

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 9563

5890/DWHZ
25 April 2012

Cyrus J. Reed
[REDACTED]

Re: Claim Number: N10036-1660

Dear Mr. Reed:

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 N10036-1660 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 N10036-1660.

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	N10036-1660
Claimant	Cyrus Reed
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$21,072.77

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 01 February 2012, Cyrus J. Reed (the Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$21,072.77 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant works in IT Services for Automatic Power, Inc. (API).¹ API is company that provides offshore marine aids to navigation.² At the time of the Deepwater Horizon oil spill, the Claimant worked at API's location in Westwego, Louisiana.³ However, due to API's losses from the Deepwater Horizon oil spill, API closed its Westwego location, along with its Cut Off, Louisiana location, and relocated its operations to Gray, Louisiana.⁴ During this transition, many employees at API were either laid off or asked to take early retirement. The Claimant was able to keep his job but now has to travel over 100 miles round trip each day with the relocation of his position to the Gray location.⁵ The Claimant's asserted damages are for the extra fuel and maintenance costs that he has incurred due to the longer commute.⁶

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).

¹ Optional OSLTF Claim Form, dated 19 January 2012.

² GCCF Interim Payment Claim Form, dated 30 June 2011.

³ Letter from API to the GCCF, dated 18 August 2011.

⁴ Letter from API to the GCCF, dated 18 August 2011.

⁵ Letter from API to the GCCF, dated 18 August 2011.

⁶ Optional OSLTF Claim Form, dated 19 January 2012.

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 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 19 January 2012;

- Determination Letter on Interim Payment/Final Payment Claim, dated 13 January 2012;
- GCCF Interim Payment Claim Form, dated 30 June 2011;
- GCCF Interim Payment Claim Form, dated 30 September 2011;
- GCCF Interim Payment Claim Form, dated 31 December 2011;
- Written Explanation of API's business;
- Photocopy of the Claimant's API business card;
- Computer printout of internet search of API;
- Screenshot of API's website;
- Paystub from Automatic Power, dated 12 May 2011;
- 2008, 2009, and 2010 Form W-2's from Automatic Power, Inc.;
- Letter from API to the GCCF, dated 18 August 2011;
- Various invoices and receipts for car expenses;
- Email Notification of the Claimant's entry into the Multi-District Litigation, dated 05 April 2011;
- Direct Filing Short Form for MDL 2179.

Prior to presenting this claim to the NPFC, the Claimant filed four claims with the GCCF for loss of earnings, all under Claimant ID # 3509233. The Claimant submitted one additional claim to the GCCF under the same Claimant ID for loss of earnings after the presentment of his claim to the NPFC. The table below provides relevant information for the Claimant's GCCF claims.⁷

<u>Date Presented to GCCF</u>	<u>Claim No.</u>	<u>Claim Type</u>	<u>Amount Claimed</u>	<u>GCCF Status</u>
04/28/2011	9346871	Interim 2 (ICQ22011)	-----	Denied
06/30/2011	9410678	Interim 3 (ICQ32011)	\$5,272.93	Denied
09/30/2011	9516807	Interim 4 (ICQ42011)	\$3,481.44	Denied
12/31/2011	9552716	Interim 5 (ICQ52012)	\$3,170.40	Denied
04/02/2012	9588479	Interim 6 (ICQ62012)	\$3,429.60	Deficient

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant's job was relocated and he had increased driving expenses. The NPFC deems that the Claimant's GCCF loss of earnings claims were properly presented to the responsible party and properly presented to the NPFC.⁸ The NPFC deems that the Claimant's claim for loss of earnings was properly presented to the responsible party and properly presented to the NPFC to the extent that those damages were presented to the responsible party.⁹ Accordingly, this Claim Summary Determination for NPFC Claim N10036-1660 considers and addresses the earnings claimed in the claims presented to the

⁷ Report from the GCCF dated 17 April 2012.

⁸ The NPFC did not consider the Claimant's Interim 6 claim because there was not valid presentment. A claim must have either been wholly or partially denied by the responsible party or the claim must have gone 90 days without action from the responsible party for proper presentment. For the Interim 6 claim, there has been no final action from the GCCF; nor has 90 days elapsed since 02 April 2012.

⁹ Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Based on the information provided by the GCCF, the NPFC is unable to verify the amount of damages claimed to the GCCF for the Claimant's Interim 2 claim.

responsible party, specifically; GCCF Claim #'s 9346871 (ICQ22011), 9410678 (ICQ32011), 9516807 (ICQ42011), and 9552716 (ICQ52012).

The documentation submitted by the Claimant indicated that the Claimant filed a claim in the multidistrict litigation now pending in the United States District Court for the Eastern District of Louisiana (MDL-2179 In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf Of Mexico, on April 20, 2010) against BP (the "MDL") on 20 April 2011. Although, under the Oil Pollution Act of 1990, the NPFC may not approve and certify the payment of a claim during the pendency of an action by the person in court to recover costs which are the subject of the claim, the NPFC may adjudicate such a claim to determine whether it may be compensable. Where appropriate, such a claim may be denied.

NPFC Determination

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 that he experienced a financial loss due to the Deepwater Horizon oil spill. The Claimant provided a letter from API confirming the Claimant's assertions that the Claimant's job was relocated due to a decline in business at API caused by the Deepwater Horizon oil spill.¹⁰ On 19 March 2012, the NPFC contacted API to confirm the authenticity of the submitted letter as well as procure additional information regarding the effects of the Deepwater Horizon oil spill on API's business. API confirmed the validity of the submitted letter to the NPFC. Further, the NPFC was informed that there were two reasons for the losses experience by API; one being the moratorium on drilling.¹¹

The second reason offered by API for their losses was that API provides navigation tools for oil platforms that are not in production and, due to the Deepwater Horizon oil spill, the oil companies dismantled these platforms and took them out of service; thus there was no need for API's services.¹² Information gathered by the NPFC indicates that the dismantling of unused oil equipment in the Gulf of Mexico by oil and gas companies was enacted due to a Notice to Lessees issued by the Department of the Interior and the Bureau of Ocean Energy Management, Regulation and Enforcement on 15 September 2010, to be effective on 15 October 2010.¹³ The rationale offered for this notice was that it was "part of a sustained effort to improve the safety of

¹⁰Letter from API to the GCCF, dated 18 August 2011.

¹¹ PHONECON between API and the GCCF on 19 March 2012.

¹² PHONECON between API and the GCCF on 19 March 2012.

¹³ News Release from the U.S. Department of the Interior on 15 September 2010 - "Notice Updates Procedures for Decommissioning Offshore Wells, Platforms." Accessed on 24 April 2012 at:

<http://www.doi.gov/news/pressreleases/Interior-Department-Issues-Idle-Iron-Guidance.cfm>

energy production on the Outer Continental Shelf and strengthen environmental protections.”¹⁴ Elsewhere, the NPFC found information indicating that this notice “was triggered by the findings of a 2008 MMS review on the presence of idle infrastructure in the GoM.”¹⁵

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 the drilling moratorium, which is considered an intervening factor and thus not a consequence of the oil spill, or the Notice to Lessees issued for oil rig dismantling, which is also not a consequence of the oil spill.

This claim is denied because the Claimant failed 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

Claims Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *4/25/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹⁴ News Release from the U.S. Department of the Interior on 15 September 2010 - “Notice Updates Procedures for Decommissioning Offshore Wells, Platforms.” Accessed on 24 April 2012 at:

<http://www.doi.gov/news/pressreleases/Interior-Department-Issues-Idle-Iron-Guidance.cfm>

¹⁵ News Article written by DecomWorld - “DecomWorld Findings Reveal US Idle Iron Mandate puts £3.5bn Price Tag on GoM Decommissioning Market.” Accessed on 24 April 2012 at:

<http://www.prweb.com/releases/2010/09/prweb4552314.htm>