

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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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 9869

5890/DWHZ
11 July 2012

Mr. Dwaine M. Smith


Re: Claim Number: N10036-1810

Dear Mr. Smith:

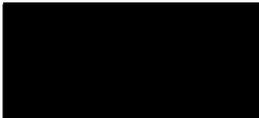
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1810 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-1810.

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	N10036-1810
Claimant	Mr. Dwaine Smith
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$4,500.00

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 (GCCCF) began accepting and adjudicating certain individual and business claims on behalf of BP.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT

On 16 May 2012, Mr. Dwaine Smith (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$4,500.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

Documentation provided in this claim submission indicates that the Claimant works in the construction industry in Houma, Louisiana.²

Claimant does not provide evidence indicating how his earnings were affected by the oil spill, nor has the Claimant identified the time period during which he alleged to have sustained \$4,500.00 in alleged financial losses.

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.

¹ Optional OSLTF Claim Form, signed on 29 April 2012.

² 2010 Form 1040 lists the Claimant's occupation as "worker"; The Claimant also provides W-2 forms from Marine Construction and General Labor companies.

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, 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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

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 29 April 2012;
- 2011 Forms W-2 Wage and Tax Statements, showing payment from Danos & Curole Marine Construction and Original USA General Labor, LLC;
- Invoice for payment for the Claimant's 2010 Tax Preparation, 27 February 2012;
- Federal Tax Comparison, 2010 and 2011;
- Graphs comparing 2010 and 2011 taxable income;
- 2011 Form 1040A;
- 2011 Louisiana Resident tax documentation;
- Refund Transfer Application and Agreement, signed on 6 March 2012;
- 2011 Form 1099-G, showing unemployment compensation of \$5,174.00;

- 2010 Form W-2 Wage and tax Statement, showing payment form Original USA General Labor, LLC and Danos & Curole Marine Construction;
- Combined Invoices, Vanderbilt Catholic High School, 2009;
- 2010 Form 1099-G, showing unemployment compensation of \$13,855.00;
- 2010 Form 1040, showing adjusted gross income of \$30,006.00;
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Louisiana Resident tax documentation.

Prior to presentment of this claim to the NPFC, the Claimant presented a Full Review Final (FRF) payment claim to the RP/GCCF. The Claimant was assigned Claimant ID 3463922 and the FRF claim was assigned claim # 9070041.³ The Claimant stated that the GCCF denied payment on this claim.⁴

On 16 May 2012, the Claimant submitted this claim to the NPFC, seeking \$4,500.00 in loss of profits or impairment of earning capacity damages resulting from effects of the Deepwater Horizon oil spill.⁵ OPA requires that all claims for costs or damages be presented to the RP prior to presentment of the claim to the NPFC.⁶ Claimant stated that this claim has been first presented to and denied by the RP/GCCF. Presentment requirements are therefore satisfied to the extent that the damage amount now before the NPFC does not exceed that presented to the GCCF. Any damages now presented to the NPFC, which were not first presented to the GCCF are denied for improper presentment.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

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.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the BP Settlement, he should then submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

³ GCCF Claimant Status, accessed on 16 May 2012.

⁴ Optional OSLTF Claim Form, signed on 29 April 2012.

⁵ Optional OSLTF Claim Form, signed on 29 April 2012.

⁶ 33 C.F.R. § 136.103(a).

Furthermore, this claim would be denied under OPA's loss of profits damage category, as the Claimant has failed to prove that he has sustained a financial loss as a result of the Deepwater Horizon oil spill.

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.

Documentation included in this claim submission is insufficient to prove that the Claimant sustained a certain amount of financial loss as a result of the discharge of oil caused by the Deepwater Horizon oil spill. In a letter dated 24 May 2012, the NPFC requested that the Claimant provide certain additional information in support of this claim, including, among other things, a record of the type of work the Claimant was involved in at the time of the oil spill, as well as proof that particular jobs or projects that were cancelled as a result of the oil spill.⁷

The NPFC requested that the Claimant provide the necessary additional information within fourteen days of the date of the letter. As of the date of this determination, the Claimant has failed to respond.

Documentation included in the Claimant's original submission fails to indicate (1) the exact nature of the work in which Claimant was involved, (2) how that work may have been affected by the oil spill, or (3) that the Claimant sustained an actual financial loss.

This claim is therefore denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$14,747.00, (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, and (3) that the Claimant has been settled by virtue of belonging to the economic damages class associated with the CSSP.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/11/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ NPFC request for additional information 24 May 2012.