

CLAIM SUMMARY / DETERMINATION

Claim Number:	913032-0001
Claimant:	Tom River Municipal Utilities Authority
Type of Claimant:	Local Government
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$71,471.06

FACTS:

- 1. Oil Spill Incident:** On September 13, 2009, United States Coast Guard Station Barnegat Light (Coast Guard) received a report from the New Jersey Department of Environmental Protection (NJDEP) of an unknown sheen, about 100 feet, that was on Toms River, a navigable waterway of the United States.¹ The NJDEP cut back all the brush to the edge of the river. They discovered that the source of the sheen was from a 1,000 gallon heating oil tank that was partially buried in a swampy area on the property of the Claimant, Toms River Municipal Utilities Authority (TRMUA), a public water treatment facility located 100 yards from the waterway. The sounding of the tank determined that 500 gallons of #2 diesel fuel was still in the tank. The Coast Guard noted that the tank may have been bulldozed during the renovation of the property in the 1950's.² The Coast Guard deployed boom at the incident site, but later pulled the boom and left it by the tank. TRMUA was notified by the New Jersey Department of Environmental Protection (NJDEP) of the incident and issued TRMUA a Field Directive to pump out the remaining fuel in the tank, remove the tank, and clean-up the contaminated area of spill.³ The United States Coast Guard Sector Delaware Bay (Sector Delaware Bay) became the Incident Commander, but the NJDEP took the lead in overseeing the clean-up by TRMUA, the designated responsible party (RP). TRMUA informed the Coast Guard that they would be hiring Budget Boat Towing & Salvage, Incorporated (Budget Boat) for the clean-up. Northstar Marine, Incorporated (Northstar Marine) was also hired by TRMUA for the clean-up.
- 2. Description of Removal Activities for this Claimant:** On September 13, 2009, Budget Boat and Northstar Marine provided clean-up services, under the direction of NJDEP. Budget Boat was scheduled to decontaminate the boom that was deployed by the Coast Guard that was left near the tank, and then return the boom to their station. Budget Boat arrived at the incident site and deployed a Field Foreman, a Site Safety Supervisor, HazMat certified technicians, vehicles, vessels, spill response trailers, an oil boom trailer, containment boom, and absorbent pads and sweep. Northstar Marine's deployment of resources included a supervisor, an equipment operator, vac truck, and a vehicle for the clean-up operations. On September 15, 2009, Sector Delaware Bay's Maritime All-Hazards Response Team (MAHR) reported that the NJDEP instructed Budget Boat to also flush the shoreline to speed up the dissipation of the discharge. By September 16, 2009, MAHR reported that a minimal sheen was observed within the boomed area, and they were discussing boom retrieval with NJDEP. Sector Delaware Bay reported the clean-up was almost complete on September 18, 2009. By September 21, 2009, 99% of the discharge had been collected, and the NJDEP shortened the 1,000 feet of boom initially deployed, due to the minimal sheen present. And on September 24, 2009, the MAHR Team reported that the clean-up was completed and that the boom had been retrieved.

¹See National Response Report #917679, dated September 13, 2009.

² U.S. Coast Guard MISLE Case Report for Case #474203, dated September 13, 2009.

³ U.S. Coast Guard Sector Delaware Bay Investigator Statement Form ██████████, dated September 28, 2009.

3. **The Claim:** On February 12, 2013, the TRMUA (Claimant) submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of \$71,471.06 for costs incurred due to the oil spill response. On their Optional OSLTF Claim Form, TRMUA described the entity that caused the damage as an “abandoned oil tank of unknown origin” that was located on the bank of the Toms River.⁴

The Claimant included in their claim submission a copy of NJDEP’s Field Directive (Directive), dated September 13, 2009.⁵ The Directive informed the Claimant that they were responsible for the discharge, and directed them to conduct remedial investigations and actions to prevent the #2 fuel oil from entering Toms River by deploying hard and sorbent boom; pump out and contain contents of the fuel tank, as well as remove tank; remove any ponded fuel using pumps or sorbent materials; remove contaminated soil and debris at the incident site; maintain boom in place during the entire remediation; and that the work was to be performed by a properly certified contractor. A September 14, 2009 Notice of Federal Interest (NOFI) was also issued to the Claimant by the Federal On-Scene Coordinator Representative (FOSCR), [REDACTED].⁶ On October 7, 2009, the NJDEP sent TRMUA a letter informing them that they had closed out their case because they had complied with all of the terms of the imposed Directive.⁷ Per NJDEP, their inspections determined that “all practical measures to remediate the contamination” from the discharge were taken, and that there was no longer a pollution threat to Toms River.

On February 21, 2013, the National Pollution Funds Center (NPFC) contacted Mr. [REDACTED], TRMUA, to inform, that based on their claim submission, they were the responsible party for the incident.⁸ The NPFC asked if TRMUA possessed any information or documentation to prove that they were not responsible for the discharge. Mr. [REDACTED] replied that TRMUA purchased the property in 1949, and that the property was a blueberry farm before their purchase. He added that TRMUA would have been proactive if they had known the tank was on their property; that they did not put the tank on the property; the property was never used as a dump; and they don’t except tanks. He also stated that the seal of the tank started to rot and that caused the oil to discharge into Toms River. He asked that the NPFC look at the photographs submitted with the claim. He was then informed that the photographs had been damaged before arriving to the NPFC. Mr. [REDACTED] stated that he would send copies of the photographs. On March 18, 2013, Mr. [REDACTED] sent an e-mail to the NPFC asking for confirmation regarding updates of the claim.⁹ The NPFC returned his call and he requested the status of the claim.¹⁰ He was informed that the photographs he forwarded to the NPFC did not provide proof that TRMUA was not the responsible party. Mr. [REDACTED] requested to speak to a supervisor regarding the claim. Mr. Rutkowski addressed his concerns regarding the claim status to [REDACTED]. Ms. [REDACTED] granted a 30 day extension to TRMUA to provide proof that they were not the responsible party.¹¹

On April 15, 2013, Mr. [REDACTED], on behalf of TRMUA, provided a summary of the incident and additional supporting documentation to prove that TRMUA was not responsible for the

⁴ United States Coast Guard Optional OSLTF Claim Form, signed by [REDACTED] on February 4, 2013.

⁵ NJDEP Site Remediation Program Field Directive to TRMUA, dated September 13, 2013.

⁶ United States Coast Guard Notice of Federal Interest to TRMUA, dated September 14, 2013.

⁷ Letter from [REDACTED], NJDEP-BER, to [REDACTED], TRMUA, dated October 7, 2009.

⁸ [REDACTED] Phone Notes of telephone conversation with [REDACTED], TRMUA, dated February 21, 2013.

⁹ [REDACTED] electronic mail to [REDACTED], dated March 18, 2013.

¹⁰ [REDACTED] Phone Notes re conversation with [REDACTED], dated March 18, 2013.

¹¹ [REDACTED] electronic mail to [REDACTED], dated March 18, 2013.

discharge.¹² The documents included NJDEP Underground Storage Tank (UST) System Closure Approval, effective as of July 13, 1994.¹³ The Approval was for TRMUA's Administration Office, granting approval to remove one 1,500 gallon #2 heating UST; one 2,000 gallon #2 heating oil UST; one 275 gallon waste oil UST; one 500 gallon diesel fuel UST; one 6,000 gallon gasoline fuel UST, and one 8,000 gallon UST. And, on April 8, 2009, the NJDEP sent TRMUA a No Further Action Letter and Covenant Not to Sue after the removal of two 2,000 gallon heating oil USTs from their property.¹⁴ The UST tank removal was carried out by Envirotactics, Incorporated on October 9, 2008.¹⁵

TRMUA was not aware that the UST discovered on September 13, 2009 was on their property. They noted that the UST was "embedded in a bank of the Toms River adjacent to a vacant TRMUA owned property and was subject to tidal influences."¹⁶ They also noted that they were not able to determine the owner of the tank.

Based on the information provided, the NPFC has determined that TRMUA is not the responsible party for the September 13, 2009 incident. The responsible party remains unknown. Therefore, under OPA, TRMUA will be reimbursed for compensable removal costs incurred due to the incident of September 13, 2009.

APPLICABLE LAW:

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

¹² [REDACTED] letter to [REDACTED], dated April 15, 2013.

¹³ NJDEP Underground Storage Tank System Closure Approval for Administrative Office, dated July 13, 1994.

¹⁴ [REDACTED] NJDEP, letter to [REDACTED], TRMUA, dated April 8, 2009.

¹⁵ [REDACTED], Envirotactics, Inc. letter to [REDACTED], dated October 10, 2008.

¹⁶ Toms River Municipal Utilities Authority NPFC Claim # 913032-0001 Summary.

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 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

DETERMINATION OF LOSS:

A. Findings:

1. The FOSC coordination was provided by FOSCR [REDACTED] of the United States Coast Guard Sector Delaware Bay.
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC obtained a copy of the Coast Guard MISLE case and associated documentation regarding the incident.

The Claimant has requested reimbursement for the removal of the UST discovered on September 13, 2009 for services provided by Northstar Marine and Budget Boat. For their services provided, Northstar Marine billed the Claimant a total of \$28,273.56 and Budget Boat billed \$43,197.50.

Northstar Marine, Incorporated

The Claimant provided Northstar Marine's daily worksheets on July 18, 2013.¹⁷ The NPFC received Northstar Marine's rate schedule on June 26, 2013, after requesting the rate schedule from them on June 25, 2013.¹⁸

For their services provided on Sunday, September 13, 2009, Northstar Marine billed TRMUA \$4,198.27. [REDACTED] was billed at the double time rate of \$180.00 for 5.5 hours of work for a total of \$990.00, for a supervisor. However, according to their rate schedule, the supervisor rate is \$75.00 per hour. The NPFC will reimburse TRMUA at the \$150.00 per hour rate for double time for Mr. [REDACTED] for a total of \$825.00 for his 5.5 hours worked. A waste class sample was billed for \$90.00, but no cost documentation was provided. Therefore, the cost for the sample is denied. Northstar Marine also billed for two Level D PPEs at \$45.00 each, for a total of \$90.00, but they were not documented on the signed daily worksheet. The NPFC denies the costs for the PPEs, as well.

Northstar Marine billed \$9,871.64 for work performed on September 14, 2009. They billed 8.0 hours for supervisor [REDACTED] at the Project Manager rate of \$90.00 per hour as his standard rate, for a total of \$720.00; and 3.0 hours at the overtime rate of \$135.00 per hour for a total of \$405.00. However, the signed daily for September 14, 2009 has Mr. [REDACTED] listed as the supervisor. The NPFC will reimburse the Claimant at the supervisor rate of \$75.00 per hour and \$112.50, respectively, for a total of \$937.50. Northstar Marine billed \$650.00 for the "mob/demob of equipment," but that task was not found on their rate schedule, and therefore denied. A chainsaw was billed on the invoice for \$150.00 per day. It was also listed on the daily work sheet, but it was not on the rate schedule, nor was any cost documentation provided for the item. The chainsaw cost for \$150.00 are denied. They also billed for 5 rolls of polyethylene sheeting at the rate of \$95.00 per roll for a total of \$475.00. On their signed daily worksheet, the items were listed as 3 rolls of poly tarp, but the item was not found on the rate schedule. Therefore, the cost of \$475.00 for the tarp is denied. The water waste class sample for \$90.00 and the soil waste class sample for \$400.00 are also denied due to lack of receipts or other form of cost documentation.

