



OFFER LETTER

Ottawa, 20 October 2021
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CCG File: n/a

BY EMAIL

Manager, Response Services and Planning
Canadian Coast Guard
200 Kent Street (Stn 5N167)
Ottawa, Ontario K1A 0E6

RE: Unknown name (deck barge)– Port Mellon, Howe Sound, British Columbia
Incident date: 2019-03-07

SUMMARY AND OFFER

[1] This letter responds to a claim submitted by the Canadian Coast Guard (the “CCG”) with respect to an incident involving a deck barge with no known name (the “Vessel”). The Vessel was found abandoned and listing in the water with various cargo and chemicals on board (the “Incident”).

[2] On 26 February 2021, the Office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received the CCG’s claim for costs and expenses related to the Incident. The claimed costs and expenses total \$396,954.40. The claim has been reviewed and a determination has been reached. This Offer Letter explains the determination and advances an offer of compensation pursuant to sections 105, 106 and 116 of the *Marine Liability Act* (the “MLA”).

[3] It has been determined that the CCG’s claim should be allowed. The amount of \$57,102.91 (the “Offer”) is offered with respect to this claim, plus statutory interest.

[4] The reasons which explain the Offer are set forth below.

THE SUBMISSION RECEIVED

[5] The CCG submission includes a narrative which describes relevant events relating to the Incident. It also includes a summary of the costs and expenses claimed and backup documents related to some of those costs and expenses. To the extent that these submitted documents are relevant to the Fund’s determination, their contents are described below.

Narrative

[6] On 7 March 2019, the CCG was notified that the Vessel was listing in the Port Mellon area. The Vessel was understood to contain debris, hazardous and noxious substances, and an excavator, and was in danger of sinking. Heavy Metal Marine Limited (“Heavy Metal Marine”), a local marine construction company, pushed the Vessel closer to shore and surrounded it with boom on its own initiative.

[7] CCG personnel mobilized to the scene and confirmed that the Vessel contained a 200-class excavator, dock flotation foam, and dock construction materials; it was also listing at a 40-degree angle, with an unrecoverable oily sheen surrounding it in the water.

[8] Due largely to the high risk to the marine environment and human safety presented by the chemicals aboard, the CCG engaged Heavy Metal Marine on an emergency contract to remove the excavator and stabilize the Vessel.

[9] A local land leaseholder identified the owner of the Vessel. The owner had moored the Vessel at the leaseholder’s site in 2018 and contact had ceased between the two parties a month prior to the Incident. Since then, the leaseholder had been attempting to keep the Vessel afloat.

[10] Three CCG personnel were dispatched to the site with various pollution countermeasures equipment, including 500 feet of curtain boom and salvage pumps. They were advised that the owner had a history of storing hazardous and noxious substances aboard his vessels.

[11] It was determined that the excavator onboard the Vessel contained a diesel fuel tank, a hydraulic oil tank, and an additional tank, each with a capacity of 400 liters. The contents of these tanks were apparently not verified. The excavator also contained over 60 drums for hazardous and noxious substances such as bromine chloride.

[12] The CCG deployed boom around the Vessel, attempted to dewater it, and secured the excavator to its deck to prepare for removal. It was observed that some of the oily sheen was escaping from the boomed area.

[13] Given the increased risk due to the chemicals onboard the Vessel, the CCG held a conference call with various parties, including the Squamish Nation, Environment and Climate Change Canada, and the British Columbia Ministry of the Environment and Climate Change, in order to discuss appropriate responses. It was decided that crews would work at least 100 feet away from areas of the Vessel known to store the chemicals.

[14] On the night of 7 March 2019, the excavator was successfully removed from the Vessel.

[15] The next day, the CCG observed that the Vessel had listed further during the night and dumped most of its contents into the water. The CCG authorized Heavy Metal Marine to remove the debris, and plans were made to surround it with boom to contain its spread.

[16] On 9 March 2019, the roof of the onboard shed was removed, and a chemical assessment indicated a low threat to human health. Heavy Metal Marine removed the existing debris and secured the Vessel to the shore.

[17] These operations continued on 10 March 2019, and a final pollution assessment indicated no further environmental risk. The next day, the Vessel was turned over to the CCG Vessels of Concern Program to be unloaded, and the CCG incident file was closed.

The costs and expenses summary

[18] The submission also included the following summary of the costs and expenses claimed by the CCG:

| COST SUMMARY | | | |
|---|-----------------------------|----------------|------------|
| POLLUTION INCIDENT | | | |
| INCIDENT: | DERELICT BARGE, PORT MELLON | PROJECT CODE: | FHVR5 |
| INCIDENT DATE: | March 7, 2019 | DATE PREPARED: | FEB 22/21 |
| DEPARTMENT: | CANADIAN COAST GUARD | PREPARED BY: | ██████████ |
| | | | <u>SCH</u> |
| MATERIALS AND SUPPLIES | - | | 1 |
| CONTRACT SERVICES | 349,440.89 | | 2 |
| TRAVEL | 1,702.88 | | 3 |
| SALARIES - FULL TIME PERSONNEL | 1,769.78 | | 4 |
| OVERTIME - FULL TIME PERSONNEL | 11,613.68 | | 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) | 31,255.05 | | 11 |
| VEHICLES | 1,073.94 | | 12 |
| ADMINISTRATION | 98.19 | | 13 |
| | <hr/> | | |
| TOTAL CCG COST OF INCIDENT | <u>\$ 396,954.40</u> | | |

Figure 1: screen capture of the CCG cost summary

Additional information received

[19] On 28 July 2021, the Office of the Administrator requested additional information from the CCG, namely the Pollution Response Vehicle logbook entries for 7 March 2019, the first day of the response to the Incident. The CCG provided this information and this logbook entry was included as evidence in the Administrator's assessment of the claim.

FINDINGS AND DETERMINATIONS

Eligibility of the claimant

[20] It has been determined that the CCG is an eligible claimant and that the Incident occurred within the territorial seas or internal waters of Canada for the purposes of s. 103 of the MLA. As the Vessel posed an identified risk of oil pollution due to the fuel in the excavator that it carried, it is further determined that at least some of the claims submitted by the CCG are eligible for compensation from the Fund.

The pollution threat posed

[21] The response to the Incident by the CCG consisted of three primary components: removing the excavator from the Vessel, stabilizing and recovering the spilled cargo, and unloading the cargo and debris for transportation to a disposal site.

[22] The submitted evidence suggests that the excavator was the only source of a hydrocarbon oil pollution threat in this matter. Namely, the oily sheen that CCG personnel observed appeared to come from the excavator, and the sorbent boom deployed around the Vessel remained intact after the excavator was removed. However, the submission provides no evidence that the CCG verified the contents of the excavator's fuel tanks.

[23] The CCG submission does not establish that the chemical drums or debris of the Vessel itself posed a hydrocarbon oil pollution threat, or were ever perceived as such a threat. Accordingly, only the costs and expenses associated with the removal of the excavator and the assessment of the oil pollution risk posed by the Vessel are potentially compensable from the Fund.

[24] These include the costs of the initial response to and on-site assessment of the Vessel, the removal of the excavator, and the return of CCG personnel to their base afterward. Once the excavator was removed from the Vessel and secured, the oil pollution threat was contained. The majority of the subsequent costs and expenses were incurred primarily as part of a response to a vessel containing hazardous and noxious substances, which falls outside of the mandate of the Fund.

CLAIM AND OFFER DETAILS

[25] The CCG submission broke its claim down into several categories. This section of the Offer Letter reviews each of those categories of claim in detail and provides reasons as to why the claimed costs and expenses have been allowed or disallowed.

Schedule Two – Contract Services \$349,440.89

[26] The following table summarizes the claimed contract services costs in this matter:

| Contractor | Subtotal cost claimed | GST | Total cost claimed |
|-----------------------|------------------------------|--------------------|---------------------------|
| Heavy Metal Marine. | \$331,350.86 | \$16,567.53 | \$347,918.39 |
| TCB Marine Consulting | \$1,450.00 | \$72.50 | \$1,522.50 |
| Total | \$332,800.86 | \$16,640.03 | \$349,440.89 |

Table 1 – Summary of claimed Schedule 2 costs

These costs comprise approximately 88% of the claimed costs and expenses and involve two primary contractors: Heavy Metal Marine and TCB Marine Consulting. Heavy Metal Marine also hired several subcontractors as part of its work.

Heavy Metal Marine

[27] The CCG issued an emergency contract to Heavy Metal Marine, which was already on site and was equipped to perform the necessary work. No Statement of Work was included in the CCG submission to the Administrator.

[28] Heavy Metal Marine removed the excavator from the Vessel and secured it on its own crane barge. It then unloaded the cargo and debris from the Vessel for disposal. For the purpose of analysis, the costs included in the Heavy Metal Marine invoices were separated into two categories: equipment costs and personnel costs.

[29] While the CCG submission establishes a reasonable perception of an oil pollution threat from the excavator, it emerges from the narrative and invoices that the CCG's primary focus during the response was on the risk to the environment and human health posed by the hazardous and noxious substances in the Vessel's deck cargo.

[30] While it is not clear that all of the equipment which Heavy Metal Marine brought to the scene of the incident proved necessary for the oil pollution response, the equipment brought is accepted as reasonable at least for the first day of the incident. The equipment costs for the first day are therefore allowed.

[31] On the grounds listed above, the Heavy Metal Marine equipment costs that arose after the removal of the excavator have not been established as measures taken to respond to a threat of oil pollution. They are therefore disallowed.

The equipment costs from the Heavy Metal Marine invoices are allowed in the amount of \$19,075.00.

[32] Having established the rationale for the use of Heavy Metal Marine equipment for 7 March, the table below provides details on the personnel costs included in the Heavy Metal Marine invoice for that day.

| Position | Rates | | | Hours Charged | | | Calculated | Claimed | Difference |
|---------------|----------|----------|----------|---------------|----------|-----------|--------------------|--------------------|-----------------|
| | Straight | OT | DT | ST | OT | DT | | | |
| Foreman | \$94.97 | \$142.46 | \$189.94 | 8 | 2 | 10 | \$2,944.08 | \$3,039.05 | \$94.97 |
| Bridgeman | \$79.30 | \$118.95 | \$158.60 | 8 | 2 | 8 | \$2,141.10 | \$2,220.40 | \$79.30 |
| Operator | \$79.30 | \$118.95 | \$158.60 | | | 8 | \$1,268.80 | \$1,348.10 | \$79.30 |
| Operator | \$79.18 | \$118.77 | \$158.36 | | | 8 | \$1,266.88 | \$1,346.06 | \$79.18 |
| Operator | \$79.18 | \$118.77 | \$158.36 | | | 8 | \$1,266.88 | \$1,346.06 | \$79.18 |
| Operator | \$79.18 | \$118.77 | \$158.36 | 8 | 2 | 8 | \$2,137.86 | \$2,217.04 | \$79.18 |
| Bridgeman | \$79.30 | \$118.95 | \$158.60 | | | 8 | \$1,268.80 | \$1,348.10 | \$79.30 |
| Bridgeman | \$79.30 | \$118.95 | \$158.60 | | | 8 | \$1,268.80 | \$1,348.10 | \$79.30 |
| LoA | \$210.00 | | | 8 | | | \$1,680.00 | \$1,680.00 | 0 |
| Totals | | | | 24 | 6 | 66 | \$15,243.20 | \$15,892.91 | \$649.71 |

Table 2 – Summary of claimed Schedule 2 personnel costs (Heavy Metal Marine, 7 March 2019)

[33] The number of crew members was reduced from eight on 7 March to six on 8 March. While six crew members likely would have been sufficient on 7 March considering the amount of work that was performed on both days, the use of eight personnel on 7 March is accepted due to the fact that the magnitude of the pollution threat was not completely known at that time and to the capacity of the excavator’s fuel tanks.

[34] The amounts claimed for the Heavy Metal Marine employees on 7 March are high. For the most part, the amounts are understandable when it is considered that for Heavy Metal Marine, the response started at 05:30 and continued until 23:30. For the Foreman, the hours billed (20) actually exceed the amount between incident start and stand down. Nevertheless, the claim is accepted on the basis that the Foreman may have worked after the stand down, either to wind the day down or plan for the next day, and hours attributable for 8 March going by a calendar may have nevertheless been recorded on 7 March. The hours claimed for the Heavy Metal Marine employees are therefore accepted.

[35] There is a discrepancy in the submission for the total claim for hours for Heavy Metal Marine personnel. For each employee, the claim exceeds the grand total achieved by multiplying the employees rate by the applicable hours worked – by the amount of one hour at straight time. With no explanation evident in the evidence or the narrative, this is taken as a spreadsheet or calculation error. The amount claimed for Heavy Metal Marine employees is therefore reduced by \$649.71.

[36] The following table summarizes the accepted Heavy Metal Marine personnel costs for 7 March, when the oil pollution threat from the excavator was addressed. **The personnel costs from the Heavy Metal Marine invoices are allowed in the amount of \$15,243.20.**

[37] As mentioned, costs incurred after the Vessel’s sole potential pollution threat, the excavator, was removed on 7 March 2019 are dismissed on the grounds that they do not relate to a ship-source oil pollution response. Accordingly, the costs from Heavy Metal Marine subcontractors Dolphin Marine, Coast Environmental, and Williams Scrap Metal, which were incurred to remove the Vessel and debris for disposal, are disallowed.

[38] The following table summarizes the claimed and allowed Heavy Metal Marine contractor costs.

| Heavy Metal Marine and Subcontractors Totals Claimed and Established | | |
|---|---------------------|--------------------|
| | Claimed | Established |
| HMM Equipment | \$116,345.00 | \$19,075.00 |
| HMM Personnel | \$63,456.34 | \$15,243.20 |
| HMM Subtotal | \$179,801.34 | \$34,318.20 |
| Dolphin Marine | \$31,950.00 | \$0.00 |
| Coast Environmental | \$92,725.30 | \$0.00 |
| Williams Scrap Metal | \$3,248.59 | \$0.00 |
| Subcontractors | \$121,426.71 | \$0.00 |
| Contract Total | \$301,228.05 | \$34,318.20 |
| Mark-up (10%) | \$30,122.81 | \$3,431.82 |
| GST (5%) | \$16,567.54 | \$1,887.50 |
| Total | \$347,918.40 | \$39,637.52 |

Table 4 – Summary of claimed and allowed Schedule 2 costs (Heavy Metal Marine)

TCB Marine Services

[39] These costs arise from a marine surveyor that the CCG contracted to oversee the removal of the Vessel’s cargo on 9 March 2019. The following day, the surveyor also approved the mooring plan to secure the barge once this operation was completed.

[40] This has not been established as a measure taken to respond to the threat of ship-source oil pollution that the Vessel posed, as it was performed after what was apparently the only oil pollution threat (the excavator) had been properly contained.

The costs from the TCB Marine Services invoice are disallowed in their entirety.

The following table summarizes the claimed and allowed contract services costs:

| Contractor | Costs claimed | Costs allowed | Reason for markdown |
|-----------------------|----------------------|----------------------|--|
| Heavy Metal Marine | \$347,918.40 | \$39,637.52 | Work performed after oil pollution threat contained |
| TCB Marine Consulting | \$1,522.50 | \$0 | Not established as an oil pollution response measure |
| Total | \$349,440.90 | \$39,637.52 | |

Table 5 – Claimed and allowed Schedule 2 costs

This portion of the claim is allowed in part in the amount of \$39,637.52.

Schedule Three – Travel

\$1,702.88

[41] The CCG claims travel expenses for five personnel, one of whom incurred travel expenses on 7-10 March 2019, one of whom incurred travel expenses on 9-10 March, and three of whom incurred travel expenses on 7-8 March.

[42] According to the narrative, the crew of Environmental Response personnel departed for the scene around 0800 on the morning of 7 March and arrived by 1130. The oil pollution response operations were primarily completed that night, once the excavator was removed and secured to Heavy Metal Marine's barge.

[43] The provided log book entries state that the crew departed from Gibsons, BC, at 0900 on 8 March 2019 and secured alongside the Heavy Metal Marine crane barge at 0937. Subsequent work was primarily related to determining the risk posed by the hazardous and noxious substances onboard the Vessel.

[44] It would have been reasonable for the CCG to refuel the 750 boat in Gibsons before returning to monitor the Incident at Port Mellon. Two hours would have been sufficient for this task. Allowing for reduced speed due to poor visibility at the time, the crew would have returned to the Institute of Ocean Sciences at approximately 1630 on 8 March 2019.

[45] This travel itinerary is accepted as reasonable, with the consequent number of hours worked that day being 7.5 at the straight rate of pay. Meal allowance on this day is reduced to lunch only, as breakfast was included in the hotel rate that the CCG personnel paid, and the crew would have returned to their base during normal work hours. This does not apply to the Deputy Superintendent, who did not stay in a hotel, according to the Expense Report Statements and hotel invoices.

[46] The majority of the claimed travel costs arising after 8 March 2019 are disallowed, as the threat of oil pollution had been addressed at that point. However, the travel costs for

the two CCG officers who travelled to the scene on 9 March, the day on which the chemicals onboard the Vessel were assessed, are accepted as reasonable on the grounds that it was until then unclear, based on the Narrative and ICS Forms, whether the chemicals presented an oil pollution threat in addition to that posed by the excavator.

[47] Part of the claimed travel costs arise from the Deputy Superintendent (identified as Employee 1 in the table below), who was involved in coordinating interdepartmental cooperation. As such, he likely would have remained in the office and maintained contact with the CCG field crew as necessary on 7 March 2019. The Expense Report Statement attributed to this employee notes that he incurred travel expenses from 7-10 March; however, there is no breakdown of travel expenses incurred per day. In the absence of such specification, 50% of his total travel expenses are accepted as reasonable, as an approximation of travel expenses that he incurred on 7-8 March.

[48] The following table summarizes the claimed and allowed travel costs for this claim.

| Schedule 3 (Travel) Summary | | | |
|---|----------------------|--------------------------------|-----------------|
| Travel (7 -9 March): Claimed | | | |
| Employee | Days | Total | |
| 1 | 7-10 | \$472.95 | |
| 2 | 9-10 | \$190.70 | |
| 3 | 7-8 | \$362.94 | |
| 4 | 7-8 | \$332.97 | |
| 5 | 7-8 | \$343.32 | |
| Total | | \$1,702.88 | |
| Treasury Board Travel Rates | | Established, per Person | |
| FY 2018/2019 | | 7 March | 8 March |
| Breakfast | \$19.45 | | |
| Lunch | \$19.20 | \$19.20 | \$19.20 |
| Dinner | \$48.15 | \$48.15 | |
| Incidentals | \$17.50 | \$17.50 | \$17.50 |
| | Daily Total | \$84.85 | \$36.70 |
| | Two-day Total | | \$121.55 |
| Travel (7 - 8 March 2019): Established | | | |

| Employee | Days | Meals/Inc'dl s | Accommodation | Private Vehicle | Total |
|----------|------|-------------------|---------------|--------------------|-------------------|
| 1 | 7-9 | \$84.85 | \$0 | \$32.43 | \$117.28 |
| 2 | 9 | \$84.85 | \$0 | \$9.54 | \$94.39 |
| 3 | 7-8 | \$121.55 | \$143.87 | \$33.79 | \$299.21 |
| 4 | 7-8 | \$121.55 | \$143.87 | \$3.82 | \$269.24 |
| 5 | 7-8 | \$121.55 | \$143.87 | \$14.17 | \$279.59 |
| | | | | Total | \$1,059.71 |

Table 6 – Claimed and allowed Schedule 3 costs

This portion of the claim is allowed in part in the amount of \$1,059.71.

Schedule Four – Salaries for Full Time Personnel \$1,769.78

[49] The CCG claims salary costs for four of the five personnel for whom it claims travel costs, as discussed above. Three of these personnel are paid at the GT-04 level and one is paid at the GT-05 level. These claimed costs include the entire response period of 7 March-17 April 2019, although the Narrative states that the file, as it concerned CCG Environmental Response, was closed on 11 March when it was transferred to the Vessels of Concern program.

[50] On the same grounds as the previous Schedules, salary costs incurred after the oil pollution threat was contained on 8 March are disallowed.

[51] First, the hourly pay rates were corrected before comparing the claimed and established hours and costs. The hourly rate of pay is incorrectly calculated from the annual salary in the claim submission. Specifically, the claim divides the annual salary by 52 weeks and therefore 37.5 hours. However, per Treasury Board guidelines, the annual salary must be divided by 52.176 (obtained by dividing the average of 365.25 days per year, factoring in leap years, by 7 days) to obtain the weekly rate, then divided again by 37.5, the number of hours in the standard work week.

[52] The corrected hourly rates of pay were used to calculate the Schedule 4 costs that are accepted as reasonable. The corrected costs appear in the table below.

| Employee | Date | Straight | 1.5 X | 2 X | Expanded | Salary |
|----------|----------|----------|----------|-----|----------|----------|
| 1 | 7 March | 7.5 | 7.5 | | 11.25 | \$377.49 |
| | 8 March | 7.5 | 7.5 | | 11.25 | \$377.49 |
| | Subtotal | 15.0 | 15.0 | 0.0 | 22.50 | \$754.98 |

| | | | | | | |
|---------------|----------|-------------|-------------|-------------|---------------|-------------------|
| 3 | 7 March | 7.5 | 7.5 | 2.5 | 16.25 | \$336.32 |
| | 8 March | | | 19.0 | 38.00 | \$0.00 |
| | Subtotal | 7.5 | 7.5 | 21.5 | 54.25 | \$336.32 |
| 4 | 7 March | 7.5 | 7.5 | 2.5 | 16.25 | \$336.32 |
| | 8 March | | | 19.0 | 38.00 | \$0.00 |
| | Subtotal | 7.5 | 7.5 | 21.5 | 54.25 | \$336.32 |
| 5 | 7 March | 7.5 | 7.5 | 2.5 | 16.25 | \$336.32 |
| | 8 March | | | 19.0 | 38.00 | \$0.00 |
| | Subtotal | 7.5 | 7.5 | 21.5 | 54.25 | \$336.32 |
| Totals | | 37.5 | 37.5 | 64.5 | 185.25 | \$1,763.94 |

Table 7 – Claimed Schedule 4 costs (corrected)

[53] While the Deputy Superintendent (Employee 1) did not play a fundamental role in the oil pollution portion of the response to the Incident, he approved the emergency contract with Heavy Metal Marine, coordinated interdepartmental conference calls, and presumably provided briefing as needed. His salary costs are therefore accepted.

[54] For the remaining personnel, it is accepted that the crew of the CCG 750 worked the claimed 18 hours from 0600 to 2400 on 7 March 2019. This is the day on which the excavator was removed and secured, and therefore the day on which the pollution threat was contained.

[55] It was also reasonable for the CCG to work on 8 March to ensure that there were no other potential sources of oil pollution from the Vessel. However, that all hours worked on 8 March are claimed at the double time rate is of concern.

[56] In keeping with the determination that there was no further oil pollution-related work foreseen or performed beyond the night of 7 March, the portion of oil pollution-related work on 8 March is limited to the crew's return to its base at the Institute of Ocean Sciences. It would have been efficient to refuel before leaving Gibsons in the morning, as the crew only learned that the Vessel's deck cargo had slipped off upon arriving on scene. In the circumstances, it also would have been reasonable for the crew to ensure that there were no other hazardous and noxious substances onboard the Vessel upon arriving.

[57] Taking into account the above, it would be reasonable for the oil pollution-related work to be completed within the normal 7.5-hour workday, at the straight hourly rate. Accordingly, the claimed total of 17.5 hours at double time is replaced by 7.5 hours as a regular work day.

[58] Additionally, the Personnel and Equipment Daily Log entry for 8 March 2019 indicates that three CCG officers worked from 0000 to 0230 that morning, following the

removal of the excavator on the night of 7 March. However, the claim does not include evidence of the work that these officers were performing during this time. The Log entry for 7 March was initially not included in the claim, and when the CCG later provided it to the Office of the Administrator, it indicated that the crew left the scene at 0040 and arrived at Gibsons at 0140 on the morning of 8 March. Still, this does not account for the work that was ostensibly performed from 0000 to 0230 on the morning of 8 March.

[59] The following table summarizes the claimed and accepted salary costs in this matter. Note that the accepted salary costs are higher than the claimed salary costs due to the conversion of some of the claimed overtime costs to the straight hourly rate of pay.

| Employee | Date | Straight | 1.5 X | 2 X | Salary |
|-----------------|-------------|-----------------|--------------|-------------|-------------------|
| 1 | 7 March | 7.5 | 7.5 | 0.0 | \$377.49 |
| | 8 March | 7.5 | 0.0 | 0.0 | \$377.49 |
| | Subtotal | 15.0 | 7.5 | 0.0 | \$754.98 |
| 3 | 7 March | 7.5 | 7.5 | 1.0 | \$336.32 |
| | 8 March | 7.5 | 0.0 | 0.0 | \$336.32 |
| | Subtotal | 15.0 | 7.5 | 1.0 | \$672.64 |
| 4 | 7 March | 7.5 | 7.5 | 1.0 | \$336.32 |
| | 8 March | 7.5 | 0.0 | 0.0 | \$336.32 |
| | Subtotal | 15.0 | 7.5 | 1.0 | \$672.64 |
| 5 | 7 March | 7.5 | 7.5 | 1.0 | \$336.32 |
| | 8 March | 7.5 | 0.0 | 0.0 | \$336.32 |
| | Subtotal | 15.0 | 7.5 | 1.0 | \$672.64 |
| Totals | | 37.5 | 37.5 | 64.5 | \$2,772.90 |

Table 8 – Allowed Schedule 4 costs (corrected)

This portion of the claim is allowed in part in the amount of \$2,772.90.

Schedule 5 - Overtime for Full Time Personnel

\$11,613.68

[60] As mentioned, the claimed work hours on 8 March 2019, which were claimed at double time, were converted to 7.5 hours during normal work hours. Additionally, the overtime hours incurred by the two CCG officers who responded at the scene on 9 March, a Saturday, are partially accepted, considering the necessary testing performed on that day to determine whether the chemicals onboard the Vessel posed an oil pollution threat.

[61] As the narrative indicates that the chemical testing was completed at 1130 on 9 March, the overtime costs incurred by Employee 1 from 0500 to 1130 (6.5 hours at the 1.5-time rate) and by Employee 2 from 0530 to 1130 (6 hours at the 1.5-time rate) are accepted as reasonable. The chemical testing indicated that the Vessel posed a low threat to human health, and there is no evidence that it was determined to pose an ongoing oil pollution threat.

[62] The adjusted overtime costs are as follows.

| Employee | Date | 1.5 X | 2 X | Overtime |
|-----------------|-------------|--------------|-------------|-------------------|
| 1 | 7 March | 7.5 | 0.0 | \$471.87 |
| | 8 March | 7.5 | 0.0 | \$471.87 |
| | 9 March | 6.5 | 0.0 | \$408.96 |
| | Subtotal | 15.0 | 0.0 | \$1,352.70 |
| 2 | 9 March | 6.0 | 0.0 | \$337.41 |
| | Subtotal | 6.0 | 0.0 | \$337.41 |
| 3 | 7 March | 7.5 | 2.5 | \$607.24 |
| | 8 March | 0.0 | 19.0 | \$1,420.00 |
| | Subtotal | 7.5 | 21.5 | \$2,027.24 |
| 4 | 7 March | 7.5 | 2.5 | \$607.24 |
| | 8 March | 0.0 | 19.0 | \$1,420.00 |
| | Subtotal | 7.5 | 21.5 | \$2,027.24 |
| 5 | 7 March | 7.5 | 2.5 | \$607.24 |
| | 8 March | 0.0 | 19.0 | \$1,420.00 |
| | Subtotal | 7.5 | 21.5 | \$2,027.24 |
| Totals | | 43.5 | 64.5 | \$7,771.83 |

Table 9 – Claimed Schedule 5 costs (corrected)

[63] Overtime costs are accepted for the three CCG personnel who attended at the scene during the removal of the excavator on the night of 7 March, for a total of 7.5 overtime hours and \$495.13 of overtime pay per person. Overtime costs for 7.5 hours are also accepted for the Deputy Superintendent, who coordinated response operations and interdepartmental teleconferences, and presumably provided direction during the removal of the excavator, on 7 March. Finally, as noted above, overtime costs for the two CCG officers who attended at the scene during the chemical assessment on 9 March are partially accepted. This yields a total of \$2,703.63.

This portion of the claim is allowed in part in the amount of \$2,703.63.

Schedule 11 - Pollution Counter-Measures Equipment \$31,255.05

[64] Three PRV III boats were used from 7-10 March 2019, for a total of four days. These are relatively large pollution response craft, and the use of three is disproportionate to the allowed claim for CCG personnel time. As it has not otherwise been established that

more than one such boat was required to transport the CCG personnel and equipment to site for the purposes of taking oil pollution measures, the claim is allowed for one craft, for the two days that oil pollution response measures were ongoing. The total for the use of one of the PRV III boats is \$4,209.50 per day. The total allowed is \$8,419.00.

[65] The use of 600 feet of curtain boom which the CCG deployed around the Vessel is also accepted as a reasonable precaution, given the identified oil pollution threat from the excavator. At a rate of \$.67 per foot per day, the use of this boom from 7-10 March yields a total of \$1,608.00.

[66] An air monitor was also brought to the site of the Incident. It was only used to detect the possible release of hazardous and noxious substances from the Vessel, and apparently only after the oil threat was removed. These costs are therefore disallowed.

This portion of the claim is allowed in part in the amount of \$10,027.00.

Schedule 12 – Vehicles \$1,073.94

[67] The CCG also claimed for the use of three vehicles, two of which were used on 9-10 March and one of which was used on 11 and 13 March. Only one of these vehicles, a 5-ton truck, was necessary for the transportation and disposal of the excavator after it was removed from the Vessel.

[68] Adding this truck’s flat daily rate of \$777.78 to the standard fuel rate of \$0.22 per kilometer, the cost for the use of this truck on 13 March comes to \$783.72.

This portion of the claim is allowed in part in the amount of \$783.72.

Schedule 13 – Administration \$98.19

[69] The claimed administration costs were charged at a rate of 3.09%, which is the rate on which the CCG and the Administrator have agreed. This administrative rate was applied to the accepted travel (Schedule 3) and salary (Schedule 4) costs, for a total of \$118.43.

This portion of the claim is allowed in part in the amount of \$118.43.

OFFER SUMMARY AND CLOSING

[70] The following table is provided to summarize the claimed and allowed expenses with respect to the CCG claim for this claim.

| SCHEDULE | CLAIM | OFFER |
|----------------------|--------------|-------------|
| 2: Contract Services | \$349,440.90 | \$39,637.52 |
| 3: Travel | \$1,702.88 | \$1,059.71 |
| 4: Salaries | \$1,769.79 | \$2,772.90 |
| 5: Overtime | \$11,613.68 | \$2,703.63 |

| SCHEDULE | CLAIM | OFFER |
|---|---------------------|--------------------|
| 11: Pollution Countermeasures Equipment | \$31,255.05 | \$10,027.00 |
| 12: Vehicles | \$1,073.94 | \$783.72 |
| 13: Administration | \$98.19 | \$118.43 |
| Total | \$396,954.42 | \$57,102.91 |

Table 10 – Claimed and allowed expenses (all schedules)

[71] The amount of the Offer is \$57,102.91, plus statutory interest accrued to the time payment is made.

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

[73] 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.

[74] 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 on Form 337. You must serve it upon the Administrator, who shall be named the Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

[75] 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.

[76] Finally, where a claimant accepts an offer of compensation from the Fund, the Fund 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