

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/DWHZ  
3 May 2012

Ms. Carol Fontenette  


Re: Claim Number: N10036-1726

Dear Ms. Fontenette:

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 N10036-1726 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 N10036-1726.

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	N10036-1726
Claimant	Carol Fontenette
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$9,400

### ***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 5 March 2012 Carol Fontenette, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$9,400 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 the Manager at a Chevron franchise gas station, owned by Victory Fuel Enterprises LLC in Gretna, Louisiana.<sup>2</sup> The Claimant alleged to have sustained a loss of \$4,200 in 2010 because of reduced quarterly bonuses due to a drop in business. The Claimant alleged further losses of \$5,400 in 2011 for the same reason.<sup>3</sup>

Claimant added her alleged losses from 2010 and 2011 to reach a "final claim demand" of \$9,400.<sup>4</sup>

### ***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> Optional OSLTF Claim Form, signed on 12 January 2012.

<sup>2</sup> Letter from Claimant's employer, 5 March 2012.

<sup>3</sup> Letter from Claimant, 7 March 2012.

<sup>4</sup> Letter from Claimant, 7 March 2012.

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

- Optional OSLTF Claim Form, signed on 5 March 2012;
- Letter from the Claimant's employer, stating business suffered and was sold because of spill, 5 March 2012;
- Letter from the Claimant describing losses, 7 March 2012;
- 2008 IRS E-file Signature Authorization, 23 January 2009;
- 2009 W-2 Wage and Tax Statement, showing yearly earnings of \$35,280.02;
- 2008 1040 Individual Income Tax Return (page 2);
- 2009 1040 Individual Income Tax Return;
- 2010 W-2 Wage and Tax Statement, showing yearly earnings of 36,702.52;
- 2010 1040 Individual Income Tax Return;
- 2011 1040 Individual Income Tax Return;
- Earnings Statement from 14 February to 31 December for 2011 Employment, showing earnings of \$31,565.74;
- Earnings Statement from 9 to 15 January for 2012, showing earnings of \$1,669.69;
- Paystub for 11-28 November 2010, showing earnings of \$1,273.08 and \$30,305.84 YTD;
- Letter from new owner of Chevron station stating time of purchase and status of claimant's employment, 26 August 2011;
- Response to Request for Additional Information, Two Hand-written Pages, signed 24 April 2012.

On 22 September 2010 the Claimant presented an Emergency Advanced Payment (EAP) claim to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages in the amount of \$2,500.<sup>5</sup> The Claimant was assigned Claimant ID 3030584 and the EAP claim was assigned claim # 85121.<sup>6</sup> The RP/GCCF denied payment on this claim.

On 9 December 2010 the Claimant presented a Final claim to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages in the amount of \$12,000.<sup>7</sup> The Claimant retained ID 3030584 and the Final claim was assigned claim # 9026497.<sup>8</sup> The RP/GCCF denied payment on this claim.

On 27 December 2011 the Claimant presented a Full Final Review (FFR) to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages in the amount of \$11,000.<sup>9</sup> The Claimant retained ID 3030584 and the FFR claim was assigned claim # 9131776.<sup>10</sup> The RP/GCCF denied payment on this claim.

On 19 August 2011 the Claimant presented a third quarter Interim Payment claim (ICQ32011) to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages in the amount of \$11,000.<sup>11</sup> The Claimant retained ID 3030584 and the ICQ32011 claim was assigned claim # 9406596.<sup>12</sup> The RP/GCCF denied payment on this claim.

On 6 October 2011 the Claimant presented a fourth quarter Interim Payment claim (ICQ42011) to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages in the amount of \$11,000.<sup>13</sup> The Claimant retained ID 3030584 and the ICQ42011 claim was assigned claim # 9500503.<sup>14</sup> The RP/GCCF denied payment on this claim.

On 20 November 2011 the Claimant presented a fourth quarter Interim Payment claim (ICQ42011) to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages in the amount of \$11,000.<sup>15</sup> The Claimant retained ID # 3030584 and the ICQ42011 claim was assigned claim # 9511928.<sup>16</sup> The RP/GCCF denied payment on this claim.

On 21 March 2012, the Claimant submitted this claim to the NPFC, seeking \$9,400 in loss of profits and impairment of earning capacity damages.<sup>17</sup> The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.<sup>18</sup> Because the Claimant has presented these damages first to the RP/GCCF and subsequently been denied, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$9,400. Further, because the subject matter of the claim before the NPFC appears to be the same as all of the Claimant's previous GCCF claims, all of which were denied, this Claim Summary Determination considers and addresses all of the Claimant's prior GCCF claims, specifically GCCF Claim #'s 85121, 9026497, 9131776, 9406596, 9500503, and 951192

<sup>5</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>6</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>7</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>8</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>9</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>10</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>11</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>12</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>13</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>14</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>15</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>16</sup> GCCF United States Coast Guard Report, 12 April 2012.

<sup>17</sup> Optional OSLTF Claim Form, signed on 5 March 2012.

<sup>18</sup> 33 C.F.R. § 136.103(a).

## 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. This claim is denied because the Claimant has failed on both counts.

In a letter dated 18 April 2012, the NPFC requested that the Claimant provide certain additional documentation to meet the requirements of the law listed above, including (1) financial records from her place of employment demonstrating lost revenue in the period following the oil spill, and (2) the agreement or criteria used to determine bonus payments.

On 1 May 2012, the Claimant responded to the NPFC request for additional information. The Claimant indicated she did not have access to (1) financial records for her place of employment, and (2) any proof of losses the business may have sustained.<sup>19</sup> She stated that bonuses were based “largely on store sales and gas sales.”<sup>20</sup> Without any sort of financial data, the NPFC is unable to verify the alleged losses. The information provided is insufficient to establish that any alleged losses were the result of the Deepwater Horizon oil spill.

Furthermore, the Claimant’s 2009 and 2010 tax returns do not demonstrate a loss of income. The Claimant claimed earnings of \$35,280 in 2009 as compared to \$36,703 in 2010, an increase of \$1,423.<sup>21</sup> Claimant did experience a decrease in her W-2 income statements between 2010 and 2011 related to her job at the gas station (\$36,702 in 2010 down to \$31,565.74 in 2011), but after speaking with the new gas station owners, the NPFC learned that the new ownership did not pay bonuses.<sup>22</sup> Further, the NPFC learned that the Claimant resigned from her position in late 2011.<sup>23</sup>

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$9,400.00, 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: *5/3/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

<sup>19</sup> Response to Request for Additional Information, signed 24 April 2012.

<sup>20</sup> Response to Request for Additional Information, signed 24 April 2012.

<sup>21</sup> 2009 and 2010 1040 Individual Income Tax Returns.

<sup>22</sup> PHONECON: NPFC and the Claimant’s Employer’s Corporate Office, 18 April 2012

<sup>23</sup> PHONECON: NPFC and the Claimant’s Employer’s Corporate Office, 18 April 2012