claim Form, received on 9 September 2011.

<sup>7</sup> Letter from the Claimant to the NPFC, dated 31 August 2011.

<sup>8</sup> Letter from the Claimant to the NPFC, dated 31 August 2011.

<sup>9</sup> 33 C.F.R. § 136.215(a)(2) requires that the Claimant prove, "that the property was damaged or destroyed."

## ***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.
- (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 this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, received 9 September 2011;
- Optional OSLTF Claim Form, dated 15 August 2011;
- Letter from the Claimant to the NPFC, dated 31 August 2011;
- Letter written on behalf of the Claimant, 23 January 2011;
- Letter from Doyle Carter to NPFC, 31 January 2010;
- 2008 Form 1040A;
- 2009 Form 1040A;
- 2010 Form 1040A;
- Letter from Ryan Sandlin to the NPFC, 9 March 2011.

Prior to presentment to the NPFC, the Claimant alleged to have presented claims to the RP/GCCF on 2 September 2010, 5 January 2011 and July 2011.<sup>10</sup> The NPFC was unable to verify the subject matter of these claims. The Claimant stated that her claims were initially denied, and submitted to the RP/GCCF on Re-Review.<sup>11</sup> The Claimant received a denial on Re-Review on 31 August 2011.<sup>12</sup>

On 9 September 2011, the Claimant presented this claim to the NPFC, which has been categorized as a claim for loss of profits and impairment of earning capacity damages in the amount of \$26,555.88. This NPFC determination shall address this claim to the extent that it has been presented to and denied by the RP/GCCF. Any amount of damages now presented to the NPFC which were not first presented to the RP/GCCF are hereby 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 to prove a claim for loss of profits and impairment of earnings capacity, a claimant must demonstrate (1) that she suffered an actual financial loss, and (2) that any loss that may have occurred 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.

The Claimant has failed to demonstrate that she suffered an actual financial loss. The Claimant is seeking compensation based on the loss of her position working as an oil spill responder. However, the loss of income which was gained as a result of the oil spill is not a loss that is compensable under OPA. Instead, OPA requires that any income resulting from the oil spill be subtracted from any claim presented to the NPFC.<sup>13</sup> Therefore, any financial loss incurred by the

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<sup>10</sup> Optional OSLTF Claim Form, dated 9 September 2011.

<sup>11</sup> Optional OSLTF Claim Form, dated 9 September 2011.

<sup>12</sup> Optional OSLTF Claim Form, dated 9 September 2011.

<sup>13</sup> 33 C.F.R. § 136.235(a).

Claimant, including the cost of maintaining her home, is not a loss that was a *result* of the oil spill, and is not compensable under OPA.

This claim is denied because the Claimant has failed to meet her burden to demonstrate (1) that she suffered a loss in the amount of \$26,555.88, and (2) 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.

Claim Supervisor:  *NPTC Claims Adjudication Division*

Date of Supervisor's Review: *9/20/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: