

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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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2446 3886

5890/DWHZ  
15 May 2012

Calvin Hampton  


Re: Claim Number: N10036-1796

Dear Mr. Hampton:

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 N10036-1796 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

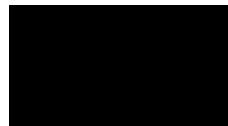
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1796.

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	N10036-1796
Claimant	Scrub & Clean Services, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$150,000.00

### ***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 9 May 2012, Calvin Hampton, on behalf of Scrub & Clean Services, Inc., (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$150,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was a cleaning services company in New Orleans, Louisiana.<sup>2</sup> The Claimant alleged many of the businesses served suffered as a result of the oil spill and in turn the Claimant's business began to decline.<sup>3</sup> The Claimant further alleged that it was "almost impossible" to get new contracts.<sup>4</sup>

The Claimant has not provided an explanation of how he calculated his losses.

### ***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 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.

<sup>1</sup> Optional OSLTF Claim Form, signed 1 May 2012.

<sup>2</sup> Optional OSLTF Claim Form, signed 1 May 2012.

<sup>3</sup> Optional OSLTF Claim Form, signed 1 May 2012.

<sup>4</sup> Optional OSLTF Claim Form, signed 1 May 2012.

- (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 undertake, 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:

- Optional OSLTF Claim Form, signed 1 May 2012;
- Sheet with GCCF Claim Number and EIN Number;
- Profit & Loss Statements for June 2008 through December 2011;
- 2008 Federal S Corporation Income Tax Return;
- 2009 Federal S Corporation Income Tax Return;
- 2010 Federal S Corporation Income Tax Return.

Prior to presentment to the NPFC, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages.<sup>5</sup> The Claimant was assigned Claimant ID 3391056 and the FRF claim was assigned claim # 9452760.<sup>6</sup> The RP/GCCF denied payment on this claim.

Prior to presentment to the NPFC, the Claimant presented an Interim Payment (IP) claim to the RP/GCCF, seeking loss of profits and wages damages.<sup>7</sup> The Claimant retained Claimant ID 3391056 and the IP claim was assigned claim # 9582545.<sup>8</sup> The claim was withdrawn pursuant to a written request from the Claimant.

Prior to presentment to the NPFC, the Claimant presented a second FRF to the RP/GCCF, seeking loss of profits and wages damages.<sup>9</sup> The Claimant retained Claimant ID 3391056 and the FRF claim was assigned claim # 9584689.<sup>10</sup> The RP/GCCF denied payment on this claim.

On 9 May 2012, the Claimant submitted this claim to the NPFC seeking \$150,000.00 in loss of profits and impairments of earning capacity damages.<sup>11</sup> The NPFC may adjudicate this claim to the extent that

<sup>5</sup> GCCF Claimant Status, accessed 9 May 2012.

<sup>6</sup> GCCF Claimant Status, accessed 9 May 2012.

<sup>7</sup> GCCF Claimant Status, accessed 9 May 2012.

<sup>8</sup> GCCF Claimant Status, accessed 9 May 2012.

<sup>9</sup> GCCF Claimant Status, accessed 9 May 2012.

<sup>10</sup> GCCF Claimant Status, accessed 9 May 2012.

<sup>11</sup> Optional OSLTF Claim Form, signed 1 May 2012.

these damages have been presented to the RP/GCCF.<sup>12</sup> Any damages now before the NPFC, which were not first presented to the RP/GCCF are denied for improper presentment.

### **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.

In order to prove a claim for loss of profits 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.

The financial documentation provided by the Claimant fails to support the Claimant's assertion that the Deepwater Horizon oil spill caused a loss of income in 2010. According to NPFC calculations, the business experienced a downward trend in the year prior to the oil spill, from May 2009 through April 2010.<sup>13</sup> The calculations further show that this downward trend continued after the oil spill, but at a slightly decreased rate indicating the Claimant's business had improved as compared to recent trends.<sup>14</sup>

Furthermore, the Claimant did not provide evidence to indicate that any particular jobs, contracts, or clients were lost or cancelled as a result of the oil spill. Without any supporting documentation, the NPFC is unable to determine how the oil spill may have impacted the Claimant's business.

Should the Claimant choose to request reconsideration, he must provide evidence of contracts cancelled or not entered into because of the oil spill, evidence that his customers were in industries affected by the oil spill, or other evidence that specifically links his alleged loss to the Deepwater Horizon incident. Contact information for all customers will also need to be provided.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$150,000.00, and (2) 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.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/15/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>12</sup> 33 C.F.R. § 136.103(a).

<sup>13</sup> 2009 and 2010 Profit and Loss Statements.

<sup>14</sup> 2010 Profit and Loss Statements.