

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 1150 0000 4636 3097

5890/DWHZ  
Claim # N10036-1277  
05 October 2011

Gulf States Enterprises, Inc.  
Attn: Troy Templeman  
8905 Untreiner Avenue  
Pensacola, Florida 33534

Re: Claim Number: N10036-1277

Dear Mr. Templeman:

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 N10036-1277 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 N10036-1277.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

  
ation Division  
National Pollution Funds Center  
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1277
Claimant	Gulf States Enterprises, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$92,000.00

### ***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 05 August 2011, Troy Templeman, on behalf of Gulf States Enterprises (collectively, the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$92,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant operates a truck hauling company that provides hauling services and construction materials for marine contractors in the Pensacola, Florida region.<sup>1</sup> The Claimant asserted that due to the Deepwater Horizon oil spill, previously submitted proposals for work were cancelled.<sup>2</sup> Additionally, the Claimant asserted that the product end of its business suffered due to a reduction in the number of tourists and boaters in the region.<sup>3</sup> As a result of the cancelled proposals and the reduction in the product end of the Claimant's business, the Claimant asserted it suffered reduced income.<sup>4</sup>

The Claimant did not provide an explanation for the calculation of the sum certain of \$92,000.00.

### ***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 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:

<sup>1</sup> Attachment to Optional OSLTF Claim Form describing claim.

<sup>2</sup> Attachment to Optional OSLTF Claim Form describing claim.

<sup>3</sup> Attachment to Optional OSLTF Claim Form describing claim.

<sup>4</sup> Attachment to Optional OSLTF Claim Form describing claim.

- (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:

- Optional OSLTF Claim Form received 05 August 2011;
- Attachment to Optional OSLTF Claim Form describing claim;
- Email from the Claimant to NPFC dated 27 July 2011;
- Email from the Claimant to NPFC dated 29 July 2011;
- The Claimant Income Statement for period January 2009-December 2009;
- The Claimant Income Statement for period July 2009-September 2009;
- The Claimant Balance Sheet as of 31 December 2008;
- The Claimant Income Statement for period January 2008-December 2008;
- The Claimant Income Statement for period April 2009-June 2009;
- Email from the Claimant to NPFC dated 04 August 2011 (1);
- Letter from Alford & Son's to the Claimant dated 23 November 2010;
- The Claimant Estimate to O'Daniel Marine Construction dated 17 May 2010;
- The Claimant Estimate to O'Daniel Marine Construction dated 14 August 2010;
- The Claimant Estimate to O'Daniel Marine Construction dated 07 June 2010;
- The Claimant Estimate to O'Daniel Marine Construction dated 16 September 2010;
- The Claimant Estimate to O'Daniel Marine Construction dated 26 August 2010;
- The Claimant Estimate to O'Daniel Marine Construction dated 22 November 2010 (1);
- The Claimant Estimate to O'Daniel Marine Construction dated 16 September 2010;
- The Claimant Estimate to O'Daniel Marine Construction dated 22 November 2010 (2);
- Letter from O'Daniel Marine Construction to the Claimant dated 15 November 2010;
- Email from the Claimant to NPFC dated 04 August 2011 (2);

- 2008 Form 1120S Federal Tax Return;
- 2009 Form 1120S Federal Tax Return;
- Email from the Claimant to NPFC dated 04 August 2011 (3);
- Email from the Claimant to NPFC dated 04 August 2011 (4);
- Letter from the Claimant to NPFC requesting review of GCCF denial;
- Email from the Claimant to NPFC dated 04 August 2011 (5);
- GCCF Claim Form.

Prior to presenting this Claim to the NPFC, the Claimant filed a Full Review Final (FRF) Payment with the GCCF on 01 December 2010 in the amount of \$92,382.65.<sup>5</sup> The Claimant was assigned Claimant ID # 3157518 and Claim ID # 9038932. The FRF Claim was denied on 27 May 2011.<sup>6</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim is the same as the subject matter of Claimant's claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, previously submitted proposals for work were cancelled as well as a reduction in the demand for the Claimant's product services and as a result the Claimant's business lost income. The NPFC deems the Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1277 considers and addresses the earnings claimed in the claim presented to the responsible party up to \$92,000.00, specifically; GCCF Claim # 9038932 (FRF).

### **NPFC Determination**

The claim is denied. 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.

The claim is denied because the Claimant has not proven its alleged loss in the amount of \$92,000.00 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. The Claimant has failed to prove a connection between the Deepwater Horizon oil spill and any alleged loss to its truck hauling business.

The Claimant asserted that the Deepwater Horizon oil spill resulted in previously submitted proposals for hauling work to be cancelled.<sup>7</sup> Additionally, the Claimant asserted that a reduction in the number of tourists and boaters reduced the demand for the product end of its business.<sup>8</sup> The Claimant, however, failed to provide evidence to support these assertions. The Claimant has failed to provide evidence that any customers cancelled, rescinded or abandoned existing contracts, as opposed to mere proposals, for its truck hauling services. Additionally, the Claimant failed to provide any evidence whatsoever regarding the nature of the product sales of its business, let alone the effect of the Deepwater Horizon oil spill on such sales.

Nevertheless, the NPFC attempted to verify the assertions submitted by the Claimant in its original submission to the NPFC. The NPFC contacted O'Daniel Marine Construction to verify the Claimant's assertion that proposals for truck hauling services were cancelled due to the Deepwater Horizon oil spill. In a subsequent conversation with O'Daniel Marine Construction, the NPFC was informed that the downturn in the real estate economy, rather than the Deepwater Horizon oil spill, was the primary reason for the reduction in the marine construction business in the region.<sup>9</sup> Additionally, the NPFC contacted Alford and Sons Marine Construction to verify the Claimant's assertion that proposals for truck hauling services were cancelled due to the Deepwater Horizon oil spill. In a subsequent phone conversation with Alford and Sons Marine Construction, the NPFC was informed that Alford and Sons did not have any

<sup>5</sup> Report from the GCCF dated 21 September 2011.

<sup>6</sup> GCCF Denial Letter Dated 27 May 2011.

<sup>7</sup> Attachment to Optional OSLTF Claim Form describing claim.

<sup>8</sup> Attachment to Optional OSLTF Claim Form describing claim.

<sup>9</sup> PHONECON between the NPFC and O'Daniel Marine Construction dated 10 August 2011.

cancelled contracts between its business and the Claimant's business due to the Deepwater Horizon oil spill.<sup>10</sup>

Moreover, on 18 August 2011, the NPFC requested additional information from the Claimant to fully evaluate the claim and specifically to determine the effect of the Deepwater Horizon oil spill on the Claimant's business after the oil spill occurred.<sup>11</sup> The NPFC requested that the Claimant provide profit and loss statements for 2010, a complete Federal Tax Return for 2010, sales ledgers from 2008-2010 including the names of clients, the type of project completed, the date of the project and the amount billed.<sup>12</sup> The NPFC also requested documentation of contracts that were cancelled due to the Deepwater Horizon oil spill as well as the contact information for customers that cancelled orders in 2010 including names, addresses and telephone numbers.<sup>13</sup> Despite the NPFC's grant of the Claimant's request for an extension<sup>14</sup> to respond to the Request for Additional Information, to date no response has been received by the NPFC.

This claim is denied because the Claimant failed to meet its burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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 Review: *10/5/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>10</sup> PHONECON between the NPFC and Alford and Sons Marine Construction dated 11 August 2011.

<sup>11</sup> NPFC Request for Additional Information dated 18 August 2011.

<sup>12</sup> NPFC Request for Additional Information dated 18 August 2011.

<sup>13</sup> NPFC Request for Additional Information dated 18 August 2011.

<sup>14</sup> PHONECON between the NPFC and the Claimant dated 24 August 2011.