

U.S. Department of
Homeland Security

**United States
Coast Guard**

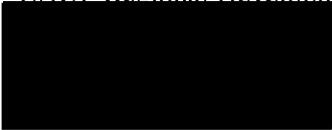


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 2970 0004 1302 0069

5890/DWHZ
28 February 2013

ENUE Regional Development Corporation


Re: Claim Number: N10036-1890

Dear Mr. Henderson:

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 N10036-1890 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 N10036-1890.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100


Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1890
Claimant	ENUF Regional Development Corporation
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$1,200,000.00

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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF'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 GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 6 February 2013, Mr. John Henderson, on behalf of the Economic National Underprivileged Foundation (ENUF) Regional Development Corporation (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$1,200,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is a non-profit organization headquartered in New Orleans, Louisiana. The Claimant describes the organization as having "implemented economic policy reform after [hurricane] Katrina in the Gulf Coast Region."² After the oil spill, the Claimant alleged to have suffered an economic loss due to "changes in public services due to the oil spill."³ The Claimant does not clearly indicate exactly how the oil spill affected the Claimant's non-profit funding, but the Claimant stated that "businesses we were restoring post Katrina . . . lost revenue which supported our not-for-profit. And we had to reform our recovery policy and initiatives to include post oil spill by BP Horizon."⁴

The Claimant seeks to recover \$1,200,000.00, in losses allegedly sustained as a result of the oil spill.

¹ Optional OSLTF Claim Form, signed on 23 January 2013.

² Handwritten letter from the Claimant, 29 December 2012.

³ Optional OSLTF Claim Form, signed on 23 January 2013.

⁴ Optional OSLTF Claim Form, signed on 23 January 2013.

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

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

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 23 January 2013;
- Handwritten Statement, 29 December 2012.

The Claimant alleged that this claim was first presented to the Responsible Party through the GCCF, where the Claimant was assigned ID # 1096369.⁵ According to the Claimant, all previously presented claims were denied.

On 6 February 2013, the Claimant submitted this claim to the NPFC seeking \$1,200,000.00 in loss of profits or impairment of earning capacity damages.⁶ The Claimant has not provided documentation sufficient to prove that this claim concerning the same damage amount was first properly presented to and denied by the Responsible Party or its representative. However, the NPFC will adjudicate the claim to the extent that presentment requirements have been met. Any damages now being presented to the NPFC which were not first presented to the Responsible Party are denied.⁷

The Claimant alleged that they were either denied payment or were excluded by the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).⁸ If the Claimant opted out or is excluded from the Settlement class, then the Claimant may pursue a claim through the NPFC. However, if the Claimant was included and did not opt out, the Claimant is bound by the terms of the Settlement and this claim would be denied.

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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

As an initial matter, it appears that the Claimant may be member of the E&PD Settlement. If so, this claim would be considered to have been settled, and the Claimant would be 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 the NPFC to those rights.

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 E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, this claim is also denied on its merits. In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a

⁵ Optional OSLTF Claim Form, signed on 23 January 2013.

⁶ Optional OSLTF Claim Form, signed on 23 January 2013.

⁷ 33 C.F.R. § 136.103(a).

⁸ Handwritten statement, 29 December 2012..

loss or reduction in income, and (2) that the financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant has not provided evidence sufficient to prove that they sustained a loss or reduction in income following the oil spill. The Claimant is a non-profit organization which receives the majority of its funding presumably from donations and Federal grants. The link between the nature of the Claimant's work and the effects of the oil spill is not made apparent by the evidence submitted in support of this claim. Furthermore, the Claimant has not provided evidence to prove that the government reduced funding or that private entities reduced donations to the organization at any time in 2010. The Claimant has also not provided any evidence to prove that reductions in funding or donations could have been caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to meet their burden to prove (1) that they sustained a financial loss in the amount \$1,200,000.00, or (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 discharge of oil. Additionally, and until the Claimant demonstrates otherwise, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.

Claim Supervisor: M 

Date of Supervisor's Review: *2/28/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: