

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	E14503-0001
<b>Claimant:</b>	Environmental Remediation Services, Inc
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$192,849.90

### FACTS:

#### Oil Spill Incident

On February 5, 2014, the United States Environmental Protection Agency (USEPA) was contacted by Ohio Environmental Protection Agency (OEPA) regarding an underground storage tank located at a gasoline station that was discharging fuel into a storm sewer system in McCutchenville, Ohio. The gasoline station is known as the Route 53 Service Station, LLC in Seneca County. The gasoline entered a storm sewer causing a sheen in Thorn Run Ditch, which is a tributary to the Sandusky River, a navigable waterway of the US. The discharge posed a substantial threat to the Sandusky River.

Petroleum in the sewer system caused an elevated reading of volatile organic compounds (VOCs) in residential properties.<sup>1</sup> Residents of thirty-four residential properties self evacuated. OEPA oversaw flushing of the storm sewer system which resulted in a lowering of the VOC readings and allowed the residents to return to their homes for the night; however, on February 6, 2014, seven residents reported gasoline odors in their homes and self evacuated.<sup>2</sup>

On February 7, 2014, OEPA requested assistance from USEPA in its capacity as the Federal On Scene Coordinator (FOSC) to conduct air monitoring and assist with the Responsible Party (RP) investigation.<sup>3</sup> At approximately 1050, USEPA and the Superfund Technical Assistance and Response Team (START) contractor arrived on-site and met with OEPA, Ohio Bureau of Underground Storage Tank Release (BUSTR), and the McCutchenville Fire Chief to determine the status of the discharge.<sup>4</sup>

USEPA issued a Notice of Federal Interest (NOFI), to the owners of the underground storage tank located at the Route 53 Service Station, Ms. [REDACTED] and Mr. [REDACTED].<sup>5</sup> After the NOFI was issued, USEPA determined that Mr. [REDACTED] was not a Co-Owner of the gas station and Ms. [REDACTED] was the sole owner of the underground storage tank and the gas station.<sup>6</sup>

The RP hired Environmental Resources Services, Inc. (ERS or Claimant) to respond and cleanup the oil discharge.

<sup>1</sup> POLREPS 1 - 3

<sup>2</sup> *id*

<sup>3</sup> *id*

<sup>4</sup> POLREP 1, 2.1.2 Response Actions to Date

<sup>5</sup> *id*

<sup>6</sup> Mr. [REDACTED] divulged this information to Claims Manager, [REDACTED] while speaking on the phone, May 7, 2014.

The RP's consultant, BJAAM Environmental (BJAAM) was responsible for collecting ground water well samples.

### Responsible Party

Ms. [REDACTED] is the owner of the underground storage tank located at the Route 53 Service Station, LLC; therefore, she is the Responsible Party under OPA. Ms. [REDACTED] made two payments to ERS in the total amount of \$32,500.00. The first payment was made to ERS in the amount of \$2,500.00 on February 11, 2014, to secure the services of ERS. After the Claimant ran a credit history report on the RP, ERS required another immediate payment of \$30,000.00, which Ms. [REDACTED] paid to ERS on the same day. After the second payment was made, Ms. [REDACTED] advised the Federal On-Scene Coordinator (FOSC), Mr. [REDACTED] as well as ERS that she did not have the resources to make further payments for the cleanup. At this point, Mr. [REDACTED] asked ERS to stay on-scene to continue the work and file a claim with the National Pollution Funds Center (NPFC) to recover its uncompensated removal costs from the Oil Spill Liability Trust Fund.<sup>7 8</sup>

On May 12, 2014, the NPFC Claims Manager sent an RP Notification letter to Ms. [REDACTED] at the Route 53 Service Station, LLC location via Certified Mail Receipt. On May 13, 2014, the NPFC held a phone conference with her. During the phone conference, Ms. [REDACTED] stated that her gas station remained closed and that she does not have the money to pay the Claimant. Further, Ms. [REDACTED] explained that she filed a hardship with the State of Ohio and planned to meet with the Tank Fund on June 11, 2014.<sup>9</sup> The RP explained that she was expecting to receive State funds to pay the bills that she incurred as a result of the oil spill<sup>10</sup>.

On June 18, 2014, the NPFC received a letter from the RP's Legal Counsel stating that Route 53 Service LLC is currently unable to make any further payments to ERS, Inc.<sup>11</sup>

### Claim and Claimant

Claimant presented the first invoice<sup>12</sup> to the RP via Certified Mail Receipt on April 01, 2014. Ms. [REDACTED] signed for it on April 09, 2014.<sup>13</sup> Claimant presented the second invoice<sup>14</sup> to the RP via Certified Mail Receipt on April 29, 2014.<sup>15</sup> This invoice was available for pickup on May 2, 2014 at the McCutchenville, Ohio Post Office.<sup>16</sup>

<sup>7</sup> See, Phone Call follow up email with Claimant, dated May 8, 2014.

<sup>8</sup> POLREP 3, Planning Section, 2.2.2 Issues, indicates that on several occasions the RP contractor indicated that there were issues with payment from the RP. The payment issue did not result in a substantial delay in response efforts and was monitored by the OSC.

<sup>9</sup> Claims Manager, [REDACTED] researched the Ohio Tank Fund and found that the State of Ohio does not have a Tank Fund implemented.

<sup>10</sup> Note to File, dated May 13, 2014.

<sup>11</sup> VORYS letter to ERS Legal Counsel, dated June 18, 2014

<sup>12</sup> Invoice # OH14-02-0022 in the amount of \$205,937.14

<sup>13</sup> Certified Mail Receipt # 70110297000030936302078

<sup>14</sup> OH14-02-00222 in the amount of \$19,412.76

<sup>15</sup> Certified Mail Receipt # 70112970000393631804

<sup>16</sup> USPS Tracking at USPS.Com

On May 1, 2014, ERS submitted its removal cost claim documentation to the Oil Spill Liability Trust Fund (OSLTF or the Fund) for reimbursement of their uncompensated removal costs in the amount of \$192,849.90. The sum certain is comprised of two invoices, invoice numbers OH14-02-0022 and OH14-02-00222. ERS's costs include; Personnel, Equipment, Materials, Fuel Surcharge, Subcontractors, Rental Equipment, Transportation, and Disposal. Initially, the removal cost documentation was assigned an NPFC tracking number of PRE-00014539 until the 90 day presentment criteria<sup>17</sup> had been met; however, after the NPFC received the letter from the RP's Legal Counsel stating that the RP was unable to make further payments, the NPFC assigned the cost documentation a removal costs claim number of E14503-0001 then immediately moved forward with the adjudication of the claim.<sup>18</sup>

### Description of Removal Activities

ERS used vacuum trucks to collect product from catch basins at and downstream of the gasoline station. In addition, they conducted a camera survey of one of the storm water drains in order to determine where the product was entering the storm drain. Product was found in a storm water catch basin downstream from the service station and ERS continued to use the vacuum trucks<sup>19</sup> through the night time hours as well.<sup>20</sup> ERS estimated that approximately 12,500 gallons of product and water had been recovered, during the first few days of response.<sup>21</sup>

ERS used water jets to clear debris out of the storm water line located along SR53 in front of the service station. As the storm line was cleared of debris, a camera survey<sup>22</sup> was completed to determine if there were breaches in the line or lateral tie-ins to the main storm water line. The results of the camera survey revealed two breaches in the storm line within 20 feet of the service station dispenser island. During the camera survey it was determined that a section of the storm line in front of the service station had been crushed preventing further advancement of the utility camera to the southwest. A second camera survey was conducted of a second storm line located to the west of the service station which is connected to catch basins on CR47. ERS was able to clean out and advance the camera survey a distance of 450 feet to the northeast of the catch basin. ERS continued to clean out sections of the storm line to allow further advancement of the camera survey towards the service station.<sup>23</sup>

ERS and the local Fire Department cut the overlying concrete pavement<sup>24</sup> east of the service station dispenser island, parallel to SR53. Once the concrete was removed, ERS excavated a trench<sup>25</sup> in order to determine the source and degree of petroleum release in that area of the service station property. Elevated concentrations of VOCs were found in the excavated soil. EPA requested that the excavation continue in this area to the same vertical horizon as the storm water line in order to determine whether or not the product had entered the line in that area.

---

<sup>17</sup> 33 U.S.C. §2713(a)

<sup>18</sup> Claim number was assigned on June 20, 2014

<sup>19</sup> See, EQ-The Environmental Quality Company Invoice # 59628 for 3000 Gallon stainless Steel Vacuum Truck with Operator.

<sup>20</sup> POLREP #1

<sup>21</sup> POLREP #2

<sup>22</sup> See, Cam-Tech Industrial Services Invoice # 150.351 for Camera truck and push camera to video inspect lines at gas spill response area.

<sup>23</sup> *id*

<sup>24</sup> See, Bee Gee Rental & Rental & Sales contract # 01-232584-04 for concrete saw rental.

<sup>25</sup> Trench size was approximately 40 feet to a depth of approximately 5 feet below grade surface.

Excavation continued through February 09, 2014. The trench was expanded to a depth of approximately 10 feet deep and petroleum odors were present with readings of up to 380 PPM.<sup>26</sup>

Trench excavation continued in an east-west direction which exposed fiberglass piping going from the UST to the metal vent risers. Excavation revealed that the pea gravel backfill around the vent piping was saturated with product. EPA screened the ambient air and the pea gravel, which had a VOC reading 100 PPM. Excavation also revealed the presence of two clay pipes at a depth of approximately 4 feet. Based on the investigative trenching, EPA and ERS identified two pipes with gasoline and gasoline impacted water within the sub-surface footprint of the gasoline station that continued North and North West beyond the border of the site and that were in close proximity to a plastic perforated drain pipe. It was determined that the perforated drain pipe continued to an end cap that tied into an on-site storm sewer basin on the western portion of the site. ERS installed a sewer plug at this junction.<sup>27</sup>

Trench excavation<sup>28</sup> continued and revealed a clay drain tile that was in line with the catch basin on CR 47 and in line with the refusal point. The excavation began to fill up with gasoline impacted water, high VOC readings were documented. ERS plugged<sup>29</sup> the exposed drain tile and used a vacuum truck to remove the gasoline and water.<sup>30</sup>

EPA continued the oversight of investigative trenching west of the site and confirmed an off-site migration pathway due to storm sewer drainage tiles that were identified with the investigative excavation in proximity to the sites western storm sewer catch basin (confluence of three drainage tiles). ERS filled all drain tile openings within this excavation with concrete to ensure storm water runoff or impacted groundwater would no longer drain from the site into the offsite storm sewer system. ERS backfilled remaining open excavation and the trench.<sup>31</sup>

ERS conducted cleaning services of mobile frac tanks<sup>32</sup> and utilized a 3000 gallon stainless steel Prevac to empty the remaining liquids from the fractank. ERS completed a confined space permit and upon acceptable atmospheric reading ERS entered the tank and recovered sludge dirt from the tank.<sup>33</sup>

Petroleum contaminated water and products were recycled at Valicor Environmental Services.<sup>34</sup> The contaminated soil was hauled by L&T Danner Enterprises<sup>35</sup> to the County Environmental of Wyandot in Bowling Green, Ohio.<sup>36</sup>

Removal actions were completed on March 17, 2014,<sup>37</sup> although demob activities were performed from April 2, 2014 through April 9, 2014.<sup>38</sup>

---

<sup>26</sup> POLREP #2

<sup>27</sup> POLREP #3

<sup>28</sup> See, Ogg Brothers Invoices # 442 and 443

<sup>29</sup> See, Kelly Supply Company Invoice # 16004566-0 for Remo-Plug

<sup>30</sup> *id*

<sup>31</sup> *id*

<sup>32</sup> See, BakerCorp invoices # 1443366-0002, 1443424-0002, 1443366-0001, 1443366-0003, 1443424-0003, and 1443424-0001.

<sup>33</sup> 2014 07 07 ERS letter to Claims Manager, [REDACTED]

<sup>34</sup> Valicor Environmental Invoices # 297443, 297378, 297198, 296890, 302055, 301398, and 297409.

<sup>35</sup> See, Invoice # 6992

<sup>36</sup> See, Invoice # 0000014936

**APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into or upon the navigable waters is liable for removal costs and damages resulting from such incident. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

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". 33 USC § 2701(33).

In the case of an onshore facility, a responsible party means any person owning or operating the facility. 33 USC § 2701(32)(B).

"Facility" means "any structure, group of structures, equipment, or device which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil." 33 USC § 2701(9).

"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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source. 33 USC § 2713(a). If a claim is presented in accordance with subsection (a) of this section and (1) each person to whom the claim is presented denies all liability for the claim; or (2) the claim is not settled by any person by payment within 90 days after the date on which the claim was presented, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund. 33 USC § 2713(c).

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;

---

<sup>37</sup> See, POLREP # 3

<sup>38</sup> See, Letter fm Claimant to NPFC dated July 7, 2014.

- (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 of Facts***

1. FOSC coordination for the removal actions was provided by USEPA, Mr. [REDACTED] who determined that the removal costs were consistent with the National Contingency Plan.
2. The incident involved oil that posed a substantial threat of a discharge of oil to the Sandusky River, a navigable water of the United States.
3. In accordance with 33 CFR § 136.105(e)(12), Claimant certified that no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1).
5. Claimant properly presented the claim to the Responsible Party, who denied payment.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of removal costs presented were for actions 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 costs were adequately documented and reasonable.

It is important to note that the total removal costs incurred by the Claimant were \$225,349.90. The RP made a total of \$32,500.00 in payments which were deducted bringing the total remaining uncompensated removal costs to \$192,849.90 as requested by the Claimant.

### **Invoices**

#### **Invoice OH14-02-0022**

This invoice is for Personnel, Equipment, Materials, Subcontractor Costs, Analytical, Rented Equipment, Transportation/Disposal Costs, and Personnel Travel Costs in the amount of \$205,937.14 from February 5, 2014 through March 13, 2014. The NPFC has approved **\$205,118.33** based on the published rate schedule of costs in place at the time services were rendered, daily field tickets, third party invoices, and proof of payment.

General Categories of Denied Costs:

- 1) No evidence provided in the file that demonstrates certain claimed hours were worked.
- 2) Hours were not provided on the ERS Daily field T&M Form.
- 3) No receipt provided.

Denied costs are not itemized in this Claim Summary Determination but are described in the attached summary of costs spreadsheet created by the NPFC for both invoices. The spreadsheet reflects each item billed, claimed, paid, denied, and the reason for approval or denial. All denied costs fall within the information referenced above.

**Overall Denied Costs for Invoice OH14-02-0022 = \$818.81<sup>39</sup>**

Invoice OH14-02-00222

This invoice is for Personnel, Equipment, Materials, Subcontractor Costs, Rented Equipment, and Transportation/Disposal Costs in the amount of \$19,412.76 from February 12, 2014 through April 28, 2014. The NPFC has approved **\$19,270.76** based on the published rate schedule of costs in place at the time services were rendered, daily field tickets, third party invoices, and proof of payment.

General Categories of Denied Costs:

- 1) Actual time worked did not correlate with the Detailed Report provided by the Claimant.
- 2) Overtime was incorrectly applied based on the rate schedule.

Denied costs are not itemized in the Claim Summary Determination but are fully described in the attached summary of costs spreadsheet created by the NPFC for both invoices. The spreadsheet reflects each item billed, claimed, paid, denied, and the reason for the approval or denial. All denied costs fall within the information referenced above.

**Overall Denied Costs for Invoice OH14-02-00222 = \$142.00<sup>40</sup>**

The NPFC performed a review of the costs presented for invoices OH14-02-0022 and OH14-02-00222 and has determined that the rates charged were in accordance with the established rate schedule and the actions taken by all parties responding to the incident were determined by the USEPA to be consistent with the National Contingency Plan (NCP).

---

<sup>39</sup> See, NPFC spreadsheet.

<sup>40</sup> See, NPFC spreadsheet.

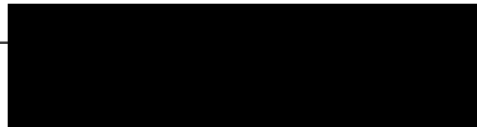
Thus, the Claims Manager determines that the NPFC will offer \$191,889.09 for this claim as payable from the OSLTF.

**C. Determined Amount:**

All claimed costs are for charges incurred by the claimant for removal actions for the above-described incident. The offered amount, \$191,889.09, are removal costs as defined by OPA and payable from the Fund.

The NPFC hereby determines that the OSLTF will offer **\$191,889.09** as full compensation for the uncompensated removal costs incurred by the claimant and submitted to the NPFC under Claim Number E14503-0001.

Claim Supervisor:



Date of Supervisor's review: *7/24/14*

Supervisor Action: *Approved*

Supervisor's Comments: