

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	E14503-0002
<b>Claimant:</b>	BJAAM Environmental Inc.
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$46,047.10

### **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 United States. 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 10:50, 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 BJAAM Environmental, Inc. (BJAAM or Claimant) as their Spill Management and Consultant team.

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<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> *id*

### Responsible Party

Ms. [REDACTED] is the owner and operator of the underground storage tank located at the Route 53 Service Station, LLC (Route 53); therefore, she is the Responsible Party under OPA.

Ms. [REDACTED] made two separate payments to BJAAM in the total amount of \$7,000.00.<sup>7</sup> Ms.

[REDACTED] advised the Federal On-Scene Coordinator (FOSC), Mr. [REDACTED] that she did not have the resources to make further payments for the cleanup. At this point, the FOSC asked all of the responders 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>8</sup>

On August 14, 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 and email. Ms. [REDACTED]'s legal counsel was copied on the email as well.<sup>9</sup> On September 10, 2014, RP's legal Counsel sent the NPFC a letter stating that the NPFC wrongly identified Ms. [REDACTED] as the Responsible Party and that Route 53 is the Responsible Party. The letter states that Ms. [REDACTED] is the contact person for the business.<sup>10</sup> In the letter, RP's Counsel explains that Route 53 paid for a significant portion of the remediation services and that BJAAM was acting under the direction of U.S. EPA.<sup>11</sup> It also explains that Route 53's failure to compensate BJAAM is due to Route 53's lack of funds. The letter explains that Route 53 spent over \$41,000.00 to remediate the release and because the service station has not yet been approved to reopen for business, Route 53 has no funds to make further payments.<sup>12</sup> Further the letter explains that Route 53 believes that an overfill or spill during a February 3, 2014 fuel delivery from R & R Takhar Oil Company, Inc. (through SOCI Petroleum Inc.) may be the source of the release and asks that the NPFC consider pursuing R & R Takhar Oil Company, Inc., and or SOCI Petroleum, Inc. as Responsible Parties.<sup>13</sup>

### Claim and Claimant

Claimant presented invoice 114009-1 in the amount of \$46,047.10, dated February 25, 2014 to the RP via Certified Mail Receipt<sup>14</sup> on March 10, 2014.<sup>15</sup> On August 12, 2014, BJAAM 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 \$46,047.10. The sum certain is comprised of one invoice (invoice # 114009-1) and their costs include; Professional Services, Expenses, General Expenses, Equipment, Materials, and Laboratory

<sup>7</sup> Route 53 Service, LLC check # 1327 to BJAAM, dated 2/28/2014, and check # 1323, dated 2/7/2014, both signed by Ms. [REDACTED]

<sup>8</sup> POLREP 3, Planning Section, 2.2.2 Issues, indicates that on several occasions that 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> See, Email dated August 14, 2014 to Ms. [REDACTED] via email [REDACTED] and [REDACTED]

<sup>10</sup> [REDACTED] letter dated September 10, 2014, signed by [REDACTED]

<sup>11</sup> [REDACTED] letter dated September 10, 2014, signed by [REDACTED]

<sup>12</sup> [REDACTED] letter dated September 10, 2014, signed by [REDACTED]

<sup>13</sup> [REDACTED] letter dated September 10, 2014, signed by [REDACTED]

<sup>14</sup> Certified Mail Receipt # 7012 2920 0002 0286 6094

<sup>15</sup> BJAAM letter dated 3/10/2014 to Route 53 Service, LLC, signed by [REDACTED] Controller.

Costs. This is the second claim that has been presented to the Fund under Federal Project Number (FPN) E14503.

### Description of Removal Activities

BJAAM personnel arrived on-site February 6, 2014, to observe and assist with response activities. BJAAM split its resources in order to evaluate the incident at the station and collect residential water well samples at the request of the USEPA. BJAAM provided a topographic map showing the site location<sup>16</sup> and a site map depicting the station property.<sup>17</sup> BJAAM took photographs during the response activities as well.<sup>18</sup>

BJAAM assisted ERS with a camera survey that was performed in one of the storm water drains in order to determine where the product was entering into the storm drain. Product was found in a storm water catch basin downstream from the service station. It was estimated that 12,500 gallons of product and water had been recovered, during the first few days of response.<sup>19</sup>

As the storm line was cleared of debris, a camera survey 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 County Road 47. The responders cleaned out sections of the storm line to allow further advancement of the camera survey towards the service station.<sup>20</sup>

BJAAM divided its resources between observing onsite trench excavation and performing air monitoring within the catch basin on the eastern side of the Country Road 47 while vacuum extraction and water jetting were in progress. BJAAM personnel collected soil samples from the filled roll-off and provided the results to US EPA and Ohio EPA.<sup>21</sup>

Air monitoring within the station building was initiated by BJAAM using a RAE Systems MiniRAE photoionization detector (PID) and VRAE multigas monitors. Specifically, VOCs, LEL, carbon monoxide, hydrogen sulfide and oxygen were measured in various locations through the station in order to evaluate indoor air quality.<sup>22</sup>

BJAAM inspected potentially affected catch basins located on and off-site and observed vacuum extraction and sewer investigation activities that were being performed by ERS. BJAAM also accompanied Weston Solutions Inc. and the local fire department and collected potable water samples from selected properties at the request of USEPA. All water samples were collected according to BJAAM standard operating procedures and were packaged in iced coolers and were

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<sup>16</sup> Provided in claim submission.

<sup>17</sup> Provided in claim submission.

<sup>18</sup> Provided in claim submission.

<sup>19</sup> POLREP #2

<sup>20</sup> See, Claimant's 30-Day Follow-Up Emergency Notice

<sup>21</sup> See, Test results provided by Claimant and 30-Day follow-Up Emergency Notice.

<sup>22</sup> Station air monitoring locations and results are provided in claim submission.

later delivered to Geo Analytical, Inc. (Geo). Data resulting from the water samples are provided in the claim submission.

BJAAM continued air monitoring activities within the station and collecting water and soil samples. Claimant provided results within their claim submission.

Petroleum contaminated media and debris were disposed of at Republic Services.<sup>23</sup>

Removal actions were completed on March 17, 2014.<sup>24</sup>

**APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. 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).

"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."

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.

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<sup>23</sup> Manifest Document Numbers: 0022-001, 0022-002, 0022-003, 0022-004, 0022-005, 0022-006, 0022-007, 0022-008, 0022-009, 0022-010, 0022-011, 0022-012, 0022-013, 0022-014.

<sup>24</sup> See, POLREP #3.

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 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; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
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 has 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 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 costs were adequately documented and reasonable.



It is important to note that the total removal costs incurred by the Claimant were \$53,047.10. The RP made a total of \$7,000.00 in payments which were deducted, bringing the total remaining uncompensated removal costs to \$46,047.10 as requested by the Claimant.

**Invoice 114009-1**

As stated above, this invoice is for; Professional Services, Expenses, General Expenses, Equipment, Materials, and Laboratory costs in the total amount of \$46,047.10 from February 7, 2014 through February 25, 2014. The NPFC has approved **\$45,000.22** 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) The invoice for this day has 3 line items containing "Travel from site to Office." The NPFC has allowed one line item entry for this expense.
- 2) Administrative costs and claim prep are not OPA compensable removal costs.
- 3) Claimant provided a credit card receipt however; an itemized receipt for this meal is required.
- 4) The terms of the markup are not explained in the BJAAM contract nor is it defined in the rate schedule and as such, markup is denied.

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 the invoicing. 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.

**Determined Amount:**

All claimed costs are for charges incurred by the Claimant for removal actions for the above described incident. The offered amount, \$45,000.22 are the compensable removal costs as defined by OPA and payable from the Fund.

The NPFC hereby determines that the OSLTF will offer **\$45,000.22** as full compensation for the uncompensated removal costs incurred by the claimant and submitted to the NPFC under Claim Number E14503-0002.

Claim Supervisor:

Date of Supervisor's review: *9/22/14*

Supervisor Action: *Approved*

Supervisor's Comments: