

**MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY**

In the Matter of:

EGLE Reference No. AOC-RRD-20-011

Odish Brothers & Family, Inc.  
Odish Brothers Sunoco  
9 East Genesee Street  
Lapeer, Michigan 48446  
Lapeer County  
Facility ID No.: 0-0013317; Site ID No. 44000279

Proceeding under Section 21323i of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

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**ADMINISTRATIVE ORDER BY CONSENT  
FOR CORRECTIVE ACTION AND PAYMENT OF COSTS**

A. This Administrative Order by Consent (Order) is entered into voluntarily by and between the Michigan Department of Environment, Great Lakes, and Energy (EGLE) and Odish Brothers and Family Inc. (Respondent), pursuant to the authority vested in the EGLE and the Michigan Department of Attorney General (MDAG) by Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301, *et seq* (Part 213). All terms used in this Order, which are defined in Part 213, shall have the same meaning.

B. This Order concerns the performance of corrective action by the Respondent and the settlement between the State of Michigan (State) and the Respondent for the State's costs of corrective action, which were incurred by the State in responding to the release of regulated substances at and emanating from the Property of Odish Brothers Sunoco located at 9 East Genesee Street, Lapeer, Lapeer County, Michigan, (the Property).

C. Pursuant to Part 213, the State incurred costs in responding to the release of regulated substances from an underground storage tank system at the Property. Pursuant to MCL 324.21323b(1)(a), a person who is liable under MCL 324.21323a is liable for all costs of corrective action lawfully incurred by the State. The parties to this Order desire to resolve all claims for costs of corrective action that the State has incurred and paid for related to confirmed release number 19-050. Settlement of this claim is in the public interest and will minimize litigation.

D. The execution of this Order by the Respondent is neither an admission of liability with respect to any issue covered under this Order nor an admission or denial of any findings of fact or legal determinations stated or implied herein.

E. This Order shall apply to and be binding upon the Respondent and its successors. No change or changes in the ownership or corporate status of the Respondent shall alter in any way Respondent's obligations under this Order. The signatories to this Order certify that they are authorized to execute this Order and legally bind the parties they represent.

BASED UPON THE FOREGOING FACTS AND DETERMINATIONS, EGLE HEREBY ORDERS, AND THE RESPONDENT HEREBY AGREES, TO THE FOLLOWING:

1. Subject to paragraph 3, Respondent agrees to submit to EGLE a complete Final Assessment Report (FAR) that includes a Corrective Action Plan (CAP) by April 1, 2021. The FAR and CAP must include all the required elements and information listed in Sections 21311a and 21309a of the NREPA, respectively, and remains subject to EGLE's final review and approval. The Respondent shall implement the CAP and shall complete a Closure Report and submit the report to EGLE within three hundred and sixty-five (365) days of the Effective Date of this Order subject to paragraph 3.

2. The Respondent shall pay to EGLE the sum of One hundred and Thirty-Five Thousand Dollars (\$135,000.00) in three equal payments to partially resolve the State's claims for costs of corrective action at the Property. By the one-year anniversary of the Effective Date of this Order, the Respondent shall pay Forty-Five Thousand Dollars (\$45,000.00) to EGLE. The Respondent shall also pay Forty-Five Thousand Dollars (\$45,000.00) to EGLE on the second and third anniversary of the Effective Date of this Order.

3. Notwithstanding the above, the dates required for the submittal of the FAR/CAP and Closure Report may be extended by mutual consent of the parties in the event that EGLE determines that any of the FAR/CAP or the granting of Closure of the release requires additional activities prior to EGLE approval.

4. Subject to the provisions of Part 215, Underground Storage Tank Corrective Action Funding, of the NREPA, MCL 324.21501 *et seq* (Part 215), the Respondent is using Part 215 funding to complete the corrective actions at the Property. Notwithstanding the payments made pursuant to Paragraph 2 of this Order, the Respondent shall reimburse EGLE for EGLE's costs of corrective action from the Respondent's Part 215 claim (Claim No. 19-050) to the extent that funding remains for the claim after the Respondent receives EGLE's certification of completion of corrective action as required by MCL 324.21323g(2). Within fourteen (14) days of the Respondent's receipt of EGLE's certification of completion of corrective action, the Respondent shall submit to the Michigan Underground Storage Tank Authority (MUSTA) an invoice (Attachment A) for reimbursement of EGLE's claim for costs of corrective action. Upon receipt of the disbursement from MUSTA, the Respondent shall immediately reimburse EGLE any MUSTA approved costs and all remaining funds associated with Respondent's Part 215 claim if received. The State's costs associated with any appeal of a MUSTA denial of EGLE's claim for costs as shown in Attachment A, shall be borne by EGLE and Respondent shall not be responsible for reimbursing EGLE for any MUSTA costs not approved by MUSTA.

5. Payments required by Paragraphs 2 and 4 are to be made by certified check payable to the "State of Michigan - Environmental Response Fund" and shall be sent to:

By first class mail:

Michigan Department of Environment, Great Lakes, and Energy  
Cashier's Office for EGLE  
P.O. Box 30657  
Lansing, Michigan 48909-8157

Via courier:

MDOT Accounting Services Division  
Cashier's Office for EGLE  
Van Wagoner Building, 1<sup>st</sup> Floor West  
425 W. Ottawa Street  
Lansing, Michigan 48933-2125

To ensure proper credit, payments made pursuant to this Order must reference Odish Brothers Sunoco, the EGLE Reference No. AOC-RRD-20-011, and the RRD Settlement ID Number RRD50126. A copy of the transmittal letter and the certified check shall be provided simultaneously to:

A. As to EGLE:

EGLE District Supervisor  
David LaBrecque, District Supervisor Lansing District Office  
Remediation and Redevelopment Division  
Michigan Department of Environment, Great Lakes, and Energy  
P.O. Box 30242  
Lansing, Michigan 48909-7242  
Phone: 517-285-7889]  
Fax: 517-241-3571  
E-mail Address: LaBrecqueD@michigan.gov

B. As to MDAG:

Assistant in Charge  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General  
G. Mennen Williams Building, 6th Floor  
P.O. Box 30755  
Lansing, Michigan 48909  
Phone: 517-335-7664  
Fax: 517-335-7636

Costs recovered pursuant to this Order shall be deposited in the Environmental Response Fund.

6. Subject to paragraph 3, if the Respondent fails to submit to EGLE a complete and approvable FAR that includes a CAP by April 1, 2021; fails to implement the CAP and submit a completed Closure Report within 365 days of the Effective Date of this Order or extended in accordance with this Agreement; fails to make full payment to EGLE as set forth in Paragraph 2; or if the Respondent fails to reimburse the remaining MUSTA funding to EGLE as set forth in Paragraph 4, the Respondent shall pay EGLE stipulated penalties as set forth below for every day of its noncompliance with any of the requirements contained in Paragraphs 1, 2 or 4.

The following stipulated penalties shall accrue per violation per day for any violation of this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1 <sup>st</sup> through 7 <sup>th</sup> day
\$500	8 <sup>th</sup> through 14 <sup>th</sup> day
\$1,000	14 <sup>th</sup> day and beyond

7. In consideration of the payments to be made by the Respondent under the terms of this Order, except as otherwise provided in this Order, the State covenants not to sue or to take further administrative action against the Respondent for the costs of corrective action addressed in Paragraphs 2 and 4. With respect to the Respondent's

liability for past corrective action costs, the State's covenant not to sue shall take effect upon EGLE's receipt of full payment from the Respondent for the amounts specified in Paragraphs 2 and 4, and any associated penalties that may have accrued pursuant to Paragraph 6 and is conditioned on EGLE's certification of completion of corrective action as required pursuant to MCL 324.21323g(2). The covenant not to sue applies only to costs of corrective action addressed in Paragraphs 2 and 4 and shall not be construed as a covenant not to sue for any other liability that the Respondent may have to the State for the Property. The covenant not to sue shall extend only to the Respondent and does not extend to any other person.

8. Nothing in this Order shall be construed as releasing or discharging any liability of any person to the Respondent and the Respondent specifically reserves its rights against such persons.

9. The Respondent agrees that all applicable statutes of limitation are tolled until the Respondent has complied with the terms of this Order.

10. The State reserves all of its rights under state and federal law to perform corrective action and to take enforcement action, including action to seek injunctive relief, the recovery of corrective action costs not addressed by this Order, the recovery of natural resource damages and costs incurred to assess natural resource damages, monetary penalties, punitive damages for any violation of law or this Order, and liability for criminal acts. The State expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Order.

11. Nothing in this Order shall limit the power and authority of EGLE or the State, pursuant to MCL 324.21319a and MCL 324.21323, or provided for under MCL 324.21323g(7), to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of regulated substances, pollutants, or contaminants on, at, or from an underground storage tank system at the Property.

12. Pursuant to MCL 324.21323d(5) and 324.21323d(6), and to the extent provided in Paragraph 7, the Respondent shall not be liable for claims for contribution for the matters addressed in this Order. Entry of this Order does not discharge the liability of any other person that may be liable under MCL 324.21323a, to the extent allowable by law. Pursuant to MCL 324.21323d(9), any action by the Respondent for contribution from any person not a party to this Order shall be subordinate to the rights of the State if the State files an action pursuant to Part 213 or other applicable federal or state laws.

13. This Order shall become effective on the date that the RRD Assistant Division Director signs this Order. All dates for the performance of obligations under this Order shall be calculated from the effective date of this Order (“Effective Date”). For the purposes of this Order, the term “day” shall mean a calendar day unless otherwise noted.

#### SIGNATORIES

The undersigned certify they are fully authorized by the party they represent to enter into this Order and to execute and legally bind that party to it. Respondent, EGLE and the MDAG agree that use of electronic signatures may be used by any of the parties to effectively execute this Order.

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IT IS SO AGREED TO AND ORDERED BY:



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Joshua M. Mosher, Assistant Director  
Remediation and Redevelopment Division  
Michigan Department of Environment, Great Lakes, and Energy

\_\_\_\_\_  
March 5, 2021

Date

AS TO FORM:

/s/ Brian J. Negele

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Brian J. Negele  
Assistant Attorney General  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General


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March 5, 2021

Date



IT IS SO AGREED BY:

MR. YOUSIF ODISH:




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Mr. Yousif Odish  
31186 Squire Lane,  
Farmington Hills, Michigan 48331

02-22-2021

Date



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Neil S. Silver  
Dawda, Mann, Mulcahy & Sadler, PLC  
Dawda Mann Building  
39533 Woodward Avenue, Suite 200  
Bloomfield Hills, Michigan 48304  
(248) 642-6961 (Direct) / (248) 642-3700 (Main)  
(248) 642-7791 (Fax)  
Email: [nsilver@dmms.com](mailto:nsilver@dmms.com)  
website: [www.dawdamann.com](http://www.dawdamann.com)

2/24/21

Date

**Attachment A**

Cost Recovery Summary Report

## REMEDIATION AND REDEVELOPMENT DIVISION

Source: EXCEL

## Cost Recovery Summary Report

## Invoice

Site Name: Odish Brothers Sunoco	County: Lapeer
Site ID: 44000279/Facility ID 00013317	Package: Combined 1i and 2i
Project Number: 440350	Phase: N/A
Location Code: 7G21	Sub Location Code: N/A

Total for Employee Salaries and Wages		
Period Covered: 05/05/2019 through 02/22/2020	\$	25,641.11
Indirect	\$	3,391.79
Sub-Total		<u>\$ 29,032.90</u>

Employee Travel Expenses for period :  
 Period Covered:

Contractual Expenses		
The Mannik & Smith Group Inc.		
Period Covered: 06/01/2019 through 2/18/2020	\$	1,194,186.20
Contract Sub-Total		<u>\$ 1,194,186.20</u>

Miscellaneous Expenses for period covered:		
Period Covered: 05/01/2019 through 10/29/2019	\$	1,281.00

MDNR/MDEQ Lab Expenses for period:  
 Period Covered:

MDPH/Community Health Expenses		
Period Covered:	\$	-

Attorney General Expenses for period:		
Period Covered:	\$	-

Other Expenses		
Period Covered:	\$	-

Sub-Total		<u><u>\$ 1,224,500.10</u></u>
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Interest Calculated from	through:	<u>\$ -</u>
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Total Combined Expenses for Site		<u>\$ 1,224,500.10</u>
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Run Date: 05/28/2020