

U.S. Department of
Homeland Security

United States
Coast Guard




Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8030

5890/DWHZ
08 December 2011

Teresa Reidl


Re: Claim Number: N10036-1556

Dear Ms. Reidl:

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 your claim number N10036-1556 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. If, however 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 N10036-1556.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1556
Claimant	Teresa Reidl
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$9,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 09 November 2011, Teresa Reidl, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$9,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant cleans private homes and condos on the beach in Pensacola, Florida.¹ The Claimant asserted that she lost many of her cleaning sites due to the Deepwater Horizon oil spill.² The Claimant explained that her customers lost their jobs on the beach due to the oil spill; thus, they were no longer able to hire her to clean their properties.³

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ Optional OSLTF Claim Form, dated 26 September 2011; Letter of claim explanation from the Claimant, dated 16 October 2011.

² Optional OSLTF Claim Form, dated 26 September 2011.

³ Optional OSLTF Claim Form, dated 26 September 2011.

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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 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

The Claimant's Submission to the OSLTF

In support of her claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 26 September 2011, received by the NPFC on 09 November 2011;
- Letter of claim explanation from the Claimant, dated 16 October 2011;
- 2008 Monthly Profit Statement;
- 2009 Monthly Profit Statement;
- 2010 Monthly Profit Statement;
- 2008 Form 1040 U.S. Individual Income Tax Return;
- 2009 Form 1040X Amended U.S. Individual Income Tax Return;
- 2009 Form 1040 U.S. Individual Income Tax Return;
- 2010 U.S. Form 1040 Individual Income Tax Return; and

- Letter from the GCCF, Re: Follow-Up to Previous Denial Letter, dated 12 October 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed a Full Review Final (FRF) claim with the GCCF for loss of earnings in the amount of \$9,000.00.⁴ The Claimant was assigned Claimant ID # 3389106 and Claim # 9256456. The FRF claim was denied by the GCCF on 26 August 2011.⁵

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim is the same as the subject matter of her claim before the NPFC, i.e., that the Claimant lost customers of her cleaning service due to the Deepwater Horizon oil spill. The NPFC deems that the Claimant's GCCF claim was properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1556 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim # 9256456 (FRF).

NPFC Determination

The claim is denied. 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 documentation presented by the Claimant.

This claim is denied because the Claimant failed to prove she suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that she had earnings of \$15,000.00 the year before the oil spill, but earned under \$10,000.00 in 2010.⁶ However, the Claimant's financial records indicate that the Claimant had net profits of \$15,698.00 in 2008, not 2009.⁷ In 2009, the Claimant's net profits dropped significantly to \$5,951.00.⁸ During 2010, the Claimant's net profits actually increased to \$8,557.00.⁹

In the months after the Deepwater Horizon oil spill in 2010 (May-December), the Claimant's gross earnings were more than double those for the corresponding time period in 2009. The Claimant's average monthly earnings for May-December 2010 were \$845.63¹⁰, compared to an average of \$412.50¹¹ in 2009 for the same period. Further, this monthly average (\$845.63) was an increase from the Claimant's monthly average of \$807.50¹² for the months in 2010 prior to the Deepwater Horizon (January-April). Consequently, the Claimant failed to prove that the Deepwater Horizon oil spill had any negative impact on her earnings considering that she earned more after the Deepwater Horizon oil than before it occurred.

Additionally, the Claimant failed to provide documentation evidencing a reduction of customers due to the Deepwater Horizon oil spill. Even though the Claimant asserted that she lost many customers due to the Deepwater Horizon oil spill, the Claimant did not provide the NPFC with any customer lists or cleaning contracts that were cancelled due to the Deepwater Horizon oil spill. Consequently,

⁴ Report from the GCCF, dated 05 December 2011.

⁵ Denial Letter on Interim Payment/Final Payment Claim, dated 26 August 2011.

⁶ Letter of claim explanation from the Claimant, dated 16 October 2011.

⁷ 2008 Form 1040 U.S. Individual Income Tax Return.

⁸ 2009 Form 1040 U.S. Individual Income Tax Return.

⁹ 2010 Form 1040 U.S. Individual Income Tax Return.

¹⁰ 2010 Monthly Profit Statement.

¹¹ 2009 Monthly Profit Statement.

¹² 2010 Monthly Profit Statement.

the Claimant failed to prove that the Deepwater Horizon oil spill was the cause of any specific loss allegedly incurred by the Claimant

This claim is denied because the Claimant failed to meet her 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: