

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2595

5890/DWHZ
Claim # N10036-1439
29 September 2011

Randy J. Hall
[REDACTED]

Dear Mr. Hall:

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 N10036-1439 involving Deepwater Horizon. 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 N10036-1439.

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	N10036-1439
Claimant	Randy J. Hall
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$33,000.00

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 September 2011, Randy J. Hall (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$33,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant works for Frank’s Casing Crew & Rental Tools, Inc, in Lafayette, Louisiana, that works on shelf and deepwater projects in the Gulf.¹ The Claimant stated that the oil spill resulted in a shut down on all deepwater drilling which was the primary source of his work and income.²

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

¹ Letter from Frank’s Casing Crew & Rental Tools, Inc. explaining the claim dated 29 March 2011

² OSLTF Claim Form signed by the Claimant

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 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by the Claimant
- Letter from Frank's Casing Crew & Rental Tools, Inc. explaining the claim dated 29 March 2011
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 27 August 2011
- W-2s Wage and Tax Statement from Frank's Casing Crew & Rental Tools, Inc. for 2007, 2008, 2009 and 2010
- Pay stubs for Claimant for Pay Periods 24 August 2011 and 06 October 2010

Before presenting the claim to the NPFC, the Claimant filed an Interim Payment Claims with the GCCF. The claims were assigned Claimant ID #3509414 and claim #9338615 (Q1 2011) and claim #9441566 (Q3 2011). The Interim Payment Claims were denied on 06 May 2011 and 27 August 2011.³

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC has not been able to confirm the amount of either the Interim Claims as of the date of this determination. The NPFC deems the GCCF claims to be properly presented to the Responsible Party and to the extent the amount of the claims presented to the RP are equal to or greater than the amount currently presented to the

³ GCCF Denial Letters dated 06 May 2011 and 27 August 2011

NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1439 considers and addresses the loss of earnings up to the amount of \$33,000.00 for all claims presented to the Responsible Party, specifically: Interim Claims #9338615 (Q1 2011) and claim #9441566 (Q3 2011).

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.

After the NPFC performed a review of the information provided, the Claimant’s financials showed an increase in earnings from 2009 (\$109,586.10) to 2010 (\$116,054.21) based on his W-2s.⁴ The Claimant’s employer, Frank’s Casing Crew & Rental Tools, Inc., stated in a letter that the company and its employees were affected by the oil spill.⁵ The Claimant indicated that the negligence associated with the Deepwater Horizon oil spill resulted in the shutdown of his potential work sites and therefore he suffered a loss.⁶ The Claimant did not provide evidence that supports the claimed loss or how the perceived loss may have been calculated.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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:	<i>Claims Adjudication Division</i>
Date of Supervisor’s Review:	<i>29 September 2011</i>
Supervisor’s Action:	<i>Denial approved</i>
Supervisor’s Comments:	

⁴ W2 Wage and Tax Statements for 2009 shows wages of \$116,856.46 and for 2010 wages of \$123,807.11

⁵ Letter from Frank’s Casing Crew & Rental Tools, Inc. explaining the claim dated 29 March 2011

⁶ OSLTF Claim Form, received 23 September 2011