

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 4666 9144

5890/DWHZ
14 October 2011

Pure Blend, LLC
Attn: Jan Brunet
140 Thompson Road
Houma, LA 70363

Re: Claim Number: N10036-1287

Dear Ms. Brunet:

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 N10036-1287 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 N10036-1287.

Mail reconsideration requests to:

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

Sincerely,



Claims Rejection Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1287
Claimant	Pure Blend, LLC
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$458,470.00

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 10 August 2011, Jan Brunet, on behalf of Pure Blend, LLC (collectively Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$458,470.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a company in Houma, Louisiana that blends and distributes specialty products for use in the oil and gas industry.¹ The Claimant has the same ownership as another company in Houma, Louisiana called Rig-Chem, Inc.² Rig-Chem, Inc. sells chemicals and additives for use in the drilling industry and the Claimant is the source of the chemical products that Rig-Chem sells.³ The Claimant asserted that it suffered a loss of revenue because the Deepwater Horizon caused a closure of the Gulf of Mexico for drilling activities, thus reducing the sale of the Claimant's products.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 Affidavit of Lori Davis providing claim explanation, notarized by Jan Brunet on 09 May 2011.

² PHONECON between the NPFC and the Claimant on 25 August 2011.

³ PHONECON between the NPFC and the Claimant on 25 August 2011.

⁴ Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 01 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 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 Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 01 August 2011;
- Calculations by the Claimant titled "Losses for July 2010 to March 2011 Due to BP Oil Spill";

- Affidavit of Lori Davis providing claim explanation, notarized by Jan Brunet on 09 May 2011;
- Denial letter on Interim Payment/Final Payment Claim, dated 17 May 2011; and
- GCCF Interim Payment Claim Form, generated as of 09 May 2011.

The Claimant's Optional OSLTF Claim Form 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"). Although 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.

Prior to presenting this claim to the NPFC, the Claimant filed an Interim 2 (ICQ22011) claim with the GCCF on 09 May 2011 in the amount of \$458,470.00 for loss of earnings.⁵ The Claimant was assigned Claimant ID # 3519032 and Claim # 9378866. The Interim 2 claim was denied by the GCCF on 17 May 2011.⁶

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 the claim before the NPFC, i.e., the Claimant suffered a loss in revenue from selling chemicals due to the Deepwater Horizon oil spill. The NPFC deems 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 N10036-1287 considers and addresses the damages claimed in the claims presented to the responsible party, specifically; GCCF Claim # 93778866 (ICQ22011).

NPFC Determination

The claim is denied. Under 33 C.F.R. § 136.105(a) and 33 C.F.R. § 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 of the documentation submitted by the Claimant.

This claim is denied because the Claimant failed to prove that it suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant indicated the role of the company was to supply Rig-Chem, Inc. with the chemicals that it sells.⁷ Thus, the Claimant's alleged loss is wholly based on the decrease of sales experienced by Rig-Chem.

Regarding the losses suffered by Rig-Chem, Rig-Chem informed the NPFC it was affected by the shutdown of the oil rigs, but contended that if the oil spill had not happened then the moratorium on drilling would not have been initiated.⁸ Additionally, Rig-Chem informed the NPFC that it had been waiting for permitting to come back, which didn't occur until early 2011.⁹

⁵ Report from the GCCF, dated 06 October 2011.

⁶ Denial letter on Interim Payment/Final Payment Claim, dated 17 May 2011.

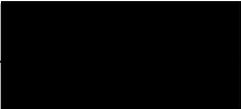
⁷ PHONECON between the NPFC and Rig-Chem on 25 August 2011.

⁸ PHONECON between the NPFC and Rig-Chem on 25 August 2011.

⁹ PHONECON between the NPFC and Rig-Chem on 25 August 2011.

Based upon the nature of Rig-Chem's loss, the Claimant failed to prove that its alleged financial loss was a direct result of the Deepwater Horizon oil spill, as opposed to other factors affecting the drilling industry in the Gulf of Mexico such as the deepwater oil drilling moratorium and permitting delays.

Accordingly, this claim is denied because the Claimant failed to meet its 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.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/14/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: