

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8146

5890/DWHZ
Claim # N10036-1563
21 December 2011

South Baldwin Sheet Metal Co., Inc

██████████
415 South Alston Street
Foley, AL 36535

Dear ██████████:

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 N10036-1563 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 N10036-1563.

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	N10036-1563
Claimant	South Baldwin Sheet Metal Co, Inc. [REDACTED], owner
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$39,837.00

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 16 November 2011, South Baldwin Sheet Metal Company, Inc., Robert C. Petersen, owner (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$39,837.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant does sheet metal work for refrigeration and HVAC and building contractors in Foley, Alabama. The Claimant states that his contractors' businesses declined after the oil spill. The Claimant states that when the contractors' businesses declined, the Claimant's business declined and the Claimant lost earnings.¹

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 §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:

¹ Letter from the Claimant explaining the claim, undated

- (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 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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form signed by Claimant 04 November 2011
- Letter from the Claimant explaining the claim, undated
- GCCF Form 2000-I Interim Payment Claim Form
- Computer generated Profit & Loss Statements 2008, 2009 and 2010
- Letter from the Claimant explaining the claim, undated with telephone numbers of certain contractors
- Form 1120 US Corporation Income Tax Returns for S Corporations 2008, 2009 and 2010

On 17 November 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 09 December 2011, the Claimant responded to the request.

Before presenting the claim to the NPFC, the Claimant filed an Interim Payment (ICQ12011) with the GCCF on 17 March 2011 in the amount of \$39,837.00.² The claim was assigned Claimant ID #1611945 and claim #9326734.³ The IC claim was denied on 27 September 2011.⁴

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that he lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant's denied ICQ12011 GCCF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1563 considers and addresses the earnings claimed in his claim presented to the responsible party, specifically; GCCF Claim # 9326734 (ICQ12011).

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.

The Claimant's loss of earnings for South Baldwin Sheet Metal Company does not include expenses and overhead saved due to the revenues lost.⁵ Loss of earnings is defined as lost revenue less expenses and overhead deducted from the lost revenues.⁶

Based on the Monthly Profit & Loss Statements provided by the Claimant, there is no loss of earnings when revenues for 2010 after the oil spill are compared to revenues for the same period for 2009, the year before the oil spill.⁷ Further, based on the corporate income tax returns, there is no loss of earnings when the total revenue for 2010 is compared to the total revenue for 2009.⁸

Based on the corporate tax returns, there is a significant decline in total revenue from 2008 to 2009.⁹ Even if the alleged loss did occur, the Claimant has provided no

² Report from the GCCF dated 05 December 2011

³ GCCF On-Line Status Report

⁴ Report from the GCCF dated 27 September 2011

⁵ GCCF Form 2000-I Interim Payment Claim Form. See calculation of losses.

⁶ See NPFC Claims Guide on Loss of Profits and Impairment of Earning Capacity

⁷ Computer generated Profit & Loss Statements 2008, 2009 and 2010

⁸ Form 1120 US Corporation Income Tax Returns for S Corporations shows Gross Receipts of \$64,945.00 for 2009 and Gross Receipts of \$70,647.00 for 2010.

⁹ Form 1120 US Corporation Income Tax Returns for S Corporations shows Gross Receipts of \$110,484.00 for 2008 and Gross Receipts of 64,945.00 for 2009.

information to explain why his business was already trending downward a full year before the oil spill occurred. Further, the evidence provided by the Claimant does not establish that his alleged loss was due to the Deepwater Horizon oil spill

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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *21 December 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments: