

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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5890  
2 April 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 8818

Certified Cleaning and Restoration, Inc.  


RE: Claim Number: N10036-1379

Dear Mr. Ray:

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 N10036-1379 involving Deepwater Horizon. 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 N10036-1379.

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: (1) Claim Summary / Determination Form  
(2) Documentation Presented by the Claimant, N10036-1379

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1379
Claimant	: Certified Cleaning & Restoration
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$195,000.00

### ***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 8 September 2011, Joshua S. Ray, President of Certified Cleaning and Restoration, Inc.,<sup>1</sup> (jointly referred to as "the Claimant") presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$195,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>2</sup>

The Claimant is a business that performs a number of cleaning-related services in Destin, Florida. Services include: cleaning and post-construction clean-up, basic handy-man repairs not requiring license, mold-related clean up/assessment, fire and odor clean up, water damage clean up/mitigation and duct cleaning.<sup>3</sup> The Claimant alleges a loss of cleaning & restoration services for real estate companies, property managers, private landlords, and management companies based on decreases in tourism and rentals due to the Deepwater Horizon incident.

### ***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.
- (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.

<sup>1</sup> So called in the claim. Information from the office of the Florida Secretary of State indicates the full corporation name to be certified Cleaning & Restoration of NW Florida, Inc.

<sup>2</sup> Optional OSLTF Claim Form received on 8 September 2011.

<sup>3</sup> Claimant's letter to NPFC dated 30 November 2011.

- (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**

Enclosure (2) contains a list of evidence presented by the Claimant to support this claim.

On 8 September 2011, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$195,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>4</sup>

The Claimant identified payment on an Emergency Action Payment (EAP) Claim in the amount of \$65,100.00.<sup>5</sup> Additionally, the Claimant indicates having presented an Interim Payment (IP) Claim to the GCCF on 15 February 2011.<sup>6</sup> Although no specific presentation information was provided for the Emergency Advance Payment (EAP) Claim, the Claimant provided documentation of having received an EAP Claim payment from the GCCF on 23 December 2010.<sup>7</sup> The Claimant was assigned GCCF Claimant ID No. 3152159.<sup>8</sup> The Claimant indicates that his IP Claim had been under review at GCCF since February 2011.<sup>9</sup>

The NPFC conducted an independent investigation of claim presentation and payments. The NPFC confirmed presentment of two EAP Claims to the GCCF, one EAP Claim appears to have been made on 4 October 2010 by the company's president as an individual (GCCF Claim No. 150424) and another EAP Claim appears to have been made by Certified Cleaning & Restoration, Inc. on 12 October 2010 for the business (GCCF Claim No. 206777).<sup>10</sup> On those EAP claims, the company

<sup>4</sup> Optional OSLTF Claim Form received 8 September 2011.

<sup>5</sup> Certified Cleaning & Restoration letter to the GCCF dated 15 February 2011.

<sup>6</sup> Optional OSLTF Claim Form received on 8 September 2011 and GCCF Interim Payment Claim Form dated 15 February 2011.

<sup>7</sup> Excerpt of GCCF Notice of Determination, Emergency Advance Payment, dated 3 December 2010.

<sup>8</sup> GCCF letter to Claimant dated 29 October 2010 and GCCF Interim Payment Claim Form dated 15 February 2011.

<sup>9</sup> Optional OSLTF Claim Form received on 8 September 2011.

<sup>10</sup> GCCF – U.S. Coast Guard Report as of 3 February 2012.

president received a payment of \$35,000.00<sup>11</sup> and the company received \$65,100.00<sup>12</sup> in payments from the GCCF. Both of the EAP Claims were presented in the amount of \$141,539.55.<sup>13</sup> The NPFC's investigation also confirmed presentation of Interim Payment (IP) Claims for the company in the first and fourth quarters of 2011, each in the amount of \$195,277.52.<sup>14</sup> These claims were assigned Claim No. 9307634 and Claim No. 9531062, respectively). In addition, on 25 April 2011, another IP Claim was presented to the GCCF for the second quarter of 2011 in the amount of \$8,788.71 (Claim No. 9368635). The NPFC also confirmed that the GCCF initially had applied Claimant ID No. 3095639 to the individual claim<sup>15</sup> and Claimant ID No. 3152159 to the company claim.<sup>16</sup> Recently, the GCCF has applied Claimant ID No. 3152159 to both claims.<sup>17</sup>

Based upon the claim presentation information available to the NPFC, it appears that the subject matter of the Claimant's business claims to the GCCF is the same as the subject matter of his claim before the NPFC, i.e., that the Claimant lost business in 2010 due to economic impacts of the Deepwater Horizon oil spill in the geographic area where the Claimant conducts his business. Accordingly, this claim summary determination considers and addresses lost profits and earnings claims previously submitted by the Claimant to the GCCF in relation to the Claimant's 2010 business losses.

### **NPFC Determination**

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. Pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, the OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages.

After an initial review, the NPFC requested additional information on 30 September 2011.<sup>18</sup> That correspondence requested, among other things, financial documentation supporting the amount of the loss claimed, contracts/agreements for services provided to customers in 2009 & 2010, and historical sales ledgers. The correspondence also requested an explanation of how the Deepwater Horizon affected the company's revenue and other information about the company. The Claimant was given 14 days to respond to the information request letter which was dated 30 September 2011.<sup>19</sup> On 19 October 2011, the Claimant responded to the information request by providing explanations and monthly P&L statements for the years 2008, 2009 and 2010.<sup>20</sup>

After reviewing that information, the NPFC sent the Claimant a supplemental request for additional information on 15 November 2011.<sup>21</sup> The Claimant responded to the supplemental request by providing, among other things, more detailed explanations, a spreadsheet/client list of customer names, his 12 October 2011 correspondence with the GCCF, and a copy of the 2011 General Contractor license for a sister company (Coastal States Restoration).

The Claimant's client list included 210 client names. The clients were contractors, individual homeowners, property managers, realtors and owners of vacation rental property. Following receipt of

<sup>11</sup> GCCF Determination Letter of 10 October 2011 to Joshua Ray under Claimant ID Number 3095639.

<sup>12</sup> GCCF Determination Letter of 19 September 2011 to Joshua Ray under Claimant ID Number 3095639.

<sup>13</sup> GCCF Determination Letter of 19 September 2011 to Certified Cleaning & Restoration under Claimant ID Number 3152159 and GCCF - U.S. Coast Guard Report as of 3 February 2012.

<sup>14</sup> GCCF - U.S. Coast Guard Report as of 3 February 2012.

<sup>15</sup> GCCF Determination Letter of 10 October 2011 to Joshua Ray under Claimant ID Number 3095639.

<sup>16</sup> GCCF Determination Letter of 19 September 2011 to Certified Cleaning & Restoration under Claimant ID Number 3152159.

<sup>17</sup> GCCF - U.S. Coast Guard Report as of 3 February 2012.

<sup>18</sup> NPFC letter dated 30 September 2011.

<sup>19</sup> NPFC letter dated 30 September 2011.

<sup>20</sup> Claimant letter to NPFC dated 19 October 2011 and received 27 October 2011.

<sup>21</sup> NPFC letter dated 15 November 2011.

that list, the NPFC attempted to contact many of the clients listed, but was unsuccessful. On 10 February and 12 February 2012, the NPFC requested by phone that the Claimant provide contact information on these clients.<sup>22</sup>

To show the connection between the oil spill and his business, the Claimant offered to provide a 54-page report<sup>23</sup> that discusses the liability of economic loss in connection with the Deepwater Horizon spill.<sup>24</sup> In response, the NPFC stated that the report indicates support services could qualify for a loss of profits claim,<sup>25</sup> but that the NPFC needs specific documentation connecting the Claimant's loss to the Deepwater Horizon oil spill and again asked for specific contacts that could provide evidentiary support related to causation.<sup>26</sup> To date the NPFC has not received the requested contact information.

In a lost profits or impairment of earnings capacity claim, a claimant must prove that the alleged loss is due to the oil spill. Here, the Claimant provided a large amount of financial information that shows a drop in income and profits following the oil spill, but that alone is not sufficient to prove that the Claimant's losses were caused by the Deepwater Horizon oil spill as opposed to other economic factors affecting the Claimant's line of business.

The NPFC was unable to reach the Claimant's past clients to discern if they had experienced impacts from the oil spill that affected the Claimant. The Claimant did not provide information sufficient to verify his assertion that the Deepwater Horizon oil spill was the cause of the Claimant's losses. Additionally, since the Claimant has submitted at least seven claims to the GCCF in both his individual and business capacity and received some payments, it is unclear based upon the evidence provided whether the claimant has been fully compensated by the RP for his alleged losses. If the Claimant files a request for reconsideration of this determination, the Claimant must include a copy of all claims presented to the GCCF and explain the relationship between his claims for personal losses and claims for business losses.

Accordingly, this claim is denied because the Claimant has failed to demonstrate that his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

  
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/2/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>22</sup> Phone conversation between Josh Ray and NPFC Staff on 10 January 2012, and Phone conversation between Kristi Ray and NPFC Staff on 12 January 2012.

<sup>23</sup> Email to NPFC Staff dated 11 January 2012 referred to, "...a 54-page report written by John C.P. Goldberg that discusses the liability for economic loss in connection with the [D]eepwater [H]orizon spill".

<sup>24</sup> Claimant's email to NPFC Staff on 11 January 2012.

<sup>25</sup> Prof. John C.P. Goldberg, "Liability for Economic Loss in Connection with the Deepwater Horizon Spill", 22 November 2010.

<sup>26</sup> NPFC email to the Claimant on 12 January 2012.

**Enclosure (2)**

**Documentation Presented by Claimant  
N10036-1379**

Documentation Previously Provided:

- Unsigned Optional OSLTF Claim Form, received 08 September 2011.
- Claimant unsigned letter to NPFC dated 31 August 2011.
- GCCF Notice of Determination, Emergency Advance Payment dated 03 December 2010. Emergency Advance Payment of \$65,100 issued.
- Screen print of GCCF Claimant Status, loaded 31 August 2011.
- Letter from GCCF to Claimant dated 29 October 2010 on general claim requirements.
- Letter from GCCF to Claimant dated 16 March 2011 requesting additional documentation.
- 2008 Form 1120-S Tax Return with Schedules A, B, K, L, M-1, M-2 and Form 4562 and Supplemental Information.
- January through December 2008 Profit & Loss Statement.
- 2009 Form 1120-S Tax Return with Schedules A, B, K, L, M-1, M-2 and Form 4562 and Supplemental Information.
- January through December 2009 Profit & Loss Statement.
- 2010 Form 1120-S Tax Return with Schedules A, B, K, L, M-1, M-2 and Supplemental Information.
- January through December 2010 Profit & Loss Statement.
- January through April 2010 Profit & Loss Statement.
- May through December 2010 Profit & loss Statement.
- Claimant letter to GCCF dated 15 February 2011 with GCCF Attachment B for business claimant.
- Claimant's GCCF Interim Claim Form dated 15 February 2011.
- Unsigned and undated Settlement Agreement between DH Investments (landlord) and Claimant (tenant), Okaloosa County Circuit Court (2 pages).
- Claimant signed letter to NPFC dated 20 September 2010.
- Signed Re-Review Election Form (GCCF Form 1119) dated 20 September 2011; pages 4, 5, 6 and 7.
- Coastal Bank and Trust Statement of Account Balance for 31 December 2010 (1 page).
- Coastal Bank and Trust Statement of Account Balance for 30 November 2010 (1 page).
- Coastal Bank and Trust Statement of Account Balance for 31 October 2010 (1 page).
- Coastal Bank and Trust Statement of Account Balance for 30 September 2010 (1 page).
- Coastal Bank and Trust Statement of Account Balance for 31 August 2010 (1 page).
- Coastal Bank and Trust Statement of Account Balance for 31 July 2010 (1 page).
- Coastal Bank and Trust Statement of Account Balance for 30 June 2010 (1 page).

- Coastal Bank and Trust Statement of Account Balance for 31 May 2010 (1 page).
- Coastal Bank and Trust Statement of Account Balance for 30 April 2010 (1 page).
- Coastal Bank and Trust Statement of Account Balance for 31 March 2010 (1 page).
- Coastal Bank and Trust Statement of Account Balance for 28 February 2010 (1 page)
- Coastal Bank and Trust Statement of Account Balance for 31 January 2010 (1 page).
- Claimant unsigned letter to NPFC dated 19 October 2011.
- 2008 Monthly Profit & Loss Statements for January, February, March, April, May, June, July, August, September, October, November and December.
- 2009 Monthly Profit & Loss Statements for January, February, March, April, May, June, July, August, September, October, November and December.
- 2010 Monthly Profit & Loss Statements for January, February, March, April, May, June, July, August, September, October, November and December.
- Claimant's letter to NPFC dated 30 November 2011.
- Certified Cleaning & Restoration of NW FL, Inc. (undated) Client List.
- Claimant's letter to GCCF dated 12 October 2011.
- Claimant's Re-Review Election Form dated 20 September 2011, 2<sup>nd</sup> Request dated 21 October 2011.
- Corrected Form 1120S Tax Return for 2009.
- State of Florida General Contractor License number CGC1519773, issued to Joshua S. Ray, Coastal States Restoration, Inc. on 6/24/2011.
- 2010 For Profit Corporation Amended Annual Report (Florida), filed 25 February 2010.
- Form 1120S Tax Return for 2010 with Schedules and Supplementary Forms.