

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 8689

5890/DWHZ
08 February 2012

Streamline Supply, LLC
Attn: [REDACTED]
10621 HWY 182
Franklin, LA 70538

Re: Claim Number: N10036-1627

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 your claim number N10036-1627 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 N10036-1627.

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 | N10036-1627 |
| Claimant | Streamline Supply, LLC |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$55,000.00 |

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 04 January 2012, Keith Carter on behalf of Streamline Supply, LLC, (collectively the “Claimant”), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$55,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a business based in Franklin, Louisiana that supplies parts to the oil-field industry.¹ The Claimant asserts that he experienced reduced earnings due to the Deepwater Horizon oil spill.² The Claimant attributes the loss of business to restrictions placed on oil exploration and drilling in the Gulf of Mexico after the Deepwater Horizon oil spill (“the moratorium”).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

¹ Optional OSLTF Claim Form, dated 27 December 2011.

² Optional OSLTF Claim Form, dated 27 December 2011.

³ PHONECON between the NPFC and the Claimant on 6 February 2012.

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).

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 his claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 27 December 2011;
- GCCF Claim Form Generated Online dated 21 September 2010;
- Claimant's 2009 and 2010 tax return documents;
- Claimant's 2010 "Revenue By Month" table;
- Assorted Streamline Supply, LLC invoices from March-November 2010 ;

- Email from Guy LaFleur noting the “gulf shutting down” and its impact on purchases from Streamline Supply, LLC, dated 26 September 2011;
- Undated statement from Keith Carter regarding impact of “ongoing oil spill” on Claimant’s business.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings on 21 September 2010 in the amount of \$30,000.00.⁴ The Claimant was assigned GCCF Claimant ID # 1054277 and GCCF Claim # 80644. The EAP claim was denied by the GCCF.⁵ Additionally, the Claimant filed two Full Review Final claims for loss of earnings. GCCF Claim # 9137601 (FRF1) was filed on 4 January 2011. GCCF Claim # 9484862 (FRF2) was filed on 8 September 2011.⁶ Both FRF1 and FRF2 were denied by the GCCF.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant’s GCCF claims regarding loss of earnings is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced reduced earnings. The NPFC deems that Claimant’s GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1627 considers and addresses Claimant’s GCCF loss of profits or impairment of earning capacity claims to the extent that these damages were first presented to the responsible party, specifically; GCCF Claim #’s 80644 (EAP), 9137601 (FRF1), and 9484862 (FRF2).

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 he suffered a financial loss due to the Deepwater Horizon oil spill. In his Optional OSLTF Claim Form, the Claimant notes that his business selling supplies to the oil-field industry suffered as a result of the Deepwater Horizon oil spill. Additionally, the Claimant provided a statement from one of his customers, Allpoints Oilfield Services, LLC, stating that “the gulf shutting down” has eliminated their need to purchase supplies from the Claimant.⁸ Furthermore, during a phone conversation with the NPFC the Claimant cited the moratorium on drilling as the cause of his loss.⁹ Consequently, the Claimant failed to prove that his alleged loss was a result of the Deepwater Horizon oil spill as opposed to other factors such as delays in permitting and the moratorium on drilling which are intervening causes and thus not a consequence of the oil spill.

⁴ Report from the GCCF dated 2 February 2012.

⁵ Report from the GCCF dated 2 February 2012.

⁶ Report from the GCCF dated 2 February 2012.

⁷ Report from the GCCF dated 2 February 2012.

⁸ Email from Guy LaFleur dated 26 September 2011

⁹ PHONECON between the NPFC and the Claimant on 06 February 2012.

This claim is denied because the Claimant failed to meet his burden to demonstrate 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: *2/8/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: