

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

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Number: 7011 1570 0001 2446 3176

5890/DWHZ
06 April 2011

Sunset Mini Storage
c/o [REDACTED]
1950 West Hwy 98
Mary Esther, FL 32569

RE: Claim Number: N10036-1693

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 claim number N10036-1693 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. 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 N10036-1693.

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	N10036-1693
Claimant	Sunset Mini Storage
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$23,000.00

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 24 February 2012, Sunset Mini Storage (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$23,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant allegedly owns Sunset Mini Storage and a produce stand which she rents out, both located in the vicinity of Fort Walton Beach, Florida.¹ The Claimant alleges the tenant of the produce stand did not renew their lease in July of 2010 due to the oil spill.² Furthermore, for Sunset Mini Storage, the Claimant alleges a “significant loss of income in 2010 after the oil spill.”³

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 § 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 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.

¹ Claimant’s letter of explanation of her claim dated 16 February 2012.

² Claimant’s letter of explanation of her claim dated 16 February 2012.

³ Claimant’s letter of explanation of her claim dated 16 February 2012.

- (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 her claim, the Claimant submitted the following documentation:

- Claimant's letter of explanation dated 16 February 2012
- Optional OSLTF claim form undated
- 2011 1099-MISC from GCCF to Larkin Produce (Claimants former tenant)
- 2009 Form 1040 U.S. Individual Income Tax Return
- 2008 Form 1040 U.S. Individual Income Tax Return
- 2007 Form 1040 U.S. Individual Income Tax Return
- Ledger sheet showing gross income for 2008 through 2011 for Sunset Mini Storage and the produce stand

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$23,000.00.

Prior to presenting her claim to the NPFC, the Claimant alleges they filed a claim with the GCCF in October 2011 and received a denial.⁴ She states she was assigned GCCF Claimant ID #3136951.⁵ Other than her own assertion, the Claimant did not provide any information regarding the presentment of her claim to the Responsible Party (GCCF). The NPFC was unable to verify, either through the Claimant or the RP that this claim was properly presented to the GCCF.

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.

Failure to Establish Presentment

Under 33 U.S.C. § 2713(a), claimants must first present their claim to the Responsible Party, except for limited exceptions not applicable to the Claimant. The Claimant did not provide the NPFC with any information evidencing that she presented her claim to the GCCF nor was the NPFC able to verify that she presented her claim to the GCCF. Consequently, the Claimant failed to provide the NPFC with sufficient evidence to prove that her claim is properly before the NPFC. If the Claimant returns on reconsideration, documentation evidencing that she presented her claim to the GCCF must be submitted.

Failure to Prove Loss or Causation

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim.⁶ The letter requested, among other things, 2010 taxes, financial documentation for an accurate accounting of the Claimant's losses, and proof of ownership accompanying the lease for the produce stand.⁷ The request was sent on 28 February 2012. On 03 March 2012, Claimant acknowledged receipt of the certified letter.⁸ To date no response has been received by the NPFC.

Accordingly, the NPFC proceeded to evaluate the claim with the evidence the Claimant had originally submitted. The Claimant provided U.S. Income Taxes for 2007 through 2009⁹, but did not provide U.S. taxes for the alleged effected years of 2010 and 2011. The Claimant provided a handwritten ledger for the years of 2008 through August 2011¹⁰; however the total rental income for Sunset Mini Storage does not match their tax statements.¹¹ Therefore, the 2010 and 2011 numbers need to be verified by further evidence i.e. U.S. tax forms and/or state sales tax collection. The evidence provided does not support the allegation that the Claimant lost \$23,000.00 in earnings as a result of the Deepwater Horizon oil spill.

⁴ Optional OSLTF claim form undated.

⁵ Optional OSLTF claim form undated.

⁶ NPFC's request for information dated 28 February 2012.

⁷ NPFC's request for information dated 28 February 2012.

⁸ USPS tracking # 7011 1570 0001 2446 2940.

⁹ 2007, 2008, and 2009 Form 1040 U.S. Individual Income Tax Returns.

¹⁰ Ledger sheet showing gross income for 2008, 2009, 2010, and partial 2011 for Sunset Mini Storage and the produce stand.

¹¹ Ledger 2008 SMS rent equals \$43,446.00 while 2008 U.S. Taxes equal \$43,781.00; Ledger 2009 SMS rent equals \$41,552.00 while 2009 U.S. Taxes equal \$42,048.00.

The Claimant has provided no documentation to substantiate that her alleged loss of profits and impairment of earnings capacity was due to the Deepwater Horizon oil spill.¹²

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her 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: *4/6/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹² The Claimant submitted a 2011 1099-MISC from the GCCF to her alleged produce tenant Larkin Produce for \$40,500.00 but did not provide corroboration from renter as to causation nor a lease nor proof of ownership of the produce stand.