

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
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3848

5890/DWHZ
06 June 2012

Dixieland Home Farm & Garden Center, Inc.
Attn: [REDACTED]
21330 Highway 603
Kiln, MS 39556

Re: Claim Number: N10036-1692

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 N10036-1692 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 N10036-1692.

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: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1692
Claimant	Dixieland Home Farm & Garden Center, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$422,332.20

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 23 February 2012, James Alexander, on behalf of Dixieland Home Farm & Garden Center, Inc. (collectively, the Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$422,332.20¹ in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a business in Kiln, Mississippi that primarily acts as a retail supplier of feeds, seeds, chemicals, fertilizers, and other miscellaneous supplies required by local community farmers, ranchers, and residents.² The Claimant asserted that most of its customers were employed in the fishing, hospitality, farming, ranching, and service type industries and that their income was lost or dramatically reduced due to the Deepwater Horizon oil spill.³ Further, due to their reduced earnings, the customers were forced to sell their animals and decrease their gardening/farming/planting, resulting in decreased demand for the Claimant's merchandise and reduced income for the Claimant.⁴

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 Email from the Claimant to the NPFC clarifying sum certain, dated 23 February 2012.

² Letter of claim explanation from the Claimant (2), dated 28 August 2011.

³ Letter of claim explanation from the Claimant (2), dated 28 August 2011.

⁴ Letter of claim explanation from the Claimant (2), dated 28 August 2011.

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

- Email from the Claimant to the NPFC clarifying the sum certain, dated 23 February 2012;
- Letter from the Claimant to the NPFC, dated 28 August 2011;
- Letter from the Claimant to the GCCF, dated 08 January 2011;
- GCCF Interim Payment Claim Form, dated 08 January 2011;
- October – December 2009/2010, January – April 2010, January – June, July, August, September 2011 Monthly Profit & Loss Statements,
- Spreadsheet entitled “Balance Sheet Prev Year Comparison, As of December 31, 2010”;
- Letter from the Claimant to the GCCF, dated 22 May 2011;
- 2010 Form 7004, Application for Extension of Time to File;
- GCCF Interim Payment Claim Form, dated 06 June 2011;
- Letter from the Claimant to the GCCF, dated 28 August 2011;
- Letter of claim explanation from the Claimant to the GCCF, dated 28 August 2011;
- Spreadsheet entitled “A/R Aging Summary, As of June 30, 2011”;
- Letter of claim explanation from the Claimant to the GCCF (2), dated 28 August 2011;
- GCCF Interim Payment Claim Form, dated 28 August 2011;
- January – April 2010 Mississippi Sales Tax Return
- Determination Letter on Interim Payment/Final Payment Claim, dated 07 June 2011;
- Screenshot of GCCF Claimant Status;
- Letter from the Claimant to the GCCF, dated 06 June 2011;
- Letter of claim explanation from the Claimant to the GCCF, dated 06 June 2011;
- Spreadsheet entitled “A/R Aging Summary, As of March 31, 2011”;
- Letter of claim explanation from the Claimant to the GCCF (2), dated 06 June 2011;
- GCCF Interim Payment Claim Form, undated;
- Letter from the Claimant to the GCCF, dated 22 December 2011;
- Letter of claim explanation from the Claimant to the GCCF, dated 22 December 2011;
- Spreadsheet entitled “A/R Aging Summary, As of September 30, 2011”;
- Letter from the Claimant to the NPFC, dated 14 February 2012;
- Letter of claim explanation from the Claimant to the GCCF, dated 28 November 2010;
- January – November 2010 Profit and Loss Statement
- January – November 2009 Profit and Loss Statement
- Spreadsheet entitled “Balance Sheet Prev Year Comparison, As of November 28, 2010”;
- Letter of claim explanation from the Claimant to the GCCF (2), dated 22 December 2011;
- GCCF Interim Payment Claim Form, dated 22 December 2011; and,
- July – September 2011 Profit and Loss Statement.

Prior to presenting this claim to the NPFC, the Claimant filed five claims with the GCCF for loss of earnings, all under Claimant ID # 3223235. The table below provides relevant information for the Claimant’s GCCF claims.⁵

⁵ Report from the Transition Program, dated 01 May 2012.

<u>Date Presented to GCCF</u>	<u>Claim No.</u>	<u>Claim Type</u>	<u>Amount Claimed</u>	<u>GCCF Status</u>
10/19/2010	278159	Emergency Advance (EAP)	\$61,214.45	Paid
01/13/2011	9210096	Interim 1 (ICQ12011)	\$84,176.67	Denied
09/14/2011	9500359	Interim 3 (ICQ32011)	\$94,762.56	Under Review
01/19/2012	9559259	Interim 5 (ICQ52012)	\$111,104.96	Under Review
01/19/2012	9559256	Interim 5 (ICQ52012)	\$65,531.67	Denied

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 lost earnings from the sale of merchandise at its store. The NPFC deems that the Claimant's GCCF claims were properly presented to the responsible party and properly presented to the NPFC up to \$355,575.86. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1692 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 9210096 (ICQ12011), 9500359 (ICQIII2011), 9559259 (ICQV2012A) and 9559262 (ICQV2012B).

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 (1) some of the damages were not properly presented to the responsible party, and (2) the Claimant failed to prove the alleged loss was due to the Deepwater Horizon oil spill.

Non-Compensable Damages

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an Interim I claim for \$84,176.67, an Interim III claim for \$94,762.56, an Interim V claim for \$111,104.96, and a second Interim V claim for \$65,531.67.⁶ The Claimant then presented a loss of profits and impairment of earnings capacity claim to the NPFC for \$422,332.20. Any claimed amount of damages exceeding \$355,575.76 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.⁷

⁶ Report from the Transition Program, dated 01 May 2012.

⁷ The Claimant's EAP claim of \$61,214.45 was not considered for presentment because the Claimant was fully satisfied by the GCCF's payment of \$61,300.00. The NPFC also notes that, in the Claimant's email to the NPFC on 23 February 2012, the Claimant asserted that it had submitted an additional claim to the GCCF in the amount of \$66,841.89. However, based on the information provided to the NPFC by the Transition Program, the RP has no record of the presentment of this claim.

Failure to Prove Financial Loss Due to the Deepwater Horizon oil spill

The Claimant asserted that it lost merchandise sales due to financial losses experienced by its customers that were caused by the Deepwater Horizon oil spill. In support of the claim, the Claimant provided some profit and loss statements, as well as a voluminous amount of communication between the Claimant and the GCCF. On 23 April 2012, the NPFC requested that the Claimant provide additional information to further substantiate its damages and establish a connection between its alleged loss and the Deepwater Horizon oil spill. The NPFC requested that the Claimant provide, among other things, Federal tax returns from 2008, 2009, 2010, and 2011, more comprehensive profit and loss statements, data to support the anticipated 5% increase in sales in 2010, contracts for the sale of goods that were cancelled due to the Deepwater Horizon oil spill.⁸ To date, the NPFC has not received any response or additional information from the Claimant. Consequently, the Claimant failed to prove that it experienced a financial loss due to the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because (1) some of the damages were not properly presented to the responsible party and (2) 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.

Claims Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/6/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ Letter from the NPFC to the Claimant, dated 23 April 2012.