

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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Arlington, VA 20598-7100
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5890/DWHZ
17 January 2012

Fowler Plumbing, Inc.
ATTN: [REDACTED]
P.O. Box 9405
Mobile, AL 36691

Re: Claim Number: N10036-1628

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 N10036-1628 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 N10036-1628.

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	N10036-1628
Claimant	Fowler Plumbing, Inc.
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$113,000.00

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 4 January 2012, Mr. Greg Fowler, on behalf of Fowler Plumbing, Inc. (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$113,000.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant works as a commercial plumber in Mobile, Alabama. On 4 August 2009, the Claimant entered into a contract to install plumbing and gas systems throughout a motel that was intended to be constructed in Tillman's Corner, Alabama.² The contract stipulated that the work was to be completed prior to the oil spill, by 1 March 2010.³ According to the Claimant and the developer of the motel, the project was not completed prior to the oil spill because of problems securing sufficient funding.⁴

A letter from the developer of the motel states, “[t]he reason for the project to be shutdown was the bank pulled our funding at the last second, right after the oil spill occurred.”⁵

The Claimant alleged that due to the cancellation of the project, the Claimant incurred losses in the amount of \$113,000.00, which he now seeks from the OSLTF.⁶

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

¹ Optional OSLTF Claim Form, signed on 15 December 2011.

² Copy of sub-contract between the Claimant and Harvill, Inc., 29 July 2009.

³ Copy of sub-contract between the Claimant and Harvill, Inc., 29 July 2009.

⁴ PHONECONS: NPFC Staff and Ricky Patel, 9 January 2012; NPFC Staff and the Claimant, 9 January 2012.

⁵ Letter from Southern Hospitality Group, LLC to the Claimant, 6 December 2011.

⁶ Optional OSLTF Claim Form, signed on 15 December 2011.

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.
- (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:

- Letter authorizing communication with accountant, Michael Keenan, 4 January 2012;
- Fax Cover Sheet;
- Optional OSLTF Claim Form, signed on 15 December 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 8 October 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 27 May 2011;
- Email from the Claimant to the GCCF, requesting re-review of claim #01185139;
- Letter from Southern Hospitality Group, LLC to the Claimant, 6 December 2011;
- Bid for Best Western Plumbing job, 5 May 2009;
- Copy of sub-contract between the Claimant and Harvill, Inc., 29 July 2009, indicating completion of work required by March 1, 2010;
- Attachment A: Harvill, Inc. Insurance Requirements;
- Fowler Plumbing Company, Inc. Profit and Loss Statement, 2008;

- Fowler Plumbing Company, Inc. Profit and Loss Statement, 2009;
- Fowler Plumbing Company, Inc. Profit and Loss Statement, 2010;
- Fowler Plumbing Company, Inc. Profit and Loss Statement, 2011;
- Bar graph showing monthly sales, January – December 2008;
- Bar graph showing monthly sales, January – December 2009;
- Bar graph showing monthly sales, January – December 2010;
- Bar graph showing monthly sales, January – October 2011;
- Bar graph showing monthly sales, 2005 – 2011;
- Bar graph showing monthly sales, January 1, 2008 – October 12, 2011.

Prior to presentment of this claim to the NPFC, the Claimant submitted a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF, seeking loss of profits and wages damages.⁷ The Claimant was assigned Claimant ID 1185139 and the ICQ12011 was assigned claim # 9179836.⁸ This claim was denied by the RP/GCCF on 7 January 2012.⁹

The Claimant then presented a Full Review Final (FRF) claim to the RP/GCCF.¹⁰ The FRF claim was assigned claim # 9547644, and as of the date of this determination, remains under review with the GCCF.¹¹

On 4 January 2012, the Claimant submitted this claim to the NPFC, seeking loss of profits damages in the amount of \$113,000.00.¹² The NPFC may adjudicate this claim to the extent that the damages now before the NPFC were first presented to the RP/GCCF. Any damage amount now before the NPFC, which exceeds the amount presented to the RP/GCCF, is denied for improper presentment.¹³

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.

The Claimant alleged that construction of a motel in Tillman's Corner, Alabama, was cancelled, resulting in the loss of the Claimant's contract to install plumbing throughout the motel.¹⁴ Specifically, the Claimant alleged that following the oil spill, the developer lost funding for the project and was unable to complete the construction. The Claimant alleged that the bank's decision not to fund was prompted by the effects of the Deepwater Horizon oil spill.¹⁵

The NPFC contacted the developer of the project, who signed a letter included in the Claimant's submission, in order to determine why the project was cancelled. The letter states that "the bank pulled our funding at the last second right after the oil spill occurred."¹⁶ In conversations with

⁷ GCCF Claimant Status, accessed on 11 January 2012.

⁸ GCCF Claimant Status, accessed on 11 January 2012.

⁹ GCCF Denial Letter on Interim Payment/Final Payment Claim, 7 January 2012.

¹⁰ GCCF Claimant Status, accessed on 11 January 2012.

¹¹ GCCF Claimant Status, accessed on 11 January 2012.

¹² Optional OSLTF Claim form, signed on 15 December 2011.

¹³ 33 C.F.R. § 136.103(a).

¹⁴ Optional OSLTF Claim form, signed on 15 December 2011.

¹⁵ Letter from Harvill, Inc. to the GCCF, received on 11 January 2012.

¹⁶ Letter from Southern Hospitality Group, LLC to the Claimant, 6 December 2011.

the Claimant and the developer of the motel, the NPFC was informed that although construction was allegedly cancelled at some point following the Deepwater Horizon oil spill, it had been delayed in the months prior to the oil spill, due to the developer's inability to attain funding.¹⁷ The developer stated that the poor economy was the reason he was unable to secure funding prior to the Deepwater Horizon oil spill.¹⁸

The NPFC contacted a loan officer at a bank in Mobile who stated that loans for hotel construction in Mobile were being disapproved in 2010 due to the generally weak industry and the oversupply of hotels in the area.¹⁹ The loan officer stated that it was unlikely that the inability of the developer to secure a loan was due to concerns associated with the Deepwater Horizon oil spill.²⁰ The NPFC also made several attempts to contact the loan officer who actually coordinated with the developer on the project, but emails and calls were unreturned.²¹

The Claimant has not presented any information that would indicate that the developer's loss of funding was caused by the discharge of oil due to the Deepwater Horizon oil spill, and not by the factors that had been delaying the developer's ability to attain funding in the period leading up to the Deepwater Horizon oil spill.

This claim is denied because the Claimant has failed to meet his burden to prove (1) that he sustained a financial loss in the amount of \$113,000.00, and (2) that the alleged financial loss was caused by the discharge of oil due to the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *1/17/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁷ PHONECONS: NPFC Staff and Ricky Patel, 9 January 2012; NPFC Staff and Greg Fowler, 9 January 2012.

¹⁸ PHONECON: NPFC Staff and Ricky Patel, 9 January 2012.

¹⁹ PHONECON: NPFC Staff and Loan Officer, Bankcorps South, 11 January 2012.

²⁰ PHONECON: NPFC Staff and Loan Officer, Bankcorps South, 11 January 2012.

²¹ The NPFC sent the BBVA Compass Bank loan officer two emails, and made several calls to the loan officer's office and cell phones on 11, 12 and 13 January 2012. None of those calls or emails were returned.