

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  
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5890/DWHZ  
3 November 2011

Youth In Action  
ATTN: [REDACTED]  
2515 East 5 St.  
Panama City, FL 32401

Re: Claim Number: N10036-1531

Dear [REDACTED]:

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 N10036-1531 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 N10036-1531.

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	N10036-1531
Claimant	Youth in Action
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$660, 055.00

### ***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 27 October 2011, Ms. Sherlene McClary, on behalf of Youth In Action, Panama City (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$660,055.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

Youth In Action in Panama City, Florida, is a community service organization for children ages 4 to 18, who's stated objective "is to prevent teen violence and drug addictions."<sup>2</sup> The Claimant alleged that following the Deepwater Oil Spill, Youth In Action was not approved for the federal funding that it had received for "the past six years," due to funds being diverted to other groups along the Florida Gulf Coast who were affected by the oil spill.<sup>3</sup>

The Claimant seeks \$660,055.00 in loss of profits for the year 2010 to 2011, when the Claimant alleged to have not been awarded federal funding as a result of the Deepwater Horizon oil spill.<sup>4</sup>

### ***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:

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<sup>1</sup> Cover Letter, from the Claimant to the NPFC, dated 27 October 2011..

<sup>2</sup> Youth In Action, "Activity Center."

<sup>3</sup> Optional OSLTF Claim Form, received on 25 October 2011.

<sup>4</sup> PHONECON: NPFC Staff and the Claimant, 1 November 2011; the Claimant clarified that the period in which she was seeking losses was for the year 2010 – 2011.

- (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:

- Cover Letter dated 27 October 2011;
- Fax Cover Sheet, dated 27 October 2011;
- Optional OSLTF Claim Form, received on 25 October 2011;
- GCCF Denial of Emergency Advance Payment Claim, 14 December 2010;
- Department of Health and Human Services, In reference to grant application number: FY10-MCP-195, 30 September 2010, noting that the Claimant's application was not selected for funding;
- Compilation of Reviewers' Comments;
- Youth In Action, Inc. Payroll Summary, January 2 – March 31, 2010;
- Youth In Action, Inc. Payroll Summary, April – June 2010;
- Youth In Action, Inc. Payroll Summary, July – September 2010;
- Youth In Action, Inc. Payroll Summary, October – December 2010;
- Youth In Action, Inc. Payroll Summary, October 2010;
- Youth In Action, Inc. Payroll Summary, November 2010;
- Youth In Action, Inc. Payroll Summary, December 2010;
- Youth In Action, "Activity Center."

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF.<sup>5</sup> The Claimant was assigned Claimant ID 3128724, and this claim was denied on 14 December 2010.<sup>6</sup> The NPFC does not have sufficient information to verify the amount of the claim presented to the RP/GCCF, or the status of other claims presented to the RP/GCCF regarding these damages.

On 27 October 2011, the Claimant presented this claim to the NPFC, seeking loss of profits damages in the amount of \$660,055.00.<sup>7</sup> The NPFC may adjudicate this claim to the extent that this same claim has been presented to and denied by the RP/GCCF.<sup>8</sup> Any damages currently before the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentment.

### **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 damages, a claimant must demonstrate (1) that she sustained an actual financial loss, and (2) a causal link between the alleged loss and the Deepwater Horizon oil spill.

This claim is denied because the Claimant has failed to demonstrate that any losses sustained by Youth In Action were caused by the Deepwater Horizon oil spill.

This claim is based on the denial of the Claimant's proposal to receive grant funding under the "Mentoring Children of Prisoners Discretionary Grants funding opportunity."<sup>9</sup> The Claimant alleged that the selection panel decided not to grant funding to the Claimant due to the Deepwater Horizon oil spill. However, the Claimant has not provided any documentation or other evidence to show that the oil spill in any way influenced the decision of the panel.

Additionally, the Claimant was specifically applying for a "*discretionary grant*."<sup>10</sup> (emphasis added). Because there was no guarantee that the Claimant would be awarded any certain amount of money, the Claimant's failure to be selected to receive discretionary funding does not constitute a loss or reduction in income as required under OPA's Loss of Profits damage category.<sup>11</sup>

Furthermore, the Claimant has not provided evidence to show how she calculated her losses to arrive at her loss amount of \$660,055.00.

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<sup>5</sup> The Claimant's Optional OSLTF Claim states that the Claimant first submitted this claim to the RP/GCCF and that the claim has been denied. Form received by the NPFC on 25 October 2011.

<sup>6</sup> GCCF Denial Letter on Emergency Advance Payment Claim, 14 December 2010.

<sup>7</sup> Cover Letter, dated 27 October 2011.

<sup>8</sup> 33 C.F.R. § 136.103(a).

<sup>9</sup> Letter from the Department of Health and Human Services to the Claimant, dated 30 September 2010.

<sup>10</sup> Letter from the Department of Health and Human Services to the Claimant, dated 30 September 2010.

<sup>11</sup> 33 C.F.R. § 136.233(b).

This claim is denied because the Claimant has failed to meet her burden to demonstrate (1) that Youth In Action sustained an actual loss in the amount of \$660,055.00, 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/3/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: