



## **OFFER LETTER**

Ottawa, 31 March 2021  
*SOPF File: 120-822-C1-1*  
*CCG File:*

### **BY EMAIL & REGISTERED MAIL**

Recovery Section Head  
British Columbia Ministry of Environment and  
Climate Change Strategy  
Post Office Box 9337 Station Provincial Government  
Victoria, British Columbia V8W 9M1

**RE: WEST ISLAND 395 — Lina Island, British Columbia**  
**Incident date: 2018-09-08**

---

### **SUMMARY AND OFFER OF COMPENSATION**

This letter responds to a submission from the British Columbia Ministry of Environment and Climate Change Strategy (the “BCMOE”) with respect to the accommodation barge WEST ISLAND 395 (also identified as the “TASU 1” or “TASU I” in parts of the submission, hereinafter the “Vessel”), which grounded on 8 September 2018, on Lina Island, British Columbia (the “Incident”).

On 29 July 2020, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the BCMOE on behalf of the Administrator. The submission advanced claims totaling \$114,463.99 for costs and expenses arising from measures taken by the BCMOE to respond to the Incident.

The submission has been reviewed and a determination with respect to its claims has been made. This letter advances an offer of compensation to the BCMOE pursuant to sections 105 and 106 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”).

The amount of \$72,996.90 (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid and in accordance with section 116 of the MLA, is offered with respect to this claim.

The reasons for the Offer are set forth below, along with a description of the BCMOE’s submission and the supplemental evidence provided during the assessment process.

## **THE SUBMISSION RECEIVED**

The submission includes a narrative that describes events relating to the Incident. It also includes a summary of the costs and expenses that the BCMOE claims and corroborating documents. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

### **Narrative and Photographs**

The narrative begins by providing a brief overview of the Incident and the multi-party response it generated, delineating the activities of the BCMOE and specifically those of the BCMOE's Environmental Emergency Program ("EEP") personnel:

On the evening of September 8, 2018, a [fishing lodge barge] broke loose from its mooring in Alliford Bay and beached at Guudaa Kunt'as Gwaay.yaay Lina Island, Xaayda Gwaay Haida Gwaii. [...] The barge contained stored gasoline and diesel fuel with approximate volumes of 17,000 and 7000 liters respectively. On September 11, a hydrocarbon sheen was detected surrounding the barge, indicating a spill of fuel into the marine environment.

An emergency response was led by the Canadian Coast Guard (CCG) and attended either locally or remotely by numerous agencies including BC Ministry of Environment and Climate Change Strategy (ENV), Haida Nation, Transport Canada (TC), Department of Fisheries and Oceans (DFO), Environment and Climate Change Canada (ECCC), [the Vessel's owner], West Coast Marine Response Corporation (WCMRC), and Village of Queen Charlotte. [...]

Response activities by the Ministry of Environment and Climate Change Strategy's Environmental Emergency Program (EEP) included provincial regulatory oversight of the spill, participation in sampling and environmental assessment activities, setting up and running the Ministry Emergency Operations Centre (MEOC) to support field operations, and participating in Unified Command. As this incident involved a large volume of product spilled within a confined space, causing a flammable atmosphere posing significant risk to responders, input of EEP staff with Hazmat Technician Level training were critical to mitigating the risk of explosion in the barge, to allow for safe entry and then subsequent mitigation of environmental damage.

The narrative goes on:

British Columbia's Environmental Emergency Program (EEP) leads the province's response to hazardous material spills, as per the Emergency Program Act. The program prepares for, responds to and recovers from environmental emergencies as per responsibilities outlined under the Environmental Management Act and the following applicable regulations: (1) Spill Reporting

Regulation, (2) Spill Preparedness, Response and Recovery Regulation and (3) Spill Contingency Planning Regulation. As such, when provincial interests are affected by a spill (or threat), EEP typically plays a role in incident management. As the Lina Island Grounding involved a barge and risk to coastlines, EEP staff were engaged in Unified Command alongside many other agencies [...]. EEP staff participated in, reviewed, and drafted multiple plans essential for the success of the response, including the Waste Management Plan [...] and the Lightering Plan [...]. Additionally, provincial buildings in Haida Gwaii were utilized as an Incident Command Post (ICP).

The narrative next sets out a timeline of the Incident and the response thereto, both broadly and in terms of the specific activities of responding BCMOE personnel.

According to the timeline, the BCMOE was first notified of the Incident at about 21:00 on Saturday, 8 September 2018, when a Dangerous Goods Incident Report was received by the EEP Duty Officer. That same evening, contractors engaged by the owner of the Vessel, the Council of Haida Nation, and the Village of Queen Charlotte were mobilized to monitor the situation, along with additional provincial and federal entities.

On 9 September 2018, the Vessel appeared to be stabilized in its grounded position. The owner reportedly secured a tug and towline and placed the Western Canada Marine Response Corporation (“WCMRC”) on standby. On-site observations indicated that the Vessel’s hull had been damaged on grounding, and that hydrocarbons had been released inside the hull. These hydrocarbons were apparently contained within the hull, however, as no discharge was observed outside the Vessel. The EEP mobilized one of its personnel, with three additional personnel to travel to Lina Island the following day. The EEP established the Ministry Emergency Operations Centre (the “MEOC”) in Victoria to provide remote logistical support, which would continue throughout the response. The Canadian Coast Guard (the “CCG”) held coordinating calls with various interested parties.

On 10 September 2018, “the Barge remained hard aground on the east end of Lina Island.” Aerial surveillance was undertaken and the CCGS GORDON REID arrived on scene, establishing a 300-foot vessel exclusion perimeter around the owner’s tug, which would remain in place throughout the response. The Unified Command (the “UC”) and the Incident Command Post (the “ICP”) were established, along with an Environmental Unit (the “EU”). Air quality monitoring was completed by GHD. As EEP personnel arrived on scene, they joined the UC and the ICP. Two EEP personnel conducted a joint site evaluation aboard a CCG vessel. No pollution or other visible environmental impacts were observed throughout the day.

On 11 September 2018, the Vessel’s hull was inspected for damage and manhole hatches were opened where possible to foster ventilation. The Vessel was secured to the shore. A hydrocarbon sheen was first observed in the local marine environment, and deflection booms were deployed around the Vessel. EEP personnel began sampling at high priority areas. The EEP waste management specialist was activated remotely to create a waste management plan. In addition to the usual logistical support, “MEOC activities for the day included fielding media calls, financial tracking and producing situation updates.”

On 12 September 2018, attempts were made to plug the holes in the Vessel's hull, in an effort to reduce the discharge of pollutants. Further "booms were placed immediately north and south of the site as a precautionary measure to protect culturally sensitive sites in the immediate area. WCMRC tended to the boom to ensure integrity and deployed more boom as sorbent to control the spill." EEP and Environment and Climate Change Canada ("ECCC") personnel completed sampling of water, bivalve mollusks, and sediment at various locations. The EEP waste management specialist was deployed to the scene.

On 13 September 2018, the "operations team ventilated the [Vessel's] hull to ensure the safety of all responders and allow for continued operations. Ongoing damage assessments of the hull were performed as safety considerations permit. The operations team was working to determine and control the source of pollution. [...] In order to keep key parties informed, UC presented an update to the Hereditary Chiefs Council." Salvage and cargo transfer plans were in development. EEP personnel returned to sampling for hydrocarbons and an environmental impact assessment was conducted, focusing on sensitive areas.

On 14 September 2018, the operations team continued to assess the damage to the Vessel's hull, to the extent that safety permitted. Air quality on site was monitored, and the search continued for the source of the discharge of oils inside the Vessel's hull. Salvage and lightering planning continued. EEP personnel continued their sampling and assessment, working with WCMRC to complete sensitivity mapping. EEP personnel also "completed boat surveys to assess environmental sensitivities, eelgrass beds, and ground truth polygons. Ensure CFI (archeology) accompanied crews to assess for potential impacts to archeological sites. A sampling plan and wildlife plan was reviewed with [the UC]."

On 15 September 2018, "WCMRC continued to monitor booms and sorbents. Contractors plugged and patched the hull of the barge. Detailed depth sounding around the barge was also conducted to help inform the salvage plan." EEP personnel attended strategic meetings. GHD conducted background surface water and sediment sampling from upper, mid, and lower intertidal zones, which sampling continued into the following day. Some sampling in sensitive areas was repeated. The MEOC stood down for the weekend.

*Figures 1 and 2 – Screen captures of undated photographs from the narrative*

On 16 September 2018, specialized lightering equipment began to arrive on scene. "Crews reviewed lightering plan and potential for foam recovery with a skimmer, along with [Shoreline Clean-up Assessment Techniques] and sampling plans." EEP personnel attended meetings and reviewed plans.

On 17 September 2018, the UC finalized lightering plans, which "considered safety measures, protection of the environment, including disposal of hazardous waste and contaminants, and protection of areas of cultural significance." Lightering began, but difficulties with maintaining suction from the vacuum truck brought the operation to a halt. Further overflights were conducted and air quality monitoring around the Vessel continued.

EEP staff [...] participated in a call with the MEOC to discuss fatigue management policies relating to long work hours. Small

patches of sheen were noticed by EEP staff inside the boom adjacent to the barge and alerted operations and the [EU]. Field staff participated in tactics meeting and debriefs regarding the recent [National Aerial Surveillance Program] overflight surveys. EEP staff assisted operations with troubleshooting mechanical issues with vacuum trucks participating in lightering activities.

On 18 September 2018, lightering continued:

The vac truck was down so a highway super B was used in place, as hoses and fittings were the same. This served to decrease the chance of static electricity and provided a digital gauge. Approximately 30,000 litres were offloaded to date. Due to the volume of product offloaded, plans were made within UC to manage additional waste storage.

On 19 September 2018, lightering continued. Sampling and air quality monitoring continued until 28 September 2018. EEP personnel were involved with the operation throughout.

On 20 September 2018, the MEOC in Victoria was stood down. On 21 September 2018, some EEP personnel were demobilized from the site of the Incident as the situation stabilized.

The ICP was closed on 25 September 2018, and the UC's demobilization plan was initiated.

Between 27 September and 6 October 2018, the UC determined that there remained minimal risk of pollution. During the same period, EEP field crews "completed final briefings, uploaded notes, and began to initiate the After Action Review."

Between 7 October and 12 October 2018, the Vessel was removed at high tide following stabilization measures:

EEP staff redeployed to site on October 7, 2018. [An Environmental Emergency Response Officer] was deployed as part of UC and undertook/reviewed plans for removal, oversaw removal of barge from rocks, sampling and ongoing waste management efforts. EEP's internal After Action Review was initiated and final reports continued to be developed. Follow-up continued for several weeks after the vessel was removed to review sampling results, towing plan, waste management efforts and to complete incident related documentation/administration.

Between 12 October and 17 December 2018, "EEP staff continued to stay involved with the incident to handle cost recovery, monitor waste management, complete demobilization activities, review the sampling plan, and complete cost recovery."

The narrative concludes with a "Summary of Claims", which reads in part as follows:

The total cost of the incident was \$114,463.99, a figure which includes [...] a \$21,802.66 administration fee of 25% markup, and \$5,450.67 GST. The 25% administration fee is charged as per the Environmental Management Act under 91.4(3) which allows for the charge of “a prescribed percentage of those costs the Lieutenant Governor in Council considers is sufficient to meet the government's administrative costs.”

Cost summary

The claim submission includes the following breakdown of the BCMOE’s claimed costs:

Travel & Salaries						
Reg Salaries	OT Salaries	Benefits (24.8%)	Total Salaries	Total Operating		Total Costs Less GST
\$17,438.93	\$43,504.87	\$15,114.06	\$76,057.85	\$3,821.27		\$79,723.16
				\$3,665.31	Less GST	
<b>Other Costs</b>						<b>\$7,798.31</b>
						<b>\$7,487.50</b>
						Less GST
<b>Total costs</b>						<b>\$87,210.66</b>
						Less GST
25% Admin Fee						21,802.67
Subtotal						\$109,013.33
GST						5,450.67
<b>TOTAL RECOVERY</b>						<b>\$114,464.00</b>

Figure 3: Screen capture of BCMOE claimed costs

Documentation in support of BCMOE labour costs

The claim submission includes five pages of summary tables that track daily labour costs for each BCMOE employee who participated in the response. Captured in these tables are costs associated with regular salaried hours; overtime hours paid at both 1.5x and 2.0x each employee’s regular rate; standby hours paid at one third of each employee’s regular rate; and “overtime meal breaks”, paid at \$15.30 uniformly for all employees. The summary tables show that the BCMOE began to incur claimed labour costs with respect to the Incident on 9 September 2018, and that these costs continued to run until 22 March 2019, though the majority of BCMOE personnel were demobilized by 25 September 2018. The summary tables show that 21 BCMOE personnel contributed to its response over this period.

The following table summarizes claimed regular salaried hours worked by BCMOE personnel. All dollar figures are cited exclusive of benefits costs. The names of BCMOE personnel have been redacted throughout this letter, replaced with initials. Primary role descriptions and working locations (i.e., ICP or MEOC, as applicable, though some off-site personnel were not physically present in the Victoria-based MEOC) for each of the listed personnel are taken from other documentation provided by the BCMOE, much of which is discussed below.

Name	Role	Dates (2018 unless specified)	Rate	Hours	Claimed
KB	MEOC Finance Lead	09-10	\$39.20	1.00	\$39.20
AM1	MEOC Logistics Lead	09-10, 12 to 14, 17 to 20, 24	\$24.01	11.50	\$276.12
TG	MEOC Planning Lead	09-10 to 13, 17	\$31.83	9.75	\$310.34
DB	ICP Deputy Section Chief	09-10 to 14, 17 to 21	\$42.17	74.50	\$3,141.67
AR1	MEOC Support	09-11	\$34.78	1.00	\$34.78
NV	MEOC Logistics Lead	09-11, 12, 14, 18, 21	\$29.21	10.00	\$292.10
KF	MEOC Information Officer	09-11, 12	\$34.78	9.00	\$313.02
OE	Waste Management	09-11 to 14, 18, 20, 21, 24	\$38.53	44.50	\$1,714.58
JK	ICP UC Representative	09-11 to 14, 17, 18, 20, 21, 25, 26	\$38.53	76.00	\$2,928.34 <sup>1</sup>
JB	ICP EU Lead	09-12 to 14, 17 to 21, 24 to 28; 10-01 to 05, 09 to 12, 16, 18, 30, 31; 11-02, 05, 07, 08, 15; 12-05	\$35.83	122.50	\$4,389.18
LB	MEOC Director	09-13, 14, 17, 18	\$42.17	16.50	\$695.81
AM2	MEOC Finance Lead	09-14, 18	\$35.79	3.00	\$107.37
AR2	MEOC Planning Lead	09-14, 18, 20	\$36.92	4.60	\$169.83
KL	ICP EU	09-14, 17 to 20	\$42.17	40.00	\$1,686.80
CS	MEOC Director	09-20	\$46.19	0.50	\$23.09
MP	ICP Deputy Ops Section Chief	09-20, 21, 24	\$33.77	24.00	\$810.48
TC	Administrative	10-03, 11, 25, 31; 11-09; 2019-01-16; 2019-03-15	\$25.37	4.00	\$101.48
RM	Cost Recovery	2019-03-19 to 22	\$28.91	14.00	\$404.74
<b>Totals</b>				<b>466.35</b>	<b>\$17,438.93</b>

Table 1: Summary of claimed regular salary costs

The next table follows the same parameters as Table 1, this time summarizing claimed overtime, standby hours, and overtime meal breaks.

<sup>1</sup> 76.00 hours at \$38.53 hourly actually yields a total of \$2,928.28, or \$0.06 lower than the amount claimed. This is presumably because JK's specified hourly rate is derived from an annual salary and has been rounded down slightly.

Name	Role	Dates (2018)	Rate	OT 1.5x	OT 2.0x	STBY	BRK	Claimed <sup>2</sup>
SB	MEOC Logistics Lead	09-09	\$34.78	0.00	4.00	0.00	0	\$278.24
NF	MEOC Duty Manager Support	09-09	\$46.19	0.00	12.50	0.00	0	\$1,154.75
CN	MEOC Director	09-09 to 13	\$46.19	7.00	10.50	52.25	0	\$2,259.61
DB	ICP Deputy Section Chief	09-09 to 21	\$42.17	20.00	67.00	0.00	0	\$6,915.88
JK	ICP UC Representative	09-09 to 17, 20 to 26	\$38.53	19.50	117.50	0.00	10	\$10,334.76
JB	ICP EU Lead	09-09 to 22; 10-02, 07 to 12	\$35.83	22.00	139.00	0.00	5	\$11,219.63
OE	Waste Management	09-11 to 15, 18, 20, 21, 24	\$38.53	16.00	21.25	0.00	0	\$2,562.25
LB	MEOC Director	09-13 to 18	\$42.17	2.00	6.50	87.50	0	\$1,904.82
KL	ICP EU	09-14 to 20	\$42.17	9.50	33.00	0.00	7	\$3,491.24
NV	MEOC Logistics Lead	09-15, 16	\$29.21	0.00	0.00	24.00	0	\$233.68
CS	MEOC Director	09-18 to 20	\$46.19	1.00	0.00	29.00	0	\$515.94
MP	ICP Deputy Ops Section Chief	09-20 to 24	\$33.77	6.00	34.50	0.00	0	\$2,634.06
<b>Totals</b>				<b>103.00</b>	<b>445.75</b>	<b>192.75</b>	<b>22</b>	<b>\$43,504.86</b>

*Table 2: Summary of additional claimed labour costs: overtime (“OT”), standby (“STBY”) and overtime meal breaks (“BRK”)*

Because of the scope of the BCMOE operation and the large volume of supporting documentation provided, it is difficult to reproduce that documentation in this letter in a complete and meaningful way. Instead, a chart has been created to summarize the scope of BCMOE personnel deployment throughout September 2018, a period that accounts for some 90% of claimed labour costs. The chart is based entirely on BCMOE documentation and captures both on-site personnel (including their travel days) and off-site personnel (MEOC and elsewhere). The hours captured in the chart below represent actual logged hours, regardless of their status as regular, overtime, or standby. Because claimed overtime meal breaks, totaling just \$336.60, represent only a very small portion of claimed costs, they are not captured in the chart.

<sup>2</sup> Claimed total costs for CN, JK, OE, LB, KL, and CS are off by a few cents in one direction or the other, presumably the result of rounding of hourly rates (see also note 1, above) or other figures.



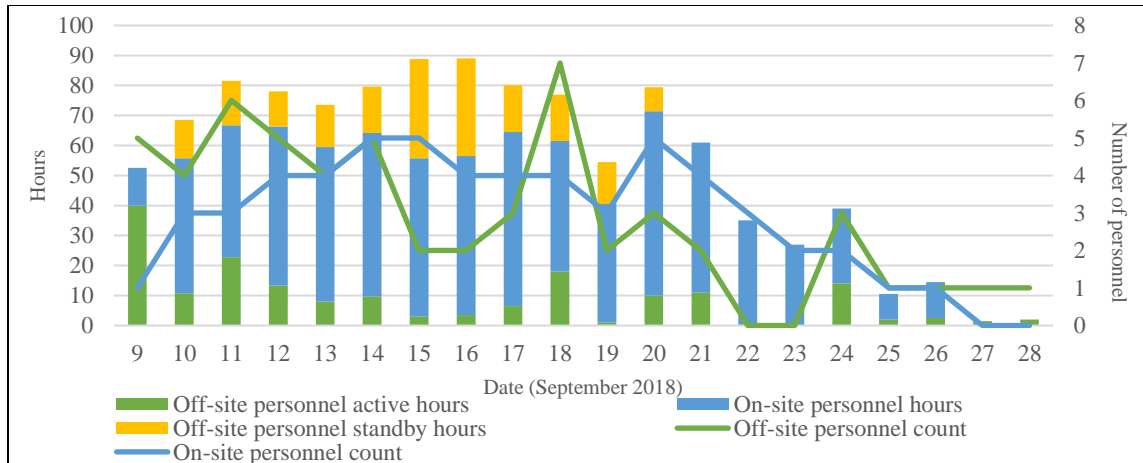


Chart 1: Summary of September 2018 off-site and on-site regular and overtime personnel hours, both active and standby

Because the majority of claimed labour costs stem from the on-site deployment of BCMOE personnel, a focused summary table showing only their hours is useful. As above, the table includes travel days in full and it does not distinguish between regular and overtime hours (no standby hours were claimed with respect to on-site personnel), nor does it capture overtime meal breaks.

Name	On-site Hours Worked by Date (September 2018)																	
	09 S	10 M	11 T	12 W	13 T	14 F	15 S	16 S	17 M	18 T	19 W	20 T	21 F	22 S	23 S	24 M	25 T	26 W
JK	12.5	13	15.5	14	13	12.5	13.5	14.5	15	4	-	13	13	13.5	13	12.5	8.5	12
DB	-	15.5	13	12	13.5	10.5	14	15	12	13	13	12	14	-	-	-	-	-
JB	-	16.5	15.5	14.5	13.5	12	13	11.5	12	14	14	11.5	11	7.5	-	-	-	-
OE	-	-	-	12.5	11.5	10	8.25	-	-	-	-	-	-	-	-	-	-	-
KL	-	-	-	-	-	9.5	4	12	19	12.5	12.5	13	-	-	-	-	-	-
MP	-	-	-	-	-	-	-	-	-	-	-	12	12	14	14	12.5	-	-
<b>Totals</b>	<b>12.5</b>	<b>45</b>	<b>44</b>	<b>53</b>	<b>51.5</b>	<b>54.5</b>	<b>52.75</b>	<b>53</b>	<b>58</b>	<b>43.5</b>	<b>39.5</b>	<b>61.5</b>	<b>50</b>	<b>35</b>	<b>27</b>	<b>25</b>	<b>8.5</b>	<b>12</b>

Table 3: Summary of claimed labour hours for on-site personnel

The BCMOE seeks compensation of \$5,699.00, or roughly 10% of total claimed labour costs, for three of its employees for the period from October 2018 through March 2019. With the exception of overtime worked by JB from 7 through 12 October 2018, these claimed labour costs generally represent part days worked at regular salaried hours.

Finally, as captured in Figure 3, the BCMOE’s combined claimed labour costs total \$60,943.80, on top of which a 24.8% charge for “Benefits”, totaling \$15,114.06, has been added. No explanatory documentation is provided in support of claimed benefits costs.

Documentation in support of non-labour costs

The claim submission contains 71 pages of documentation in support of the BCMOE’s non-labour costs. This documentation consists of summaries, expense reports, other internal accounting statements, invoices, and receipts. According to the documentation provided, most of the claimed non-labour costs are expressly associated with six personnel, all of whom spent some amount of time at the site of the Incident: DB, JB, JK, OE, KL, and MP. Some of the claimed non-labour costs are more general, having been incurred in

support of the BCMOE’s operation as a whole rather than in support of its individual participants.

The BCMOE has divided its claimed non-labour costs into two categories (see Figure 3): “Operating” and “Other”. The former category appears to represent costs for which the BCMOE reimbursed its employees whereas the latter category appears to cover costs that were incurred directly by the BCMOE.

Claimed Operating costs are supported only by internal accounting documentation and summaries. These costs are broken down by employee with basic descriptions but no receipts or invoices in support. Also absent is information on the date each claimed cost was incurred.

Claimed Operating costs can be summarized as follows:

Name	Meals / per diem	Parking	Mileage	Public Transp.	Rental car	Ferry	Air	Lodging	Misc.	Totals
DB	\$138.00	\$130.00	–	\$27.00	–	–	–	–	–	<b>\$295.00</b>
JB	\$528.00	\$20.00	\$14.04	\$30.00	\$352.80	\$301.20	–	\$447.43	–	<b>\$1,693.47</b>
JK	\$124.00	–	–	–	–	\$170.90	–	\$252.15	–	<b>\$547.05</b>
OE	\$52.00	\$175.00	\$37.80	\$25.00	–	–	\$546.13	–	–	<b>\$835.93</b>
KL	\$88.00	\$27.00	–	\$27.00	–	–	–	–	\$307.82	<b>\$449.82</b>
<b>Totals</b>	<b>\$930.00</b>	<b>\$352.00</b>	<b>\$51.84</b>	<b>\$109.00</b>	<b>\$352.80</b>	<b>\$472.10</b>	<b>\$546.13</b>	<b>\$699.58</b>	<b>\$307.82</b>	<b>\$3,821.27</b>

*Table 4: Summary of claimed Operating costs*

The BCMOE’s Other costs are generally supported by invoices and/or receipts, as well as descriptions contained in internal financial documentation. They can be summarized as follows:

Description	Date paid	Cost
Smithers Airport, parking for JB (2018-09-10 to 17)	2018-09-10	\$20.00
The Last Resort, Queen Charlotte, accommodations for DB and JB (dates unknown)	2018-09-11	\$257.50
Air Canada, cargo flight for sampling equipment, Vancouver to Sandspit (2018-09-11)	2018-09-11	\$181.46
Hazmasters Inc., 4x safety goggles, 1x box safety glasses	2018-09-11	\$80.64
Shoppers Drug Mart, writing materials	2018-09-11	\$7.37
Air Canada, airfare for OE, Sandspit to Vancouver (2018-09-15)	2018-09-12	\$540.88
Causeway Convenience, Queen Charlotte, Ziplock bags and ice for sampling	2018-09-12	\$12.26
Air Canada, airfare for KL, Penticton to Sandspit (2018-09-14)	2018-09-13	\$733.03
Pacific Coastal Airlines, airfare for MP, Vancouver to Masset (2018-09-20)	2018-09-18	\$520.28
Air Canada, airfare for JW, Kelowna to Sandspit (2018-09-19)	2018-09-18	\$524.08
Pacific Coastal Airlines, airfare for KL, Masset to Vancouver (2018-09-20)	2018-09-18	\$614.78
Air Canada, airfare for KL, Vancouver to Penticton (2018-09-20)	2018-09-18	\$305.68
Air Canada, airfare for JB, Vancouver to Smithers (2018-09-22)	2018-09-19	\$426.43
Air Canada, airfare for JB, Sandspit to Vancouver (2018-09-21)	2018-09-19	\$551.38
Air Canada, airfare for DB, Sandspit to Prince George (2018-09-21)	2018-09-19	\$584.98
Pacific Coastal Airlines, airfare for JK, Masset to Vancouver (2018-09-26)	2018-09-24	\$417.38
Pacific Coastal Airlines, airfare for MP, Masset to Vancouver (2018-09-26)	2018-09-24	\$452.03
Pacific Coastal Airlines, airfare for JW, Masset to Kelowna (2018-09-26)	2018-09-24	\$603.36
Computer power charger replacement (original damaged during response)	2018-09-27	\$41.79
RBC trip cancellation and interruption insurance, airfare for JB, Vancouver to Smithers (2018-10-11)	2018-10-05	\$41.00
RBC trip cancellation and interruption insurance, airfare for JB, Sandspit to Vancouver (2018-10-10)	2018-10-05	\$42.00
Cleaning at bunk house and office (2018-09-14, 15, 21, 22, 24, 26)	2019-02-14	\$440.00
Additional rug steam cleaning at bunk house and office	2019-02-14	\$400.00
<b>Total</b>		<b>\$7,798.31</b>

Table 5: Summary of claimed Other costs

The internal documentation provided in support of the BCMOE’s Other costs shows which employees made each purchase. The majority were arranged by AM1, who made purchases on 13, 18, 19, and 24 September 2018. In addition, AR1 made three purchases on 11 September 2018.

### Personnel logs

The claim submission includes 133 pages of personnel logs, which are presented on Incident Command System (“ICS”) 214a “Individual Log” forms. With some exceptions, these ICS-214a forms cover all of the shifts worked by all of the BCMOE personnel who took part in the response to the Incident. They provide tasking breakdowns and work descriptions.

No forms were provided in support of the following:

- AM1, who worked 11.5 hours over nine days;
- AR1, who worked just one hour on one day;
- NV’s 24 standby hours on 15 and 16 September 2018;

- JB’s work from 19 to 22 September 2018 (44 hours), as well as 11 and 12 October 2018 (29.5 hours);
- TC, who worked four hours over seven days, though a form was provided for 2 October 2018, detailing administrative work for which no labour costs were claimed; and
- RM, who worked 14 hours over four days.

The ICS-214a forms provide extensive detail on travel and tasking for the personnel who were on scene during the BCMOE’s response operation. They show that JK, DB, and JB were the core members of the BCMOE’s on-scene response. JK served as the BCMOE’s primary representative to the UC, transitioning into the role of Deputy On-scene Commander for a brief period, during which JB stood in for him. JK was the first BCMOE employee on scene; he also managed demobilization. DB worked with the owner’s contractors throughout his time on scene, aiding the development of various operational plans and directly assisting with technical issues that arose during the lightering operation. JB was primarily attached to the EU, planning and undertaking sampling operations with GHD and other members of the UC. He also assisted with waste management planning and boom deployment.

KL, MP, and OE deployed for shorter stints, in relief or specialized capacities. KL provided assistance with sampling, including at night, and general environmental monitoring. MP monitored and documented the lightering operation following DB’s departure. Finally, OE provided liquid and solid waste management guidance throughout the operation, working with all members of the UC. She deployed to the scene for four days beginning on 12 September 2018.

A number of forms refer peripherally to JW, an otherwise largely undocumented BCMOE employee who appears to have served on-site as “Lightering Branch Director” from 19 through 26 September 2018.

The ICS-214a forms are similarly detailed with respect to the tasking of off-site personnel. They show that the majority of these personnel worked brief stints in support of field operations, personnel deployment, and record-keeping. In all cases the work done by each of these personnel aligns with the job descriptions in Tables 1 and 2. KF, who served as MEOC Information Officer, fielded media calls and updated the BCMOE website periodically throughout the response.

CN, LB, and CS all served as MEOC Director at various points in the BCMOE’s response operation. Their forms show that they managed personnel deployments and addressed requests from personnel in the field, in addition to managing work transitions among themselves. LB spent considerable active work hours vetting media releases. A large number of standby hours were billed by the three MEOC Directors, often overnight. CN’s ICS-214a form entries indicate that she performed coordinating work throughout the day during standby hours, all of which occurred early in the BCMOE’s operation. This is not the case for LB and CS, whose forms do not indicate that any work was done during their standby hours.

Finally, the forms indicate that JB departed for the site of the Incident a second time, alone, on 7 October 2018, forced to travel overnight ferry from Prince Rupert when his commercial flight bookings were cancelled due to poor weather. While on-scene, JB reviewed the owner's sampling and waste management plan prior to the refloating operation, which occurred on 9 October 2018, ensuring sufficient sorbent materials were at the ready. Following the removal of the Vessel, JB conducted a site inspection that included recording signs of residual oil pollution. The off-site work done by JB from September through December 2018 was focused on waste management, claim compilation and cost recovery work, and review of sampling results data.

The following operational details from the ICS-214a forms are also relevant:

- An entry in JB's form for 15 September 2018 notes that night operations were necessary in order to complete background sampling prior to the lightering operation, in part due to tidal activity.
- JK's form for 22 September 2018 notes that fire retardant foam had trapped gasoline vapours. This resulted in delays, as further ventilation of the Vessel's hull was required.
- JK's form for 24 September notes that "CCG identified that the remaining small pockets of gross saturated sock booms/pads and bag them. Once that is completed the threat of a catastrophic release to the environment has been mitigated [...] Lightering is completed due to all readily available product recovered. The sheening is unable to be recovered due to it being attached to physical affixed and free floating equipment etc". The same entry notes that the physical ICP was due to close at the end of the day on 25 September 2018.
- Some forms associated with on-site personnel provide detail on meal arrangements. Some meals were provided by the owner of the Vessel or the Haida Nation, while others were not. A few of the entries note that there were sometimes supply shortages.
- Most of the on-site BCMOE personnel stayed in a provincial Ministry of Forests, Lands, Natural Resource Operations and Rural Development bunkhouse, which they were responsible for cleaning. To this end, cleaners were hired during the response and carpet cleaners were hired following demobilization.
- The ICP was also set up in a provincial building, and cleaning of this building was the responsibility of the UC members.
- BCMOE policies surrounding fatigue management caused persistent difficulties, as on-site personnel had to seek exemptions in order to work long hours for many days on end.
- Various references are made to a general UC goal of fiscal conservatism. Some forms explicitly cite avoidance of working weekends to avoid overtime costs.
- Senior on-site BCMOE personnel directly addressed general UC and contractor morale and safety issues throughout the response.

#### Additional documentation

The additional documentation provided by the BCMOE includes GHD's 266-page "Environmental Sampling Report", dated 22 December 2018. The Sampling Report states

that sediment and surface water sampling for, *inter alia*, “fuel-related constituents” was done before the lightering operation, on 15 and 16 September 2018, as well as afterwards, on 12 October 2018. In both cases, samples were taken from the site of the grounding and further afield. Some residual fuel concentrations at the site of the grounding were found, as well as some “perfluorinated compounds (firefighting foam-related constituents)”. In both cases, the Sampling Report concludes that “The net environmental benefit of natural attenuation is expected to be higher than the net environmental benefit of conducting intrusive remediation in the intertidal zone.”

The BCMOE submission also includes response-related correspondence, including a “RESOURCES AT RISK SUMMARY”, as well as organizational charts. In addition, the submission includes copies of the waste management plan, lightering plan, and a GHD “Fuel Transfer Air Monitoring Plan”. While all of this documentation is relevant for assessment purposes, it is not considered necessary to summarize its contents at length given the existing evidentiary descriptions already set out in this letter.

### **CORRESPONDENCE WITH THE CLAIMANT AND SUPPLEMENTARY EVIDENCE**

#### Correspondence between the Fund and the BCMOE and supplementary evidence provided

On a number of occasions during the assessment and investigation of the BCMOE’s submission, the Fund requested clarification or additional evidence from the BCMOE. To the extent that these exchanges and the additional evidence submitted as a result of them are relevant to the determinations made herein, they are described below.

#### *Administration rate and GST*

On 11 August 2020, the Fund sent a request to the BCMOE seeking an explanation of the basis for its claimed 25% administration charge, as well as an explanation of its standalone GST claim, which appeared to have been applied on top of all other claimed costs, including labour costs.

In response to the administration charge inquiry, the BCMOE wrote in reply that “The amount of the administration fee is determined by regulation, however the rationale for the percentage and how those funds are used is not defined in regulation and is at the ministry’s discretion. See B.C. Reg. 185/2017 of the *Environmental Management Act - Spill Preparedness, Response, and Recovery Regulation*.” This mirrored the statement in the original submission.

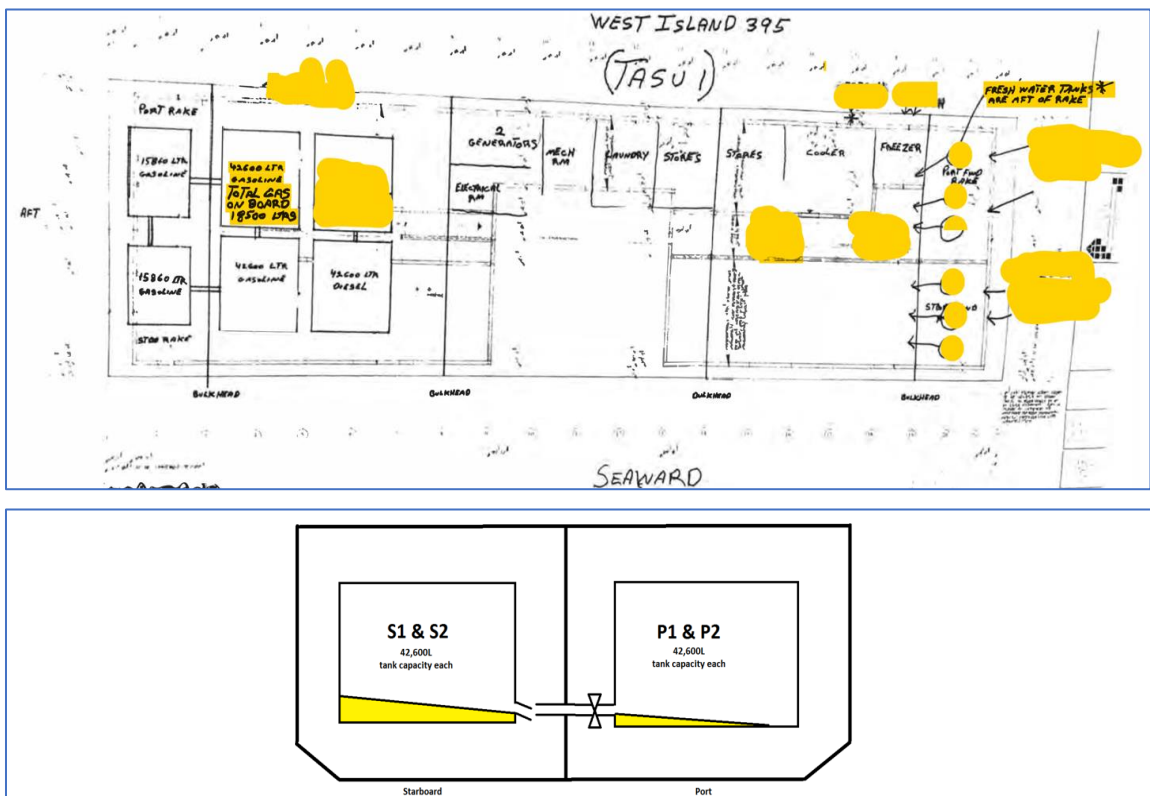
With respect to GST, the BCMOE retracted that portion of its claim.

#### *Vessel hull schematic, Incident Action Plans, and UC Situation Reports*

On 25 August 2020, the Fund requested the following from the BCMOE:

1. A copy of the General Arrangement (GA) diagram of the barge showing the locations of the various tanks, void spaces, etc. contained in the hull. [...]
2. Copies of all the Incident Action Plans (IAP's) that were signed off by Unified Command.
3. Copies of all the Situation Reports (SITREP's) that were sent out by Unified Command.

On 28 August 2020, the BCMOE responded, attaching the following: two schematics of the Vessel's hull showing, *inter alia*, the arrangement and contents of its various tanks; 997 pages of Incident Action Plan ("IAP") documentation, dated 11 September 2018 through 25 September 2018; and 13 pages of apparent UC press releases contained in a folder labelled "Situation Reports".



Figures 4 and 5: Schematics of the Vessel's hull contents, provided by the BCMOE on 28 August 2020

The IAP documentation is voluminous, containing items from each of the UC members, but neither it nor the Situation Reports meaningfully increase the information already available, beyond confirming that the Vessel was positively identified as the WEST ISLAND 395.

*Employee benefits, collective agreements, travel allowances, and various other requests*

In October of 2020, the Fund requested the following from the BCMOE:

- Support for the claimed employee benefits package rate of 24.8%, including support for its claimed application to both regular salary costs and overtime;
- Copies of the collective agreements applicable to responding BCMOE personnel;
- Details on the BCMOE travel allowance rates that were in effect at the time of the Incident;
- ICS-214a forms dated 19 through 23 September 2018 for BCMOE employee JB; and
- Details on the meals that were provided for on-site BCMOE personnel by the owner of the Vessel.

On 6 November 2018, the BCMOE provided the requested ICS-214a forms for employee JB, as well as more detailed forms for 24 and 25 September 2018. The forms show that JB worked in the ICP on 19 and 20 September 2018, focusing on the lightering efforts. Thereafter he demobilized from the scene of the Incident. JB’s remaining work on 24 and 25 September focused on waste management planning and compiling response documentation.

On 10 December 2020, the BCMOE provided three links to its travel costing policies, all of which cited rates effective from 1 April 2020. The BCMOE noted that *per diem* costs were being sought with respect to employees on location, to the extent that meals were not provided by the Vessel’s owner, noting that these were “sporadic and unreliable for responders”.

In a 17 March 2021 telephone call between the Fund and the BCMOE, information was provided about sampling carried out by the BCMOE. The BCMOE stated that its personnel were among the first responders on scene and that they had initiated background sampling, later assisting GHD, a contractor engaged by the owner, with further sampling. The BCMOE also collected tissue samples of organisms, but those samples were not tested because sediment and surface water testing showed there was no need to do so.

Finally, the BCMOE provided a payroll deduction rates spreadsheet and two collective agreements in support of its employee benefits claim. The BCMOE also included the following note:

EBP is not just health benefits, and overtime is often taken as time off in-lieu of payment. Many of the components of EBP are charged on both regular and overtime hours.

EBP includes the following:

Employer portions of:  
Pension  
EI  
CPP  
Medical  
Extended benefits

As well as items like:  
WCB  
Group life premiums  
Leave liability increases due to contract negotiated increases.

Figure 6: Screen capture from 17 March 2021 BCMOE email to the Fund



### Other claim submissions received with respect to the Incident

In addition to the subject submission from the BCMOE, the Fund has received to date two further submissions with respect to the Incident. The first of those submissions was received on 14 January 2019, from the apparent owner of the Vessel. The second such submission, received on 1 September 2020, came from the CCG.

The owner's submission provided documentation detailing the measures taken by the various contractors it engaged throughout the UC response, including, *inter alia*, surveyors' reports, activity logs, and various operational plans.

The CCG's submission presented a narrative describing the Incident and the UC response thereto, as well as some documentation also present in the BCMOE's submission.

Where two additional claim submissions described above overlap with the evidence provided by the BCMOE, they generally serve to corroborate it.

## **DETERMINATIONS AND FINDINGS**

### The BCMOE submission presents potentially eligible claims under section 103 of the MLA

The Incident resulted in oil pollution damage suffered, or the threat of such damage, within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to mitigate further damage. As a result, claims arising from the Incident are potentially eligible for compensation.

The BCMOE is an eligible claimant for the purposes of section 103 of the MLA.

The submission arrived prior to the limitation periods set out under subsection 103(2) of the MLA.

Some of the claimed costs and expenses arise from what appear to be reasonable measures taken to "prevent, repair, remedy or minimize" oil pollution damage from a ship, as contemplated under Part 6, Division 2 of the MLA, and are therefore potentially eligible for compensation.

Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.

### Identification and description of the Vessel

As the Vessel is identified under various names in the BCMOE documentation, a search of Transport Canada's registration records was carried out. No registration information relating to a vessel named "TASU 1" or "TASU I" was found.

There is, however, a listing for a barge called the "WEST ISLAND 395". That vessel, registered under the official number 323291, is identified as a steel-hulled barge. The IAP

documentation states that the Vessel was confirmed to be the one registered under that name and official number.

It is therefore concluded that the Vessel was in fact the WEST ISLAND 395.

According to registration records, the Vessel was built in 1965 for apparent use in an industrial capacity. At some later date prior to the Incident, the Vessel was modified to include an accommodation superstructure. The Vessel does not appear to have had propulsion of its own, but rather carried significant quantities of diesel and gasoline in tanks in its hull in order to power its generators and refuel smaller craft. It has a length of 51.21 metres, a breadth of 14.66 metres, and a depth of 3.14 metres.

#### Findings on the evidence

##### *The facts of the Incident set out by the BCMOE are generally accepted*

The BCMOE included with its submission a narrative and other supporting documentation, much of which is detailed above, setting out the facts of the Incident in some detail. The descriptions of material events presented by the BCMOE are accepted as generally accurate.

##### *The Vessel posed an oil pollution threat until 24 September 2018*

It is accepted that the Incident as described by the BCMOE led to both an oil discharge with the threat of environmental damage as well as the threat of future discharges. While the actual volume of oils discharged as a result of the Incident was small, the potential for a larger discharge, given the volume of oils on board the Vessel, was real. Further, the implications of such a discharge in the waters around Haida Gwaii were severe. It is accepted that removing the oils from the Vessel *in situ* was a reasonable course of action in the circumstances.

Complicating the decision to remove the oils from the Vessel *in situ* were concerns surrounding the flammability of fuel vapours confined within the Vessel's hull. These concerns are considered credible. Whether or not a fire or explosion within the Vessel might have led to oil pollution damage, it is accepted that these risks had to be properly understood and addressed before the removal of the oils in the Vessel's tanks could safely begin. This, along with the remote location of the grounding, served to delay and extend the response to the Incident.

The ICS-214a forms presented by the BCMOE shed light on the evolution and the decline of the oil pollution threat from the Vessel. As noted above, these forms indicate that when the lightering operation concluded on 24 September 2018, the Vessel no longer posed a significant oil pollution threat. This account differs somewhat from that set out in the BCMOE's narrative, which was likely drafted long after the response had concluded. The version of events set out in the ICS-214a forms is preferred, as they were likely prepared during or soon after the response.

*The BCMOE's operations were generally reasonable up to and including 24 September 2018*

The BCMOE's measures and the claimed costs associated with those measures are considered to have been taken with respect to monitoring and mitigating actual oil pollution damage from a ship as well as the continuing threat of further such damage, all of which is contemplated under the MLA.

The quality and scope of the personnel tasking evidence provided by the BCMOE—in particular the ICS-214a forms—was generally excellent. In almost all cases, it was clear what each BCMOE employee was doing throughout the response, and why. It is concluded that the BCMOE response was focused and generally consistent with the broader UC goal of fiscal conservatism, and no significant duplication of efforts, whether internally or with respect to other responders, is evident.

The bulk of supporting work done by off-site personnel in the MEOC and elsewhere is accepted. Further detail on this determination is provided in the next section of this letter.

With respect to the six personnel who spent time on-site during the response, all claimed labour costs are accepted. As shown in Chart 1 and Table 3, there were seldom more than four BCMOE personnel on location at any given time during the response. Understandably, the busiest days were transitional and travel days.

JK, DB, and JB formed the core contingent of on-site personnel, present for almost the entirety of the response, though both DB and JB were demobilized on 21 September 2018, as the lightering operation progressed and the overall situation stabilized. As shown in their ICS-214a forms, the roles of these three personnel rotated to an extent, but each is considered to have added value to the response. Whether tasking included logistical coordination; technical support, monitoring, and planning; on-site safety monitoring and enforcement; environmental assessment and monitoring; record keeping; or sampling, each of these roles is considered appropriate and reasonable.

With respect to the overall sampling operation, it is accepted that the BCMOE's role was a mix of precautionary and integral and that GHD did not begin sampling until 15 September 2018. It is also noted that resource allocation was modest, with no more than a single BCMOE employee assigned at any given time. As a result, claimed sampling-related costs are accepted as reasonable in the circumstances.

The other three on-site personnel—OE, KL, and MP—were deployed for shorter periods, largely in specialized and/or relief roles. The latter purpose in particular is accepted, as fatigue management concerns were prominent as the BCMOE's response wore on.

OE was a specialist who dealt with waste management throughout the response, deploying to Haida Gwaii for four days. Given the remoteness of the site, the complexity of the lightering operation, the volume of oil pollutants in question, and the extensive use of fire-retardant foam and sorbent materials, this deployment is considered reasonable.

KL and MP largely provided relief to the three primary responders, but each also served a specialized purpose. KL stood in for JB on the EU, participating in night sampling that appears to have been necessary due to tidal conditions and the timing of the lightering

operation. MP arrived on scene the day before DB and JB demobilized, providing both ICP and lightering support. MP also produced highly detailed records of the lightering operation.

All September 2018 travel costs associated with on-site personnel are considered to have been reasonably incurred in support of the BCMOE's response operation. While descriptions of some of the claimed travel-related costs were lacking in places, the ICS-214a forms served to lend helpful context in almost all cases. Only \$257.50 in apparent on-site lodging costs associated with DB and JB and paid on 11 September 2018 remain unexplained. It does not appear that either of these personnel stayed anywhere but in the provincial bunkhouse, but this is not entirely clear. Because this accommodations cost was modest and incurred very early in the response, it is accepted, noting that the booking in question may have been made before broader accommodations arrangements were in place, or at least before the arrangements were broadly understood.

Finally, the more general non-labour response costs are also accepted as having been incurred in support of sampling efforts, safety, cleaning of provincial facilities used in the response, or replacement of equipment damaged or loss in the course of the response. All of these costs fall into compensable categories, and all are considered reasonable.

*Some allocation of BCMOE resources beyond 24 September 2018 was reasonable*

Following the 24 September 2018 conclusion of the lightering operation, the BCMOE shifted its focus to waste management and demobilization. It is considered that the BCMOE's continued involvement at this stage was effective, efficient, and moreover reasonable. A volume of oiled sorbent materials and fire-retardant foam was contained within the Vessel at the time, and certain members of the BCMOE's team had the appropriate expertise to assist and monitor the owner's logistical and disposal steps, which were complicated by the remote location of the Incident. Furthermore, it is accepted that the BCMOE took primary responsibility for the provincial buildings used by the UC, including the ICP and at least one bunkhouse facility. These had to be left in fair condition, and BCMOE personnel had borne the brunt of this responsibility throughout the response.

The BCMOE sent a single employee, JB, back to the site of the Incident on 7 October 2018. During this time, JB, who had already been on-site for an extended period in September 2018 (and therefore knew the situation well), observed and assisted with the owner's salvage and waste management operations. Following the refloating of the Vessel, JB conducted a site inspection, reporting some signs of residual oil pollution. To the extent that JB's on-site October 2018 activities are documented, associated labour and travel costs are considered reasonable.

Finally, JB's ICS-214a forms show that he worked short stints periodically from 24 September 2018 through 5 December 2018 compiling the BCMOE's response documentation, following up on waste management, reviewing sampling results, and attempting to recover costs from the owner of the Vessel. All of these activities are accepted as reasonably connected to the BCMOE's oil pollution response operation, and all associated costs are considered reasonable.

## CLAIM AND OFFER DETAILS

The BCMOE presented its claimed costs and expenses to the Fund in seven categories, each of which is briefly outlined below.

Under Part 7 of the MLA, the measures taken to respond to an oil pollution incident and the resulting costs must be reasonable in order to be compensable by the Fund. To the extent that reasons are not already set out in this letter, the below explains why certain portions of the BCMOE's claim have been allowed while others have been disallowed.

### Regular Salaries

Claimed: \$17,438.93

For the reasons already set out in this letter, the regular salary amounts claimed with respect to DB, OE, JK, KL, and MP are accepted in full. In addition, the majority of the amounts claimed with respect to JB are accepted. The only reductions are made with respect to the undocumented work done by JB on 12 October 2018. While 11 October 2018 is also undocumented, it has been allowed on the understanding that one day was necessary for demobilization and travel home.

The full claimed amounts with respect to KB, TG, NV, AM2, and AR2 are accepted, noting that the ICS-214a forms show that these personnel all made coordinating contributions to the BCMOE's response operation, in particular during its early stages. In a similar vein, the full claimed amount is accepted for CS, who worked just half an hour of regular salaried time reviewing documents in preparation for serving as MEOC Director.

Public relations costs resulting from an oil pollution incident are generally not compensated by the Fund. An exception exists for work directed primarily at safeguarding the public or the environment, but there is no evidence that the public relations work done by BCMOE personnel met this criterion. As well, the UC issued press releases of its own on a daily basis throughout most of the response. Therefore, the public relations work done by BCMOE personnel is not accepted as compensable. The claimed amounts associated with KF are rejected, along with half the claimed amount for LB, whose time was roughly split between vetting media releases and coordinating response efforts as MEOC Director, the latter being compensable in full.

While no ICS-214a forms were provided in support of the work done by AM1 and AR1, BCMOE accounting documentation shows that both were active in booking travel and making other purchases that supported the personnel in the field. Further, NV's ICS-214a logs show that AR1 was involved in shipping sampling supplies to personnel in the field. As such, the hours claimed with respect to AM1 and AR1 are accepted to the extent that they fell on days on which those two employees made purchases that have otherwise been accepted as reasonable.

Although no itemized tasking documentation was submitted in support of the hours worked by TC and RM, the claimed costs associated with those two personnel have been accepted. Based on the timesheets submitted by the BCMOE, both TC and RM were tasked with cost

recovery and other administrative items. This work and its associated labour costs are considered reasonable.

Name	Role	Claimed	Allowed
KB	MEOC Finance Lead	\$39.20	\$39.20
AM1	MEOC Logistics Lead	\$276.12	\$168.08
TG	MEOC Planning Lead	\$310.34	\$310.34
DB	ICP Deputy Section Chief	\$3,141.67	\$3,141.67
AR1	MEOC Support	\$34.78	\$34.78
NV	MEOC Logistics Lead	\$292.10	\$292.10
KF	MEOC Information Officer	\$313.02	\$0.00
OE	Waste Management	\$1,714.58	\$1,714.58
JK	ICP UC Representative	\$2,928.34	\$2,928.34
JB	ICP EU Lead	\$4,389.18	\$4,102.57
LB	MEOC Director	\$695.81	\$347.91
AM2	MEOC Finance Lead	\$107.37	\$107.37
AR2	MEOC Planning Lead	\$169.83	\$169.83
KL	ICP EU	\$1,686.80	\$1,686.80
CS	MEOC Director	\$23.09	\$23.09
MP	ICP Deputy Ops Section Chief	\$810.48	\$810.48
TC	Administrative	\$101.48	\$101.48
RM	Cost Recovery	\$404.74	\$404.74
<b>Totals</b>		<b>\$17,438.93</b>	<b>\$16,383.36</b>

Table 6 – Summary of claimed and allowed regular salary costs

**The regular salaries portion of this claim is allowed in the amount of \$16,383.36.**

Overtime Claimed: \$43,504.87

As already noted, the BCMOE’s claim under this category includes overtime, paid at both 1.5x and 2.0x regular hourly rates, standby hours, paid at one-third regular hourly rates, and 22 overtime meal breaks, paid at \$15.30 each.

For the reasons already set out in this letter, the overtime and overtime meal break costs claimed with respect to DB, JK, OE, KL, and MP are accepted in full. In addition, the majority of the amounts claimed with respect to JB are accepted. The only reductions are made with respect to the undocumented work done on 12 October 2018. While 11 October 2018 is also undocumented, it has been allowed on the understanding that one day was necessary for demobilization and travel home.

The full claimed amounts with respect to SB and NF are accepted, noting that the ICS-214a forms show that these two personnel made important coordinating contributions to the BCMOE’s response operation, in particular during its early stages. In a similar vein, the full claimed amount is accepted for CN, whose contributions to the early stages of the BCMOE’s operation as MEOC Director, including during hours paid at standby rates, are apparent in the documentation provided.

LB and CS both served as MEOC Directors later in the BCMOE’s response, making useful coordinating contributions. By the time these two individuals became involved in the

operation, however, the ICP was fully staffed with BCMOE personnel who had become largely self-sufficient. Nonetheless, both LB and CS logged considerable standby hours, often overnight, during which time it does not appear that any active work was done. In the absence of specific justification for these standby hours, they are not accepted. In light of the above determinations made with respect to LB’s regular hours, which included considerable media relations work, only half of LB’s active overtime hours are accepted. The overtime hours worked by CS, whose focus was solely on management and logistics, are accepted in full.

Finally, the standby hours associated with NV are rejected in full due to lack of supporting documentation.

Name	Role	Claimed	Allowed
SB	MEOC Logistics Lead	\$278.24	\$278.24
NF	MEOC Duty Manager Support	\$1,154.75	\$1,154.75
CN	MEOC Director	\$2,259.61	\$2,259.61
DB	ICP Deputy Section Chief	\$6,915.88	\$6,915.88
JK	ICP UC Representative	\$10,334.76	\$10,334.76
JB	ICP EU Lead	\$11,219.63	\$10,252.22
OE	Waste Management	\$2,562.25	\$2,562.25
LB	MEOC Director	\$1,904.82	\$674.72
KL	ICP EU	\$3,491.24	\$3,491.24
NV	MEOC Logistics Lead	\$233.68	\$0.00
CS	MEOC Director	\$515.94	\$69.29
MP	ICP Deputy Ops Section Chief	\$2,634.06	\$2,634.06
<b>Totals</b>		<b>\$43,504.86</b>	<b>\$40,627.02</b>

*Table 7 – Summary of claimed and allowed overtime, standby, and overtime meal break costs*

**The overtime portion of the submission is allowed in the amount of \$40,627.02.**

Employee Benefits Claimed: \$15,114.06

The BCMOE claims employee benefits costs at a rate of 24.8% on top of both claimed regular salaries and overtime costs. While this rate appears to be reasonable and roughly in line with that of other government entities, including the CCG, its application to overtime costs is problematic.

Benefits costs do not generally increase when employees work overtime. This is because employee benefits packages are usually tied only to base salaries, unless a given employee’s base salary is below the maximum insurable amounts for the Canada Pension Plan and Employment Insurance, in which case employer contributions can increase, to a limited extent, with paid overtime. This was not the case with any of the BCMOE employees who worked overtime.

The BCMOE’s submissions of 17 March 2021 do not present compelling reasons to deviate from the general understanding set out above. As a result, claimed employee benefits costs are accepted only to the extent that they apply to allowed regular salary costs.

**The employee benefits portion of the submission is allowed in the amount of \$4,063.07.**

Operating

Claimed: \$3,665.31

The BCMOE’s claimed Operating costs, which appear to be travel-related costs for which the BCMOE ultimately reimbursed its employees, are summarized in Table 4. The BCMOE seeks to recover \$3,665.31 under this portion of its claim. This amount excludes GST charges, which were originally claimed under a standalone category. Any GST and other tax costs incurred with respect to Operating costs have instead been considered for compensation under this portion of the claim, bringing the total sought to \$3,821.27.

As has been noted, other than a single-page summary with minimal descriptions, no documentation was provided in direct support of claimed Operating costs. That said, it is possible, based on the other documentation provided by the BCMOE, and in particular based on the ICS-214a forms and the Other costs documentation, to infer why most of the Operating costs were incurred.

It is concluded that all of the claimed Operating costs can be connected with costs necessary to support on-site BCMOE personnel. Furthermore, all of those costs are considered reasonable. Though the BCMOE has not provided information on the *per diem* rates that were in effect at the time of the Incident, it is considered that the total amounts claimed for each of its personnel are generally quite low. In no case do they exceed or even approach the amounts that might have been claimed had each of the on-scene personnel been compensated at the full current *per diem* rates for each day they were in the field.

Name / Description of Claimed Costs	Claimed	Allowed
DB meals / per diem, parking, public transp.	\$295.00	\$295.00
JB meals / per diem, parking, mileage, public transp., rental car, ferry, lodging	\$1,693.47	\$1,693.47
JK meals / per diem, ferry, lodging	\$547.05	\$547.05
OE meals / per diem, parking, mileage, public transp., airfare	\$835.93	\$835.93
KL meals / per diem, parking, public transp., misc.	\$449.82	\$449.82
<b>Totals</b>	<b>\$3,821.27</b>	<b>\$3,821.27</b>

Table 8 – Summary of claimed and allowed Operating costs

**The Operating costs portion of the submission is allowed in the amount of \$3,821.27.**

Other

Claimed: \$7,487.50

The BCMOE’s claimed Other costs, which appear to be travel-related costs paid upfront by the BCMOE, are summarized in detail in Table 5. The BCMOE seeks to recover \$7,487.50 under this portion of its claim. This amount excludes GST charges, which were originally claimed under a standalone category. Any GST and other tax costs incurred with respect to Other costs have instead been considered for compensation under this portion of the claim, bringing the total sought to \$7,798.31.



With the exception of flights for JW, for whom no other supporting documentation was provided, all of the claimed Other costs can be satisfactorily connected to accepted elements of the BCMOE’s oil pollution response operation. Furthermore, those costs are considered reasonable.

Name / Description of Claimed Costs	Claimed	Allowed
DB airfare and lodging	\$713.73	\$713.73
JB airfares, lodging, parking, trip cancellation insurance	\$1,209.56	\$1,209.56
JK airfare	\$417.38	\$417.38
OE airfare	\$540.88	\$540.88
KL airfares	\$1,653.49	\$1,653.49
MP airfares	\$972.31	\$972.31
JW airfares	\$1,127.44	\$0.00
Cargo flight for sampling equipment, Vancouver to Sandspit (2018-09-11)	\$181.46	\$181.46
Hazmasters Inc., 4x safety goggles, 1x box safety glasses (2018-09-11)	\$80.64	\$80.64
Shoppers Drug Mart, writing materials (2018-09-11)	\$7.37	\$7.37
Ziplock bags and ice for sampling (2018-09-12)	\$12.26	\$12.26
Computer power charger replacement (original damaged during response)	\$41.79	\$41.79
Cleaning at bunkhouse and office (2018-09-14, 15, 21, 22, 24, 26)	\$440.00	\$440.00
Additional rug steam cleaning at bunk house and office	\$400.00	\$400.00
<b>Totals</b>	<b>\$7,798.31</b>	<b>\$6,670.87</b>

Table 9 – Summary of claimed and allowed Other costs

**The Other costs portion of the submission is allowed in the amount of \$6,670.87.**

Administration Claimed: \$21,802.67

The BCMOE seeks compensation for an “administration fee”, applied as a 25% markup on all of its other claimed costs, save for GST.

In support of this portion of its claim, the BCMOE relies solely upon provincial legislation and regulations. Under subsection 91.4(3) of the EMA, certain costs incurred by that Province in respect of an incident involving a spilled pollutant “are a debt due to the government by the responsible person and the owner of the substance or thing spilled.” One of those costs, according to paragraph 91.4(4)(b) of the EMA, is “a prescribed percentage of [spill response costs that] the Lieutenant Governor in Council considers is sufficient to meet the government’s administrative costs.” That percentage, 25% at both the time of the Incident and the time of writing, is prescribed by subsection 5(2) of the *Spill Preparedness, Response and Recovery Regulation*, BC Reg 185/2017.

While reasonable administration costs are generally compensable, the rate sought by the BCMOE is not accepted.

First, the 25% “fee” prescribed by regulation applies only against the “responsible person”, defined in section 91.1 of the EMA as “a person who has possession, charge or control of a substance or thing when a spill of the substance or thing occurs or is at imminent risk of

occurring”, and the “owner of the substance or thing spilled.” Neither definition describes the Administrator.

Second, in order for a claimed cost or expense to be compensable, it must have been actually incurred by the claimant, it must be proximate to (i.e., incurred a result of) the oil pollution incident in question, and it must be reasonable. From an evidentiary perspective, some leniency is inherent to the assessment of administration costs, which, after all, are expressed as a percentage precisely because they represent costs that are difficult to isolate and quantify, costs that may also be variable in differing circumstances. In this case, however, the BCMOE has presented no evidence that speaks to any of the criteria set out above. The fact that a given rate is prescribed by statute and regulation for use as against a responsible party is of little assistance.

Despite a lack of evidence in support of the claimed 25% administration rate, however, it is accepted that the BCMOE did in fact incur peripheral overhead costs as a result of its response to the Incident that are otherwise not captured in its claim.

The BCMOE has claimed extensively for labour costs associated with support staff who worked in the MEOC. Based on the described tasking of these personnel (logistics, planning, record-keeping, and finance), it is considered that many of them were performing the kind of support tasks that are generally intended to be captured by reasonable administration charges. Many of the salary and overtime costs associated with these personnel have been accepted. Additionally, labour costs associated with cost recovery and claim compilation have been accepted. As such, it is considered that an administration rate of 2%, applied on top of all other allowed costs, is sufficient to cover any residual and otherwise uncaptured administration costs reasonably incurred by the BCMOE as a result of its response to the Incident.

This approach is in line with that of the International Oil Pollution Compensation Funds, which generally accept administration rates up to 5% without requiring extensive supporting documentation. Where the types of overhead costs normally captured by an administration rate are directly claimed, however, the standard practice is to apply a lower rate.

**The administration portion of the submission is allowed in the amount of \$1,431.31.**

GST

Claimed: \$5,450.67

The BCMOE originally sought compensation for what it categorized independently as a GST charge, applied at a rate of 5% against the sum of all of its other claimed costs. The BCMOE provided no explanation of this portion of its claim, nor did it provide any evidence showing that the claimed amount for GST represented an expense that was actually incurred. In some cases, the standalone GST charge was applied on top of documented PST paid by the BCMOE on its non-labour costs.

As noted above, to the extent that non-labour costs incurred by the BCMOE attracted tax charges, those charges have been considered for compensation alongside the corresponding principal amounts, under the Operating and Other costs categories.

Following an inquiry from the Fund, the BCMOE withdrew the standalone GST portion of its claim.

**The standalone GST portion of the submission was withdrawn by the claimant.**

### **OFFER SUMMARY AND CLOSING**

The following table summarizes the claimed and allowed expenses:

<b>Category</b>	<b>Claimed</b>	<b>Allowed<sup>3</sup></b>
Regular Salaries	\$17,438.93	\$16,383.36
Overtime	\$43,504.87	\$40,627.02
Employee Benefits	\$15,114.06	\$4,063.07
Operating	\$3,665.31	\$3,821.27
Other	\$7,487.50	\$6,670.87
Administration	\$21,802.67	\$1,431.31
GST	\$5,450.67	\$0.00
<b>Totals</b>	<b>\$114,464.01</b>	<b>\$72,996.90</b>

*Table 10 – Summary of amounts claimed and allowed*

Costs and expenses in the amount of \$72,996.90 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

\*\*\*

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, 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

---

<sup>3</sup> As noted above, the "Allowed" amounts for both Operating and Other costs include GST and PST paid on allowed principal costs in each of those categories. These amounts are not included under the "Claimed" heading because they were originally captured in a standalone category of the BCMOE's claim.

claimant must thereafter cease any effort to recover for its claim, and further it must cooperate with the Fund in its subrogation efforts.

Yours sincerely,

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