

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

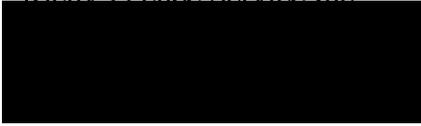


Director  
United States Coast Guard  
National Pollution Funds Center

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5890  
7/26/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2446 3640

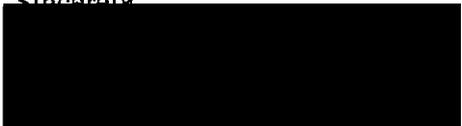
Richy's Fence Service Inc.  


RE: Claim Number: N10036-1782

Dear Mr. Slater:

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 claim number N10036-1782 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,  


Chief, Claims Adjudication Division  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1782
Claimant	: Richy's Fence Service Inc.
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$42,000.00

### **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 01 May 2012, Mr. Richard J. Slater (the Claimant), on behalf of Richy's Fence Service, Inc., submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$42,000 in loss of profits or impairment of earning capacity damages.<sup>1</sup>

The Claimant owns and operates Richy's Fence Service, Inc., a fencing company located in Indian Rocks Beach, Florida. The Claimant stated that his business is heavily dependent on the tourism industry because "[b]each front business [*sic*], motels, hotels, condos and private homeowners that rent out homes to tourist [*sic*] are [the Claimant's] customers."<sup>2</sup>

The Claimant alleged that the Deepwater Horizon oil spill caused "a drastic decrease in the volume of tourism; and an uncertainty for private beach-front property ownership, sales, or improvements."<sup>3</sup> According to the Claimant, general economic effects of the oil spill caused him to sustain losses in sales, beginning in approximately late May of 2010 and continuing throughout that year.<sup>4</sup>

The Claimant therefore seeks \$42,000 in loss of profits and impairment of earning capacity damages for economic losses sustained in 2010 following the Deepwater Horizon oil spill.<sup>5</sup>

Prior to presentment of this claim to the NPFC, the Claimant submitted a claim to the RP/BP on 21 December 2010 and 06 April 2012. The Claimant presented a First Quarter Interim Payment Claim (ICQ12011) and a Sixth Quarter Interim Payment Claim (ICQ62012) to the RP/GCCF. In each claim, the Claimant sought \$42,000 in lost wages and earnings damages.<sup>6</sup> The RP/GCCF assigned Claimant ID # 183771 to the Claimant, and assigned the ICQ12011 claim # 9139680 and the ICQ62012 claim #9587635.<sup>7</sup> The RP/GCCF denied payment on both claims.<sup>8</sup>

<sup>1</sup> Optional OSLTF Claim Form, signed 30 April 2012.

<sup>2</sup> Response to Request for Additional Information, 07 June 2012.

<sup>3</sup> Hardship Letter, undated.

<sup>4</sup> Hardship Letter, undated.

<sup>5</sup> Optional OSLTF Claim Form, signed 30 April 2012.

<sup>6</sup> GCCF Interim Payment Claim Form, signed 21 December 2010; GCCF Interim Payment Claim Form, signed 06 April 2012.

<sup>7</sup> GCCF Deficiency Denial Letter, dated 26 May 2011; GCCF Denial Letter, dated 26 April 2012.

The NPFC originally denied the claim on June 15, 2012, on two grounds. First, Claimant has not established an alleged loss of profits of \$42,000. His submissions, including his bid history and profit and loss statements, reflect that the business experienced a steady decline in revenues beginning in 2009 (before the oil spill), accelerated in the second quarter of 2010 (immediately after the oil spill) and recovered in 2011. Some of the alleged losses predated the April 20, 2010 Deepwater Horizon oil spill. Thus, the only amount of loss that could be attributed to the Deepwater Horizon oil spill, if there was a causal link between his alleged losses and the oil spill, is \$18,128.07.

Second, the claim was denied because Claimant has not proven a causal link between the Deepwater Horizon incident and his alleged losses. He asserts that the oil spill caused a decrease in tourism and an uncertainty for private beach front property ownership, sales or improvements; however, tourism in Pinellas County, where most of Claimant's customers sought his work, did not decrease but showed a minor increase in May – August 2010 and a larger increase in the fall tourist season from September – December 2010.

**REQUEST FOR RECONSIDERATION:**

The Claimant requested reconsideration which was received by the NPFC on July 18, 2012 via email. The Claimant provided a one-page letter requesting reconsideration. The Claimant provided no arguments or information for consideration by the NPFC. His request consists of a sentence that merely states... "I am requesting a reconsideration of my claim."

**NPFC Determination on Reconsideration**

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. The Claimant provided no new factual or legal information to support his request for reconsideration, thus providing no new information for the NPFC to consider. Based on the foregoing, this claim is denied on reconsideration.

Claim Supervisor: 

Date of Supervisor's review: 7/26/12

Supervisor Action: ***Denial on reconsideration approved***

<sup>8</sup> GCCF Deficiency Denial Letter, dated 26 May 2011; GCCF Denial Letter, dated 26 April 2012.