

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

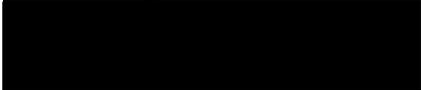


Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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5890  
15 June 2012

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
Number: 7011 1570 0001 4803 7827

**Sharon Hagstrom**  


RE: Claim Number: N10036-1745

Dear Ms. Hagstrom:

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 N10036-1745 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 N10036-1745.

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	: N10036-1745
Claimant	: Sharon Hagstrom
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$30,000.00

### ***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 27 March 2012, Sharon Hagstrom (referred to as 'the Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$30,000.00 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup> The Claimant asserts that she became unemployed during the oil spill and has had a difficult time finding employment.<sup>2</sup>

The Claimant asserts:

The oil spill (Deepwater Horizon Oil Spill) caused me to [lose] income by the reduction of tourist[s] coming to Panama City Beach and spending money, the business owners around here stopped hiring people here, stopped doing business with each other and just plain old stopped doing anything. It was like living in a ghost town, the beaches were filled with oil along the seashore and animals were lined up along the seashore. No one wanted to look at that and people stopped flying in here at the airport to vacation here.<sup>3</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.
- (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,

<sup>1</sup> Optional OSLTF Claim Form received on 27 March 2012 and letter "To Whom It May Concern" dated March 2012.

<sup>2</sup> Claimant's letter to BP Claims dated 3 December 2011.

<sup>3</sup> Claimant's letter "To Whom It May Concern" dated March 2012.

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**

Below is a list of documentation provided by the Claimant to support this claim:

- Optional OSLTF Claim Form received on 27 March 2012.
- Claimant's letter, "To whom it may concern", dated March 2012.
- Claimant's undated GCCF Appeal Form.
- IRS Wage and Income Transcript for tax period ending December 2008.
- IRS Record of Account for tax period ending December 2008.
- IRS Wage and Income Transcript for tax period ending December 2009.
- IRS Record of Account for tax period ending December 2009.
- IRS Tax Return Transcript for Tax Period ending 31 Dec. 2009.
- IRS Tax Return Transcript for Tax Period ending 31 Dec. 2010.
- IRS Tax Return Transcript for Tax Period ending 31 Dec. 2011.
- Claimant's letter, "To Whom It May Concern", dated May 2012 on getting BP Forms.
- Claimant's letter, "To Whom It May Concern", dated May 2012 on cause of damages.
- Unsigned note explaining Social Security income.

The Claimant indicates that in March 2011 she submitted a Claim to the GCCF, identified under Claimant Identification No. 3396397 and that the responsible party has taken no action on her claim.<sup>4</sup>

The NPFC conducted an independent investigation of claim presentation and payments. The NPFC confirmed presentment of three claims to the GCCF, all three of which were assigned Claimant Identification No. 3396397.

Two of these claims were for Loss of Wages/Earnings: an Emergency Advance Payment (EAP) Claim on 15 November 2010 in the amount of \$16,800.00 and a Full Review Final Payment (FRF) Claim on 6

<sup>4</sup> Optional OSLTF Claim Form received on 27 March 2012.

January 2011, with no specific damage amount indicated. The EAP Claim was assigned GCCF Claim No. 467852 and the FRF Claim was assigned Claim No. 9173331.<sup>5</sup> The GCCF denied Claim No. 467852 and determined Claim No. 9173331 to be deficient. Based upon the information provided and independent verification by the NPFC, this claim before the NPFC can be adjudicated to the degree that the damages were presented first to the GCCF: \$16,800.00. The loss of profits/earnings damages that exceed the loss of profits/earnings damages presented to the GCCF and are denied.

The third claim presented to the GCCF was a Final Claim for Subsistence damages on 15 November 2010 in the amount of \$3,396,397.00, assigned GCCF Claim No. 9060737. That subsistence claim does not bear on the loss of profits/earnings claim before the NPFC and it is not addressed further by this Claim Summary Determination as these alleged damages have not been presented to the NPFC.

### **NPFC Determination**

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.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to evaluate the claim further. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses. The Claimant was given 14 days to respond to the letter, dated 11 May 2012.<sup>6</sup> On 8 June the Claimant responded in part by providing transcripts from the IRS for tax years 2011 and 2010, as well as two letters dated March 2012, "To Whom It May Concern", and a note on Social Security income asking that [the NPFC] request proof of income [from the Social Security Administration] on her behalf.

The NPFC has considered all documentation and information presented by the Claimant.

This claim is denied because the Claimant failed—to provide documentation and information requested by the NPFC, to prove the amount of the alleged loss, and to prove that the alleged loss was due to the Deepwater Horizon oil spill.

### Failure to Prove Loss of Earnings

The Claimant asserts a loss of income in 2010 due to the Deepwater Horizon oil spill.<sup>7</sup> The Claimant asserts that she lost income in 2010 when, after the oil spill, she became unemployed.<sup>8</sup> The Claimant provided 2010 and 2011 Federal tax return evidence.<sup>9</sup> We note that the 2010 tax return evidence indicates income of \$7,702.00, however no evidence of income in 2009 has been provided. The Claimant did indicate that she had Social Security income in 2009, but she has provided no W-2 form, 1099 form or other tax information supporting that she had income in 2009.<sup>10</sup> Although the Claimant requested the NPFC to request proof of income from the Social Security Administration on her behalf, the NPFC advised the Claimant that the NPFC could not take this action and that it is the Claimant's responsibility to fully document their claim.<sup>11</sup>

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<sup>5</sup> Transition Program – U.S. Coast Guard Report as of 211300 May 12.

<sup>6</sup> NPFC letter dated 16 April 2012.

<sup>7</sup> Optional OSLTF Claim Form received on 27 March 2012 and Claimant's letter, "To Whom It May Concern", dated May 2012 on cause of damages.

<sup>8</sup> Claimant's undated GCCF Appeal Form received at NPFC on 2 March 2012.

<sup>9</sup> IRS Tax Return Transcript for Tax Period ending 31 Dec. 2010 and IRS Tax Return Transcript for Tax Period ending 31 Dec. 2011.

<sup>10</sup> Unsigned note explaining Social Security income.

<sup>11</sup> Phone conversation between the Claimant and NPFC Staff on 8 June 2012.

The Claimant has not provided sufficient financial documentation on which her alleged loss can reasonably be measured; therefore, the alleged losses are not proven. If the Claimant submits a request for Reconsideration to the NPFC, additional financial evidence should be provided to prove the loss. Additional evidence should include evidence of the claimant's income for 2009, and 2011, such as complete federal tax return or Tax Return Transcripts from the IRS, and a copy of claims for lost wages/earnings filed with the GCCF.

Failure to Prove Causation

The Claimant asserts that her alleged loss of income is due to the oil spill.<sup>12</sup> The NPFC will not presume causation or lack thereof based upon business type or location. Causation is an element of every claim that must be proven the Claimant.

Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill. The Claimant has not provided documentation supporting that her that she lost employment that she had prior to the oil spill and lost that employment due to the oil spill. The Claimant has not provided a termination notice, or contact information for employer(s) to allow verification that her alleged losses were not caused by the economy or other factors, rather than the oil spill.

The Claimant has not proven that the Deepwater Horizon oil spill was the cause of her alleged losses. If the Claimant submits a request for Reconsideration to the NPFC, evidence linking her losses to the Deepwater Horizon oil spill, not other factors, must be submitted in order for her claim to be successful.

This claim is denied for the following reasons: (1) the Claimant has failed to demonstrate her alleged loss through financial documentation; and (2) the Claimant has failed to demonstrate that her 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 (i.e., the Deepwater Horizon oil spill).

Claim Supervisor: *NPFC  Division*

Date of Supervisor's Review: *6/15/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>12</sup> Optional OSLTF Claim Form received on 8 June 2012.