The Claimant was billed \$6,032.50 for their work on Tuesday, September 15, 2009. [REDACTED] was billed as the Subsurface Evaluator at the standard rate of \$90.00 per hour for 8.0 hours, for a total of \$720.00; and the overtime rate of \$135.00 per hour for 2.0 hours, for a total of \$270.00. However, the signed daily worksheet has Mr. [REDACTED] listed as the supervisor who worked the 8 hours standard time and 2 hours overtime. The Claimant will be reimbursed at the standard rate of \$75.00 and overtime rate \$112.50 of a supervisor for a total of \$600.00 and \$225.00, respectively. An unnamed administrative assistant was billed for 4.0 hours at the standard rate of \$45.00 per hour for a total of \$180.00. The administrative assistant was not on the signed daily and therefore, the \$180.00 is denied. With regards to equipment, again, the chainsaw, billed at \$150.00 per day, is not on the rate schedule; nor are the 3 roll-off can liners billed at \$55.00 per liner for a total of \$165.00; or the 3 Level D PPEs billed at \$45.00 each for a total of \$135.00. These costs for equipment are all denied, for a total of \$450.00. There was no receipt or other

¹⁷ [REDACTED] electronic mail to [REDACTED], dated July 18, 2013.

¹⁸ [REDACTED] electronic mail to [REDACTED], dated June 25, 2013.

cost documentation provided for the 30 yard roll-off container Spot Fee that was billed for two days at the rate of \$275.00 per day, for a total of \$550.00. The Form U Waste Classification Sample was also billed, for \$1,250.00, without cost documentation. Without the cost documentation, the NPFC denies those charges.

Northstar Marine's Invoice Number 5048, dated September 18, 2009, for their services rendered on September 15, 2009 and for services of September 21, 2009. They billed for two hours of straight time at the rate \$90.00 per hour for a Subsurface Evaluator, for a total of \$180.00; and billed two hours straight time for an Administrative Assistant at the rate of \$45.00 per hour, for a total of \$90.00. However, a signed daily worksheet was not provided, and therefore the NPFC denies the costs for the Northstar Marine personnel.

Budget Boat Towing & Salvage Company, Incorporated

The Claimant provided unsigned daily work sheets for Budget Boat on June 12, 2013.¹⁹ On July 8, 2013, after previous failed attempts, the NPFC contacted Budget Boat via telephone to request their rate schedule.²⁰ Budget Boat informed that they had been trying to find the rate schedule, but could not because they don't save old rate schedules.

Budget Boat billed for vehicles and equipment used on September 15, 2009. Based on the daily worksheet, two vehicles were used for the day. However, their invoice listed three vehicles were used at the rate of \$150.00 per day, for a total of \$450.00 billed. The Claimant will be reimbursed for the two vehicles documented on the daily worksheet, for a total of \$300.00. Also, a boat trailer was billed for the day at the rate of \$150.00 per day, but it was not on the daily worksheet, and no other cost documentation was provided. The boat trailer cost is denied.

For services provided on September 18, 2009, Budget Boat billed 1.5 hours at the rate of \$55.00 per hour for a Hazmat Field Service Tech for vessel decontamination, for a total of \$82.50. However, that Tech was not identified on their employee sign-in sheet provided to the NPFC by the Claimant. Therefore, the NPFC denies the \$82.50 costs for that Tech.

Again, for their services on September 24, 2009, Budget Boat billed the Claimant 1.0 hour at the rate of \$55.00 per hour for a Hazmat Field Service Tech for vessel decontamination. The Tech was not identified on their employee sign-in sheet that the Claimant provided to the NPFC. The cost for the Tech is denied.

Therefore, based on the NPFC's denial of \$5,600.00, the NPFC determines that the OSLTF will pay \$65,871.06 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 913032-0001.


C. Determined Amount:

The NPFC determines that the OSLTF will pay \$65,871.06 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 913032-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by Claimant.

¹⁹ [REDACTED] electronic mail to [REDACTED], dated June 12, 2013.

²⁰ [REDACTED] Phone Notes re conversation with Budget Boat personnel, dated July 8, 2013.

AMOUNT: \$65,871.06

Claim Supervisor: 

Date of Supervisor's review: *8/30/13*

Supervisor Action: *Approved*

Supervisor's Comments: