



Office of the Administrator of the Ship-source  
Oil Pollution Fund

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pollution par les hydrocarbures causée par les  
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Ottawa, 11 March 2020  
*SOPF File: 120-852-C1-C*

## VIA REGISTERED MAIL & EMAIL

Senior Director, Incident Management  
Canadian Coast Guard  
200 Kent Street (6S049)  
Ottawa, Ontario K1A 0E6

**RE: LADY ELIZABETH I – Woody Point, Newfoundland and Labrador  
DOI: 7 March 2018**

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### **OFFER OF COMPENSATION**

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the motor vessel LADY ELIZABETH I, which sank on or about 7 March 2018 alongside a dock at Woody Point, Newfoundland and Labrador (the “Incident”).

On 13 December 2019, the Office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received the CCG’s submission in this matter on behalf of the Administrator. The submission advanced a claim in the amount of \$8,489.01 for costs and expenses related to the Incident. The submission has been reviewed and determinations with respect to its claims have been made. This letter advances an offer of compensation to the CCG pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (the “MLA”). Also provided in this letter are a description of the CCG’s submission and an explanation of the findings and ultimate determinations that flow from it.

It has been determined that the CCG’s claim should be allowed, in part. The amount of \$1,749.79 is offered (the “Offer”) with respect to the claim.

The Offer comprises the amount of \$1,620.37 for established costs and expenses, plus the amount of \$129.42 for accrued interest.

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### **THE CLAIM SUBMISSION**

The CCG claim submission includes a narrative, which describes events relating to the Incident. Also included in the claim submission is a cost summary, supported by various

logs, expense report statements, and receipts. Finally, additional documentation, including pollution reports and correspondence, fills out the submission.

To the extent that this documentation is relevant to the assessment of the submission, its contents are described below.

### The narrative

According to the narrative, on 7 March 2018 at 15:21, Labrador Marine Communications and Traffic Services reported to the CCG Environmental Response (“ER”) Duty Officer that the 42-foot tour boat LADY ELIZABETH I had sunk at an old ferry dock at Woody Point. The vessel’s owner had reportedly deployed boom from the local Harbour Authority around it and estimated that it contained 50 litres of diesel and 20 litres of lubricants. The vessel did not appear to have discharged any oils.

The CCG spoke with the vessel’s owner and informed him of his responsibilities with regard to oil pollution from the LADY ELIZABETH I.

Three ER personnel departed St. John’s in a CCG vehicle with a Response Trailer in tow. They reached Deer Lake, where they stopped for the night, at 00:30 on 8 March 2018.


The ER personnel arrived at the scene of the Incident at 07:15 to conduct a pollution assessment and monitor the owner’s response. They observed that the stern of the LADY ELIZABETH I was kept afloat by mooring lines while its bow rested on the bottom. They confirmed that the vessel was surrounded by boom.

A salvage crew contracted by the owner arrived on scene at 10:50, placing additional boom around the LADY ELIZABETH I and plugging through-hulls. The vessel was further secured with additional mooring lines and lift bags and a crane were used to raise it. By 19:15, it was afloat and stable. A small quantity of contaminated water was left in the vessel, to be removed with a vacuum truck. The ER personnel departed the scene at 20:30, with the owner monitoring the vessel through the night.

On 9 March 2018, the ER personnel arrived on scene at 07:30. The salvage crew arrived shortly thereafter and an assessment of the LADY ELIZABETH I was conducted. All bulk pollutants and containers were removed from the vessel. In addition, 2,800 litres of contaminated water from the vessel’s interior were pumped out by a vacuum truck. The owner presented a vessel removal plan to the ER personnel, who accepted it and left the scene at 12:00, reaching St. John’s at 21:30.

### Cost summary

The claim submission includes the following summary of costs and expenses claimed by the CCG:

<b>INCIDENT:</b>	<b>MV Lady Elizabeth I</b>	<b>PROJECT CODE:</b>	
<b>INCIDENT DATE:</b>	<b>March 7, 2018</b>	<b>DATE PREPARED:</b>	<b>April 25, 2019</b>
<b>DEPARTMENT:</b>	<b>Canadian Coast Guard</b>	<b>PREPARED BY:</b>	

		<u>SCH</u>
MATERIALS AND SUPPLIES	\$ 107.87	1
CONTRACT SERVICES	\$ -	2
TRAVEL	\$ 1,704.07	3
SALARIES - FULL TIME PERSONNEL	\$ 1,948.35	4
OVERTIME - FULL TIME PERSONNEL	\$ 3,788.40	5
OTHER ALLOWANCES	\$ -	6
SALARIES - CASUAL PERSONNEL	\$ -	7
SHIPS' COSTS (EXCL. FUEL & O/T)	\$ -	8
SHIPS PROPULSION FUEL	\$ -	9
AIRCRAFT	\$ -	10
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	\$ 128.34	11
VEHICLES	\$ 715.81	12
ADMINISTRATION	\$ 98.17	13
<b>TOTAL CCG COST OF INCIDENT</b>	<b>\$ 8,489.01</b>	

Figure 1: Screen capture of CCG cost summary

### Materials and supplies

In support of its claim for materials and supplies, the CCG submitted a receipt from Classic Woodwork Ltd. in Mt Pearl. The receipt is dated simply “May 30” (no year) and it includes the handwritten notation “Replacement Plugs”. The receipt is summarized as follows:

MATERIALS AND SUPPLIES:	QUANTITY	AMOUNT	HST	TOTAL	REFERENCE
3/4 - 1" Wooden Plugs	1	\$ 13.40	\$ 2.01	\$ 15.41	1-1
1 - 1 1/2" Wooden Plugs	2	\$ 13.40	\$ 4.02	\$ 30.82	1-1
1 1/4 - 2" Wooden Plugs	2	\$ 13.40	\$ 4.02	\$ 30.82	1-1
3 1/2 to 4 1/2 Wooden Plugs	1	\$ 26.80	\$ 4.02	\$ 30.82	1-1

Figure 2: Screen capture of materials and supplies summary

### Travel

The CCG submitted various receipts and expense report statements with regard to travel costs (accommodation, food, and incidental costs) associated with the three ER personnel involved in the response. The claims for travel costs are summarized as follows:


TRAVEL	Amount	GST	Total	REFERENCE
Travel Charge Summary				3-1
	\$ 558.16	\$ 80.46	\$ 638.62	3-2 - 3-6
	\$ 374.96	\$ 54.84	\$ 429.80	3-7 - 3-10
	\$ 555.53	\$ 80.12	\$ 635.65	3-11 - 3-15

Figure 3: Screen capture of travel summary

### Personnel and equipment logs

The CCG submitted various personnel logs in support of its claims for salaries and overtime. These logs show the hours worked by the three ER personnel involved in the response.

Claimed regular salary hours, which include the employee benefits plan, are summarized as follows:


	Group & Level	Time (Hours)	Rate	COST	REFERENCE
	GT 04	15	\$ 43.62	\$ 654.30	4-1
	GT 04	15	\$ 39.55	\$ 593.25	4-2
	RO 04	15	\$ 46.72	\$ 700.80	4-3

Figure 4: Screen capture of claimed regular salaries summary

Claimed overtime is summarized as follows:

Group & Level	1.5 x	2.0 x	Total Overtime Hours	Rate	COST	REFERENCE
[REDACTED] GT 04	22.00	1.00	35.00	\$ 36.35	\$ 1,272.25	5-1, 5-2
[REDACTED] GT 04	22.00	1.00	35.00	\$ 32.98	\$ 1,153.80	5-3, 5-4
[REDACTED] RO 04	22.00	1.00	35.00	\$ 38.93	\$ 1,362.55	5-5, 5-6

Figure 5: Screen capture of claimed overtime summary

Vehicle usage is supported by two largely illegible copies of logs and a photocopy of four fuel receipts. The claimed amounts for vehicle usage is summarized as follows:

UNIT #	MILEAGE (Kms)	RATE	TIME (days)	RATE	COST	REFERENCE
FORD F350	1434	0.22	3.00	67.56	\$ 202.68	12-1
Fuel charges					\$ 513.13	12-2, 12-3

Figure 6: Screen capture of vehicle claim summary

Finally, three Personnel and Equipment Daily Logs provide summaries of personnel and equipment tasking, including a record of vehicle mileage. These logs show that the ER personnel who attended the LADY ELIZABETH I brought with them a Response Trailer, the daily claimed rate for which was \$42.78. The logs also record that the plugs listed in Figure 2 were used as consumables. Finally, the entry dated 9 March 2018 includes the following notes:

**Crew on site 0730lt. Vessel stable. Salvage crew on site 0815lt. Assessment of vessel completed, 2 batteries, approximately 7" of fuel (1/2 tank) by sounding stick – apprx 150 ltrs., 1 5 gallon fuel can – ½ full, 2 5 gallon cans oil – one full one ½ full, 5 partly full 4 ltrs containers oil/coolant, 1 1 gallon can paint, 4 1 gallon cans roof patch cement, 2 partly full 1 ltrs jugs transmission / hyd fluid. All bulk pollutants and containers above removed. Vac truck operator reports about 2800 ltrs of pollutants/contaminated water removed. Owner intends having the boat hauled up on slipway at Winter House Brook approximately 1nm away. Crew demobs at 1200lt arriving depot 2130lt.**

Figure 7: Screen capture, excerpt from 9 March 2018 Personnel & Equipment Daily Log

### Marine pollution reports

The claim submission includes what appears to be the original pollution report issued by Labrador Marine Communications and Traffic Services. The report is dated 7 March 2018, and it appears to have been sent to the ER Duty Officer via email at 14:51 local time. It indicates that the individual referred to in the narrative as the vessel’s owner initially reported the Incident, and it reads, in part, as follows:

Remarks:		
Address: Old Ferry Ramp	City: Woody Point	Prov: NL
Posn (Lat/Long – If applicable):		
Type (oil/diesel/chemical): Oil and Diesel	Weather: No wind, No sea state	
Details: [REDACTED] of Blackawton Boat Tours reported a sunken 42 foot tour boat at the old ferry ramp in Woody Point. Boat is tied up at the wharf, no people were onboard. Pollutants onboard was approximately 50 liters of diesel fuel and approximately 20 liters of 5W-20 engine oil. No visible residue and a containment boom is in place, cause unknown at this time. A crane will be in place tomorrow to haul the boat out of the water.		

Figure 8: Screen capture, excerpt of the Labrador Marine Communications and Traffic Services pollution report

Also included in the CCG submission is an ER Marine Pollution Incident report dated 26 April 2019. The report includes two notations of potential significance. First, it classifies the incident as “Level 3 Local Response - The response is performed with regional resource”. Second, it indicates that the “ER crew monitored removal of 2800 L of oily water from vessel and removed a number of small containers of oil and chemicals” before returning to base.

Administration costs summary

The claim submission includes the following summary of the claim for administration costs:

		CCG REGION	
(i)	Rates:		
	Salaries portion		1.44%
	Other portion		1.09%
	Total Rate		<u>2.53%</u>
(ii)	Costs subject to Regional Rate (excl. EBP)		
	Materials and Supplies	\$	107.87
	Travel	\$	1,704.07
	Salaries - Full Time Personnel	\$	1,623.63
	Other Allowances	\$	-
	Salaries - Casual Personnel	\$	-
	Ship O & M Costs	\$	-
	Aircraft O & M Costs	\$	-
	Total Costs subject to Regional Rate	\$	<u>3,435.57</u>
	Regional Administration Cost	\$	<u>49.47</u>
(iii)	Costs subject to Corporate Rate (excl. EBP)		
	Materials and Supplies	\$	107.87
	Travel	\$	1,704.07
	Salaries - Full Time Personnel	\$	1,623.63
	Other Allowances	\$	-
	Salaries - Casual Personnel	\$	-
	Ship O & M Costs	\$	-
	Aircraft O & M Costs	\$	-
	Regional Administration costs	\$	<u>49.47</u>
	Total Costs subject to Corporate Rate	\$	<u>3,485.04</u>
	Corporate Administration Cost	\$	<u>-</u>
	Total Administration costs excl. EBP	\$	<u>49.47</u>
	Total Administration Costs incl. EBP	\$	<u>96.17</u>

Figure 9: Screen capture, summary of claimed administration costs

## CORRESPONDENCE WITH THE CLAIMANT

On 5 February 2020, the Fund sent an email request to the CCG Atlantic Region ER Superintendent. The email began by noting that the CCG “monitoring role and the expenses incurred and claimed need further justification to be compensable.” Five questions were posed to the CCG, seeking clarification and further detail on certain elements of the CCG’s rationale and decision-making process during its response to the Incident. A reply was requested by 17 February 2020.

On 19 February 2020, CCG’s Ottawa-based Manager of Operational Service Delivery contacted the Fund by telephone, explaining that she had received a draft response to the Fund’s questions from her colleagues in the Atlantic Region. She chose not to send this draft response to the Fund, indicating that she was in the process of reviewing and revising it.

On 25 February 2020, the CCG’s Manager of Operational Service Delivery sent her response to the Fund’s five questions, which she pasted, unmodified, into the body of her email:

In response to your inquiry on the Lady Elizabeth I (120-852-C1-B), we offer the following information. Please advise if you have any additional questions. Thank you.

1. The decision to send three response officers across Newfoundland when CCG was aware that the owner had engaged a salvage crew, had deployed boom and was actively dealing with the situation needs to be explained/justified.

**Response:** Environmental Response personnel involved in the response to a marine pollution incident must do so in accordance with provisions stipulated in the *Canada Labour Code*. The *Marine Spill Contingency Plan - National Chapter* provides an overview of the requirements for Health and Safety under the *Canada Labour Code*. According to the *Marine Spill Contingency Plan - National Chapter*, in the event of a response requiring any level of personnel or equipment deployment, an incident specific Health & Safety Plan will be created relating to the particular environment and circumstances of the incident. The process for the creation of this Plan is imbedded in the Incident Command System and duly assigned to a site safety officer for its administration and compliance. The Incident Commander, determines the resource requirements to help sustain or augment the response. In determining the resource requirements, the Incident Command considers if personnel are required; quantity; qualification requirements (i.e. Incident Command System role, equipment operators, boat drivers, safety specialist, etc.); shift requirements; date required; and reporting location. In the case of the response for Lady Elizabeth I, 3 ER personnel made up the response team required to conduct operations and meet *Canada Labour Code* requirements in the field.

2. When reviewing the documentation the question was raised concerning whether or not one officer could have travelled by air and completed the CCG ER monitoring job?

**Response:** Based on the particular environment and circumstances of the incident, it was determined that one ER personnel could have not safely conducted monitoring of the incident. It was determined that 3 ER personnel were required to safely conduct operations to meet *Canada Labour Code* requirements in the field.

Figure 10.1: Screen capture of February 2020 Fund correspondence with the CCG, questions 1 and 2

3. We understand that CCG has a concept of environmental response operations (2016) that includes using lifeboat stations/equipment/personnel to assess incidents in these types of locations. It is a timely and less costly approach. We are not sure why they were not utilized in this incident? Certainly the costs to the boat owner would have been more reasonable and the effort allocation would have been reduced significantly.
- Response:** Resource requirements are determined based on availability; quantity; whether personnel is available and qualified to operate equipment (equipment operators, boat drivers, safety specialist); and estimated time equipment will be required for. In this case, based on the aforementioned factors, Coast Guard determined that the best approach was to send ER personnel in lieu of utilizing other Coast Guard personnel.
4. Further, when lifeboat crews are not available to carry out assessments in remote areas would CCG not use the local transport Canada marine surveyor who has the professional expertise and resides in the local area?
- Response:** Coast Guard is the lead response agency under the Canada Shipping Act to ensure an appropriate response to all ship source and mystery spills. CCG ER had to have a response team on site to oversee the owners salvage operations for the incident and respond as required. Things do go wrong during these types of operations and that is why the CCG is the center of excellence in managing these responses and ensuring a response team is on site to get the operation done effectively and minimize pollution damage.
5. Lastly, why were three CCG persons required for this monitoring role?
- Response:** Based on the particular environment and circumstances of the incident, and in order to meet the requirements for Health and Safety under the *Canada Labour Code*, it was determined that a team of 3 ER personnel was appropriate to respond to the incident.

Figure 10.2: Screen capture of February 2020 Fund correspondence with the CCG, questions 3 through 5

## **FINDINGS AND DETERMINATIONS**

The CCG submission is eligible as a claim under section 103 of the MLA

The Incident occurred in the territorial sea of Canada, and therefore could form the basis of a proper claim.

The CCG is an eligible claimant for the purposes of section 103 of the MLA, and its claim was submitted within the limitation periods set out under subsection 103(2). Further, some of the claimed costs and expenses attach to measures taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship, as contemplated under Part 6, Division 2 of the MLA, more specifically monitoring measures under subparagraph 77(1)(c)(i) of the MLA, and are therefore eligible for compensation to the extent that they were reasonable.



### Most of the facts presented by the CCG are accepted

The facts as set out in the narrative and in the accompanying documentation provided by the CCG are largely accepted. However, there remain a number of evidentiary gaps and points of uncertainty with regard to the specific details and key decision points of the response. The evidentiary gaps that are relevant to the assessment are addressed below.

### Note on the owner of the LADY ELIZABETH I

It is noted that the individual referred to as the “owner” of the vessel in the CCG narrative appears in fact to be one of the two directors of the corporate registered owner of the LADY ELIZABETH I. For the sake of consistency and continuity, the remainder of this letter simply refers to this individual as the vessel’s owner.

### The pollution threat posed by the sunken LADY ELIZABETH I, as understood by the CCG

Based on the reports of the owner, on sinking, the LADY ELIZABETH I posed a modest oil pollution threat. The owner estimated that no more than 70 litres of fuel and other oils were on board the vessel. He reported that he had deployed boom from the Harbour Authority as a precautionary measure and arranged to have the vessel removed from the water (see Figure 8). No discharge of oil was reported initially or at any point during raising and removal operation, but it was nonetheless reasonable for the CCG to believe that at least a small discharge was likely, given the vessel was almost entirely submerged.

The CCG has presented no evidence that suggests there was any reason to disbelieve the owner’s version of events or his estimate of the volume of pollutants on board the LADY ELIZABETH I. Indeed, no evidence has been presented that suggests the CCG had any such doubts. Even if the worst was assumed, that the vessel was fully laden with perhaps 300 litres of diesel fuel, it is not likely that a response exceeding the scope or capabilities of that already voluntarily underway at the owner’s direction would or could have been necessary. At most, the boom in place around the vessel might have required changing, and the use of sorbent pads may have been necessary. When the CCG finally sounded the vessel’s fuel tank, on 9 March 2018, it found that the owner’s estimate was approximately accurate, allowing for some water ingress into the tank while it had been submerged (see Figure 7).

There is no evidence to suggest that the CCG made any efforts to confirm the details of the owner’s report or to obtain an unbiased assessment of the Incident before it chose to deploy three ER personnel over 700 kilometres across the province. The available evidence rather suggests that the ER personnel were deployed immediately on receiving the initial Labrador Marine Communications and Traffic Services report. No contemporaneous record of the decision to deploy these personnel has been presented — the “incident-specific Health & Safety Plan” referred to by the CCG in its 25 February 2020 email has not been provided. Further, when asked to explain its rationale in support of deployment, the CCG simply made bare reference to the *Canada Labour Code*, its “Marine Spills Contingency Plan – National Chapter” document, and unspecified aspects of “the particular environment and circumstances of the incident” (see Figures 10.1 and 10.2). No particulars

were forthcoming, whether in the original claim documentation or in response to the supplementary questions of the Fund.

CCG monitoring powers through the lens of reasonableness and in light of operational realities

The statutory authority granting the CCG the power to monitor a ship-source oil pollution incident is not at issue in the assessment of the present claim. Under paragraph 180(1)(b) of the *Canada Shipping Act, 2001* (the “CSA”), as it was at the time of the Incident, reasonable grounds to believe that a given vessel was likely to discharge a pollutant were sufficient to engage the power to “monitor the measures taken by any person to repair, remedy, minimize or prevent pollution damage from the vessel”. On the facts of the Incident, and as set out above, it is accepted that the CCG held such a belief on reasonable grounds. Further, given that the CCG knew the owner of the LADY ELIZABETH I was actively engaged in a full-scale response to the Incident, both personally and through a contractor, it is concluded that the three ER personnel were dispatched to the scene in a monitoring role, as contemplated under the CSA.

Like all preventive measures that on their face could be eligible for compensation under Part 7 of the MLA, monitoring measures, and their attached costs and expenses, must be passed through a reasonableness assessment. In short, this assessment seeks to determine whether the measures taken were proportionate to a given oil pollution threat, both objectively and as understood by a claimant at relevant decision points. Where a claimant is found to have escalated its response without taking an opportunity to fully understand an unfolding situation, this will militate against a finding of reasonableness. Claimants are not held to a standard of perfection, but they are expected to mitigate their own damages by escalating incrementally, and only to the extent that escalation is proportionally justified by a credible threat. Claimants must make all reasonable efforts to ascertain the specifics of such a threat, including its gravity, before escalating their response.

On receiving the initial report of the Incident, and in order to determine whether deploying a monitoring team to the scene was a justifiable escalation, the CCG ought to have been concerned with verifying and improving its understanding of two elements of the owner’s report: (1) the type and estimated volume of pollutants on board the LADY ELIZABETH I; and (2) the bare existence, the specific details, and the appropriateness of the owner’s response plan. Rather than seeking out a more cost-effective interim solution to the problem at hand, the CCG appears to have decided to send a three-man team to verify these details in person.

From the time of the initial report, it was nearly 16 hours before the CCG had personnel at the scene of the Incident. According to the Personnel & Equipment Daily Logs, no contact was made with the owner during this period (it is unclear if any was attempted). Further, nothing on the record suggests that any contact with anyone else on scene had been made or attempted. This is odd, considering that a telephone call to the local Harbour Authority might have shed light on the unfolding situation. The time lag of the actual response suggests that the CCG saw little need for urgency, considering the Incident to be low-risk, whether the owner’s account was fully accepted or not. That CCG personnel were

ultimately content to have the owner monitor his sunken vessel overnight on two occasions, on his own, is further indicative of the degree of the perceived threat.

If an urgent CCG presence on scene was not deemed paramount, the pollution threat was considered minimal, and the owner was believed to be engaged in at least some kind of response, the reasonableness of the costs and expenses of the entire deployment must be questioned, particularly in light of operational realities. In Newfoundland and Labrador, where even the CCG recognizes it cannot be everywhere,<sup>1</sup> it is common practice to utilize local assets to obtain information or even to perform a basic monitoring function in lieu or in anticipation of a CCG presence on scene. Such local assets might include harbour authorities or Transport Canada or Fisheries personnel. In this case, there was a local Harbour Authority, equipped with a cache of sorbent materials that the owner was using. In addition, Transport Canada and Fisheries assets were located roughly 120 kilometres away, in Corner Brook. A further Fisheries office was located just 70 kilometres away from Woody Point, at Rocky Harbour. The CCG could have drawn on these assets, with a single Response Officer coordinating as needed by telephone from St. John's. In its 25 February 2020 email response to the Fund's questions, the CCG has not presented compelling reasons as to why this approach was deemed undesirable. Indeed, there is no compelling evidence that such an approach was even considered.

Instead of calling on local assets to first confirm the owner's account of the situation and his mounting response, the CCG escalated into a full-scale monitoring operation, which brought three personnel across the province on the strength of a single report from the apparently responsible owner of the LADY ELIZABETH I. Given the possibility of lower cost alternative options, and the apparent low-risk nature of the Incident, the CCG decision to escalate directly to deployment cannot be seen as reasonable in the circumstances. The 25 February 2020 CCG assertion that this decision was based on the "particular environment and circumstances of the incident" is just that, a bare assertion. Its repetition without elaboration or specific support provides no justification to the monitoring costs claimed.

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<sup>1</sup> Canadian Coast Guard, "Environmental Response Concept of Operations – For an Alert, Responsive and Robust Environmental Response Program", 1st edition (Ottawa: Her Majesty the Queen in Right of Canada, 2016), pp 26–30. This document is referred to on several occasions in the CCG's "Marine Spills Contingency Plan – National Chapter".

## **BREAKDOWN OF THE OFFER OF COMPENSATION**

The CCG presented its claimed costs and expenses across seven schedules. Each of these schedules is outlined below, along with relevant determinations not already set forth in this letter.

*Schedule 1: Materials and Supplies* \$107.87

The CCG claimed for the cost of replacing six wooden plugs that, according to the Personnel & Equipment Daily Logs, were used on 8 March 2018. Effectively no detail has been provided on the specific use of the plugs, with the exception of a line in its narrative noting that the owner's contractor plugged through-hulls before dewatering and raising the LADY ELIZABETH I. It is therefore assumed that the CCG simply provided the plugs to the contractor for this purpose. It is not clear why the contractor did not supply its own plugs. A further complication arises out of the date on the receipt for the plugs: "May 30", without a year. Admittedly, the notation "Replacement Plugs" loosely links the receipt with the logs, and it may be that the CCG waited nearly two months to purchase replacements for the consumables used in its response to the Incident.

Despite the above complications that arise from the limited evidence presented, it is concluded that the plugs were indeed used in the response. It is further concluded that plugging the vessel's through-hulls was a necessary step in the raising operation, which helped to mitigate any oil pollution threat posed by the sunken vessel. Whether or not the CCG had been on scene, similar plugs would inevitably have been used. Therefore, the cost of the plugs is accepted as reasonable.

This portion of the claim is established in full.

*Schedule 3: Travel* \$1,704.07

This portion of the CCG's claim is comprised of accommodation, food, and incidental costs for the three ER personnel dispatched to the scene of the Incident.

For the reasons already outlined, the entire amount claimed under this schedule is rejected.

*Schedule 4: Salaries – Full Time Personnel* \$1,948.35

The CCG claim for salaries associated with deploying three ER personnel is summarized in Figure 4. For the reasons set out above, this deployment cannot be deemed reasonable.

Nonetheless, it is acknowledged that that the LADY ELIZABETH I did indeed pose a modest pollution threat on sinking, and that some degree of monitoring of the owner's response, with a specific focus on verifying his account of the situation, was reasonable as a result.

As discussed above, a proportionate degree of monitoring, in light of the specific circumstances of the Incident, would have involved a single Response Officer at the ER base in St. John's liaising with a local asset, whether a representative of the Woody Point Harbour Authority or a Transport Canada or Fisheries officer based in Corner Brook or

Rocky Point, over the telephone. This would have allowed for an incremental response to the Incident that could have been escalated on an as-needed basis, recognizing that the owner of the LADY ELIZABETH I was apparently responsible, and that the pollution threat posed by the boomed-off vessel was minimal, even if it had been fully laden with fuel.

While the claim for the specific personnel costs actually incurred by the CCG cannot be accepted, it is recognized that the CCG would nonetheless have incurred personnel costs in the course of a remote monitoring response. Even if local assets had been engaged to do the bulk of the work, any costs associated with those assets would have been — or at least could have been — reasonably borne by the CCG. To this end, the \$43.63 hourly rate associated with the more senior of the two GT-04 personnel deployed to the scene of the Incident (see Figure 4) has been multiplied over 22.5 hours, representing the three days of the owner’s response to the Incident, and yielding an amount of \$981.68. While the response did not in fact extend over three full working days, the amount allowed is intended to account for any possible overtime that may have been necessary. Further, the amount has been increased by 50% to allow for any travel or incidental costs that might have been incurred by any local assets engaged, noting that the distance between Corner Brook, the location of the furthest viable asset, and Woody Point is approximately 120 kilometres by road.

This portion of the claim is allowed, in part, in the amount of \$1,472.52.

*Schedule 5: Overtime – Full Time Personnel* \$3,788.40

The CCG claim for overtime associated with deploying three ER personnel is summarized in Figure 5. For the reasons set out above, this deployment cannot be deemed reasonable.

In light of the treatment of the claim for regular salaries, set out immediately above, the entire amount claimed under this schedule is rejected.

*Schedule 11: Pollution Counter-measures Equipment* \$128.34

This portion of the CCG’s claim is comprised of the three-day use of a Response Trailer, at a day rate of \$42.78.

For the reasons already outlined, the entire amount claimed under this schedule is rejected.

*Schedule 12: Vehicles* \$715.81

This portion of the CCG’s claim is summarized in Figure 6. It comprises the three-day use of a CCG vehicle, at a day rate of \$67.56, plus total fuel costs of \$513.13.

For the reasons already outlined, the entire amount claimed under this schedule is rejected.

*Schedule 13: Administration* \$96.17

This portion of the CCG’s claim appears to represent a percentage of the claimed amounts under Schedules 1, 3, and 4 (see Figure 9). On closer review, however, the ultimate claimed

amount for administration costs does not flow mathematically from the numbers presented by the CCG. As a result, is not at all clear how this amount was calculated.

Given that the claimed amounts under Schedules 1 and 4 have been established, in part, in total amount of \$1,580.39, a reasonable administration cost has been calculated using the multiplier of 2.53%, which has been previously accepted as reasonable.

This portion of the claim is allowed, in part, in the amount of \$39.98.

### **OFFER OF COMPENSATION SUMMARY**

The following table is provided to summarize the amounts claimed and offered.

<b>Schedule</b>	<b>Claimed</b>	<b>Offered</b>
1 – Materials and Supplies	\$107.87	\$107.87
3 – Travel	\$1,704.07	\$0.00
4 – Salaries – Full Time Personnel	\$1,948.35	\$1,472.52
5 – Overtime – Full Time Personnel	\$3,788.40	\$0.00
11 – Pollution Counter-measures Equipment	\$128.34	\$0.00
12 – Vehicles	\$715.81	\$0.00
13 – Administration	\$96.17	\$39.98
Total	\$8,489.01	\$1,620.37
Interest		\$129.42
<b>Grand Total of Offer</b>		<b>\$1,749.79</b>

*Table: Summary of amounts claimed and offered*

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In considering this Offer, please observe the following options and time limits that arise from section 106 of the MLA.

You have 60 days upon receipt of this Offer to notify the undersigned whether you accept it. You may tender your acceptance by any means of communication by 16:30 Eastern Time on the final day allowed. If you accept this Offer, payment will be directed to you without delay.

Alternatively, you have 60 days upon receipt of this Offer to appeal its adequacy to the Federal Court. If you wish to appeal the adequacy of the Offer, pursuant to Rules 335(c), 337, and 338 of the *Federal Courts Rules*, SOR/98-106 you may do so by filing a Notice of Appeal in Form 337. You must serve it upon the Administrator of the Ship-source Oil Pollution Fund, who shall be the named Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

The MLA provides that if no notification is received by the end of the 60-day period, you will be deemed to have refused the Offer. No further offer will issue.

Finally, where a claimant accepts an offer of compensation, the Administrator becomes subrogated to the claimant's rights with respect to the subject matter of the claim. The claimant must thereafter cease any effort to recover for its claim, and further it must cooperate with the Fund in its efforts to pursue subrogation.

Yours sincerely,

Mark A.M. Gauthier, B.A., LL.B.  
Deputy Administrator, Ship-source Oil Pollution Fund

Cc: Superintendent, Environmental Response, Atlantic Region  
Manager, Operational Service Delivery