

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: art-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2446 3442

5890/DWHZ  
27 April 2012

Marvin Jerome Hamilton, Sr.



Re: Claim Number: N10036-1654

Dear Mr. Hamilton:

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 N10036-1654 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 N10036-1654.

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	N10036-1654
Claimant	Marvin J Hamilton, Sr.
Type of Claimant	Personal
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,000.00

### ***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 28 January 2012, Mr. Marvin J Hamilton, Sr. (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) form to the National Pollution Funds Center (NPFC) seeking \$15,000.00 for loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant allegedly worked for Langston Pressure Washers Services, Inc., a pressure washer business servicing “vacationer’s boats, homes, business and etc.” in the Gulf County, FL region.<sup>2</sup> The Claimant asserts that as a result of the Deepwater Horizon oil spill, tourism decreased and consequently he was laid off from his position at Langston Pressure Washers Services, Inc.<sup>3</sup>

The Claimant is seeking \$15,000.00.<sup>4</sup>

### ***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

---

<sup>1</sup> Optional OSLTF form from Claimant signed 11 January 2012.

<sup>2</sup> Letter from Claimant to NPFC in response to request for additional information.

<sup>3</sup> Letter from Claimant to NPFC in response to request for additional information.

<sup>4</sup> Optional OSLTF form from Claimant dated 11 January 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 Form dated 11 January 2012;
- 2010 Form 1099-G;
- Letter from Mr. Eric Langston (Claimant's former employer);
- Cover letter for Claimant's response to request for additional information dated 11 April 2012;
- Letter from Claimant to NPFC outlining documentation included in response to request for additional information;
- Letter from Claimant to NPFC responding to questions in request for additional information;

- 2008 Form 1040 U.S. Individual Income Tax Return;
- 2009 Form 1040 U.S. Individual Income Tax Return;
- 2010 Form 1040 U.S. Individual Income Tax Return;
- 2010 Form 1099-MISC from Texas Region Management for \$7,338.00;
- 2009 Form W-2 for \$1,168.91 from Fedex National Ltl, Inc;
- 2010 Form W-2 for \$3,519.29 from Walgreen Co Ill;
- 2008 Form W-2 for \$951.12 from Met Life Agent HD Supply Inc;
- 2008 Form W-2 for \$21,438.40 from HD Supply Management Inc;
- 2009 Form W-2 for \$3,346.97 from HD Supply Management Inc;
- 2009 Form 1099-G.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$15,000.00.

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 09 November 2010 in the amount of \$15,000.00.<sup>5</sup> He was assigned Claimant ID #3284679 and claim #440522. This claim was denied on 14 December 2010.<sup>6</sup> He also filed a Final claim (FC) on 03 December 2010 with claim #566857 and was denied.<sup>7</sup> Additionally, the Claimant filed a Full Review Final (FRF) claim on 04 January 2011 with the GCCF for \$25,000.00.<sup>8</sup> He was assigned claim #9128817. This claim was denied on 25 May 2011.<sup>9</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that a reduction in income occurred as result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's three denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary/Determination for NPFC Claim #N10036-1654 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 440522 (EAP), 566857 (FC), and 9128817 (FRF).

### **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 NPFC considered all the documentation submitted by the Claimant.

In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

<sup>5</sup> Report from GCCF dated 17 April 2012.

<sup>6</sup> GCCF Denial Letter dated 14 December 2010.

<sup>7</sup> Report from GCCF dated 17 April 2012.

<sup>8</sup> Report from GCCF dated 17 April 2012.

<sup>9</sup> GCCF Denial Letter dated 25 May 2012.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate his claim. The letter requested, among other things, financial documentation from his alleged employer Langston Pressure Washers Services, Inc., for an accurate accounting of the Claimant's losses. It was sent on 30 March 2012.<sup>10</sup> On 11 April 2012, the Claimant replied to the letter stating that he is unable to provide any W-2, 1099, paystubs, contact information or financial documents from his alleged employment.<sup>11</sup> Without documentation to prove that he worked for Langston Pressure Washers Services Inc. or to calculate his alleged sum certain, the Claimant has failed to meet the requirements of 33 C.F.R. § 136.231-235 to establish a claim for loss of profits or impairment of earnings capacity.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his 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: *4/27/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

---

<sup>10</sup> USPS tracking # 7011 1570 0001 2446 3077.

<sup>11</sup> Letter from the Claimant to the NPFC answering the NPFC's questions.