

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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10/11/2012

VIA EMAIL: [REDACTED]@dhec.sc.gov

State of South Carolina
ATTN: Elizabeth Shawanesse
Department of Health and Environmental Control (DHEC)
2600 Bull Street
Columbia, SC 29201

Re: Claim Number 912093-001

Dear Ms. Shawanesse:

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 912093-0001 involving the two abandoned polyethylene drums (poly drums) found in a ditch off of Cowhorn Road near the City of Winnsboro, SC. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.



Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912093-0001
Claimant	: State of South Carolina
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Galen Wetzel
Amount Requested	: \$703.38

FACTS:

On February 8, 2012 the Claimant responded to two abandoned polyethylene drums (poly drums) found in a ditch off of Cowhorn Road near the City of Winnsboro, SC.¹ The drums were reported to have a small amount of leakage of an unknown petroleum product and located approximately 1500 feet from the Little Cedar Creek.²

A&D Environmental Services was contracted by South Carolina Department of Health and Environmental Control (SCDHEC) to clean up the site and dispose of the material. The response consisted of pumping out the abandoned drums; all material was transferred to one steel drum. A second steel drum was partially filled with contaminated soil which was removed by shovel from the area where the two abandoned drums came to rest. All four drums were then disposed of at the A&D Macon, GA facility.³

CLAIM AND CLAIMANT:

On August 30, 2012, SCDHEC presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$703.38 seeking reimbursement of their alleged uncompensated removal costs. The costs are for expenses paid to A&D Environmental Services response to this incident.

The Claimant asserts that no responsible party has been identified.

The NPFC denied the claim originally on September 27, 2012 because the Claimant failed to demonstrate how the spill posed a substantial threat of discharge to a navigable waterway.⁴

REQUEST FOR RECONSIDERATION:

On October 1, 2012, the Claimant sent an email request for reconsideration to the NPFC along with all supporting documentation. The Claimant provided a copy of their original claim submission package with an amended "route to navigable water" document.⁵

The Claimant asserts in their first submission, the Broad River was mistakenly the only waterway mentioned as a navigable waterway and they failed to identify the Cedar and Little Cedar Creeks as navigable waterways.

The Claimant also asserts that because of action taken by their agency, the spill was confined to the soil immediately under and around the drums and that if no action had been taken, it is reasonable to expect

¹ Optional OSLTF Claim Form for this claim.

² SCDHEC Environmental Quality Control Incident Report for Incident #201200552.

³ A&D Environmental Services letter dated February 16, 2012.

⁴ NPFC letter dated September 28, 2012.

⁵ Statement attached to the OSLTF Claim Form describing a substantial threat/route to a navigable waters.

that the oil would have migrated to the Little Cedar Creek causing contamination to the navigable waterway.

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).

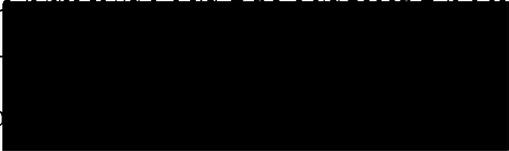
The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon consideration of all information and arguments made by the Claimant on reconsideration, the NPFC offers the following:

1. That a navigable waterway is in close proximity to the spill location. The Claimant's package states the approximate distance to the Little Cedar Creek is 1500 feet. The Little Cedar Creek is a tributary to the Cedar Creek which flows into the Broad River.
2. The Claimant contacted A&D Environmental Services at approximately 1300 on February 8, 2012 to dispatch two technicians to the spill location on February 9, 2012.⁶ The evaluation completed by SCDHEC responders to delay the cleanup, by a day, is interpreted that the spill was not posing a substantial threat to a navigable waterway.
3. The SCDHEC Environmental Quality Control Incident Report documented that a total of one drum of oily water mixture was collected from the two abandoned drums. Given that the approximate distance to a navigable waterway is documented to be 1500 feet, it is very unlikely for this quantity of liquid would pass over that distance of permeable surface and reach the waterway. Based on this information, the NPFC is not convinced that the spill substantially threatened a navigable waterway.

Based on the foregoing, the Claimant has again failed to demonstrate that this spill posed a substantial threat of discharge to a navigable waterway. This claim is denied upon reconsideration.

DETERMINED AMOUNT ON RECONSIDERATION: \$0.00

Claim Supervisor 

Date of Supervisor's Review: 10/11/12

Supervisor Action: *Denial on reconsideration approved*

⁶ A&D Environmental Services letter dated February 16, 2012.