

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2889

5890/DWHZ
10 February 2012

[REDACTED]
dba Lori and Son Cleaning
13933 South Swan Rd.
Gulfport, MS 39503

Re: Claim Number: N10036-1615

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 N10036-1615 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 N10036-1615.

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	N10036-1615
Claimant	Lori and Son Cleaning
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$7,920.00

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 3 October, 2011, Lori Yuetten, doing business as Lori and Son Cleaning (the Claimant), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$7,920.00 in loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was self-employed with Lori and Son Cleaning; a home cleaning service in Gulfport, MS.² The Claimant alleged that she sustained a loss of wages totaling \$7,920.00, due to a significant reduction in the number of customers utilizing her services following the Deepwater Horizon oil spill.³

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:

- (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.

¹ Optional OSLTF Claim Form, NPFC received 3 October 2011 and sum certain received 20 January 2012.

² Optional OSLTF Claim Form, NPFC received 3 October 2011.

³ Optional OSLTF Claim Form, NPFC received 3 October 2011.

- (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 initially submitted the following documentation:

- Optional OSLTF Claim Form, NPFC received 3 October 2011.
- Faxed Personal Statement dated 19 December 2011.
- Business license for period 10/01/07-09/30/2008.
- 2009 IRS Form 1040 with Schedules M, EIC, and Carryover Report.
- 2009 Mississippi Resident Individual Income Tax Form with Schedules A and B.
- 2009 W-2 for Riverside Hospital
- Copy of undated/unsigned Personal Statement.

Subsequent to receipt of the above information, in a letter dated 20 December 2011, the NPFC requested the Claimant provide additional information to assist with evaluating her claim.⁴ The following additional documentation was submitted:

- Faxed responses to questions presented in NPFC letter dated 20 December 2011.
- Fax of 2010 IRS Form 1040 and Schedules
- Fax of 2010 W-2 for Hudson's Treasure Hunt
- Fax of 2010 2009 Mississippi Resident Individual Income Tax Form with Schedules A and B.

⁴ NPFC letter requesting additional information dated 20 December 2011.

Prior to presentment to the NPFC, the Claimant asserts having presented a claim to the RP/GCCF, seeking loss of profits and earnings damages.⁵ The Claimant was assigned Claimant ID 3464564 and the claim was denied.⁶ The NPFC verified that Claimant submitted a Full Review Final (FRF) claim to the GCCF for lost wages/earnings and was assigned GCCF Claim # 9208479: this claim was denied.⁷

On 3 October 2011, the Claimant initially presented this claim to the NPFC, seeking damages in the amount of \$3,000.00.⁸ Subsequently, the Claimant amended her sum certain to reflect damages in the amount of \$7,920.00 in loss of profits and impairment of earnings capacity damages.⁹ The NPFC may adjudicate this claim to the extent that this claim has been presented to and denied by the RP/GCCF. Any damages claimed now before the NPFC which were not first presented to the RP/GCCF are denied for improper presentment.¹⁰

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 damages a claimant must demonstrate (1) that she sustained an actual loss or reduction in income, and (2) that any loss of income sustained by a claimant was caused by effects of the Deepwater Horizon oil spill.

The Claimant asserted that she sustained a loss of income when her clients terminated her cleaning services following the Deepwater Horizon oil spill.¹¹ The Claimant provided a copy of her 2009 IRS Form 1040 and W-2 for Riverside Hospital, her previous employer. Following an initial review of the Claimant's documentation, the NPFC sent the Claimant a letter requesting additional information to assist with evaluating her claim.¹² The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses.

In response to the NPFC's request, the Claimant provided copies of IRS Form 1040 for 2010 and a W-2 for Hudson Treasure Hunt. Additionally, the Claimant provided a copy of her business license for the period 2007 through 2008, but indicated that her license was not renewed beyond that period. In response to a request for documentation of her client's during the affected period, the Claimant explained that none of her former clients returned her phone calls.

Upon review of the Claimant's financial information, no business income is evidenced from the documents provided. It is further noted that none of the Claimant's documentation substantiates

⁵ Optional OSLTF Claim Form, NPFC received 3 October 2011.

⁶ Denial Letter on Interim Payment/Final Payment Claim, 22 April 2011.

⁷ GCCF – USCG Report as of 1February 2012.

⁸ Optional OSLTF Claim form received 3 October 2011.

⁹ Faxed Personal Statement dated 19 December 2011.

¹⁰ 33 C.F.R. 136.103 (a).

¹¹ Faxed Personal Statement dated 19 December 2011.

¹² NPFC letter dated 20 December 2011.

the assertion that she had a loss of clients or income caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

Accordingly, this claim is denied because (1) the Claimant failed to meet her burden to prove that she sustained a loss in profits in the amount of \$7,920.00, and (2) the Claimant failed to prove 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: *2/10/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: