



OFFER LETTER

Ottawa, 16 February 2022
SOPF File: 120-902-C1
CCG File:

BY EMAIL

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

RE: Unknown Name (Bluffer's Park Pleasure Craft)
Bluffer's Park, Toronto, Ontario
Incident date: 2021-04-09

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the "CCG") with respect to a pleasure craft with no known name or registration. The vessel washed ashore at Bluffer's Park, in Toronto, Ontario, on 9 April 2021 (the "Incident"). The grounding was reported to the CCG on 13 April 2021.

[2] On 13 October 2021, the office of the Administrator of the Ship-source Oil Pollution Fund (the "Fund") received a submission from the CCG on behalf of the Administrator. The submission advanced claims under sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the "MLA"). The claim totals \$9,982.18 and arises from costs and expenses which resulted from measures taken by the CCG to respond to the Incident.

[3] 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 CCG pursuant to sections 105 and 106 of the MLA.

[4] The amount of \$2,294.64 (the "Offer"), plus statutory interest to be calculated at the time the Offer is paid, in accordance with section 116 of the MLA, is offered with respect to this claim. The reasons for the Offer are set forth below.

THE SUBMISSION RECEIVED

[5] The submission includes a narrative that describes events relating to the Incident. It also includes a summary of the costs and expenses that the CCG claims and corroborating documents. Where relevant to the offer, they are reviewed below.

Narrative

[6] According to the narrative, on 13 April 2021 the CCG was alerted¹ that a 22' vessel² had grounded at Bluffer's Park, in Toronto. It was reported that the vessel had suffered hull damage.

[7] CCG made immediate efforts to identify the owner and requested additional information from other agencies.

[8] The CCG communicated with the person who reported the incident. That person provided photographs to the CCG, and described how the vessel's hull had been damaged and infiltrated by water. The vessel was resting on a rocky shoreline.

Figure 1 - Photo excerpted from CCG narrative, taken on 13 April 2021 by the person who reported the incident

Figure 2 - Photograph taken on 13 April 2021, provided by the City of Toronto to the CCG, and provided by the CCG to the office of the Administrator in response to questions posed

Figure 3 - Photo of the vessels' interior, excerpted from the CCG narrative, taken on 13 April 2021 by the person who reported the incident

[9] The person was able to get close to the vessel and provide photographs of the interior of the vessel, showing that the vessel's engine was semi-intact.

[10] The narrative indicates that:

“There was a risk of oil pollution to the marine environment because of the position of the boat and wave action. The vessel had come to rest upon a rocky shoreline with jagged edges which increased the chance to severely damage or rip off the engine. This would lead to a large release of oil pollution which is contained in the outdrive unit.

[11] The same day, the CCG invited the person who had reported the incident, who was with the City of Toronto parks department, to attempt to secure the vessel.

[12] On 14 April 2021, that person reported finding a 3” hole in the hull, and that he had been able to use ropes to secure the vessel.

¹ According to information provided to the Fund during its investigation, the Toronto Police Service became aware of the grounding of the vessel as early as 9 April 2021.

² The License Information form provided by transport Canada suggests that the vessel was actually 6.1m in length, which is closer to 20 feet.

[13] The CCG continued in its efforts to contact the owner of the vessel. The CCG successfully made contact with the last known licensed owner, who confirmed a sale to another individual. That individual confirmed that he had also sold the vessel, in yet another transaction, to what was described as a group of people.

[14] On 15 April 2021, the CCG sent a crew to the scene of the Incident. The crew observed,

“a heavily damaged hull and a rapidly deteriorating condition which posed a significant threat of discharge of oil pollution. Because of the position of the vessel, the responders were not able to safely access the fuel tank to inspect for pollutants. Therefore, the amount of potential discharge was unknown. The vessel was still stable high up on rocks... The vessel was secured to the shoreline via a rope which was attached to a boulder. By seeing the way it attached, the vessel would likely not move unless significant wave action were to occur... The weather forecast showed a risk of thunderstorms and rain with waves increasing to 1 meter during the evening and subsiding in the morning.”

[15] The CCG provided the following photograph of a CCG officer in the vicinity of the vessel:

Figure 4 - Photograph excerpted from the CCG narrative, taken on 15 April 2021

[16] The narrative indicates that the CCG contacted three different contractors for quotes for the removal and deconstruction of the vessel.

[17] The same day, the CCG made unsuccessful efforts to contact the owner of the vessel.

[18] On 16 April 2021, the CCG asked if the person who reported the spill, an employee with the City of Toronto, would be able to monitor the vessel over the weekend. That person suggested the CCG make direct contact with the seasonal workers who would be at the park over the weekend.

[19] The CCG reviewed the quotes for the removal and dispose of the vessel. The CCG selected the quote from Scruton Marine Inc., based on their availability to carry out the removal the next Monday, 19 April 2021.

[20] Over the weekend, the CCG made contact with local responders to monitor the status of the vessel. There were no changes to its status.

[21] On 19 April, the vessel was removed from the scene of the Incident by Scruton Marine Inc.

Figure 5 - Photograph excerpted from the CCG narrative, taken on 19 April 2021 during the haul out

Additional Evidence

[22] Scruton Marine was contacted by the Fund during its investigation and assessment. They confirmed that they were able to inspect the vessel and remove oil before it was lifted out of the water.

[23] They confirmed that the fuel tank aboard the vessel is as shown in Figure 3, and was inspected and found to be empty before the ship was lifted for disposal. They also advised that there was a light sheen contained inside the vessel at the time they attended at the scene, on 19 April 2021, presumably as a result of oil leaking from the ship's machinery. There was no sheen outside the vessel. As well, they confirmed that on their inspection, the vessel had obviously been stripped. Electronics and equipment had been removed.

[24] The Fund also made contact with the City of Toronto and the Toronto Police Service. The Toronto Police Service advised that the ship stranded on the rocks no later than 9 April 2021.

Cost summary

[25] The CCG submission summarizes its claimed costs as follows:

INCIDENT:	Bluffer's Park Abandoned Vessel	PROJECT CODE:	73-POLLU-02-01- 00-00-A01
INCIDENT DATE:	April 13, 2021	DATE PREPARED:	2021-09-16
INCIDENT LOCATION:	Bluffer's Park, Lake Ontario, Toronto	PROVINCE:	
DEPARTMENT :	Canadian Coast Guard	PREPARED BY:	[deleted]

Schedule #	Description	Total
		\$
1	MATERIALS AND SUPPLIES	-
		\$
2	CONTRACT SERVICES	-
		\$
3	TRAVEL	-
		\$
4	SALARIES - FULL TIME PERSONNEL	2,623.56
		\$
5	OVERTIME - FULL TIME PERSONNEL	1,030.71
		\$
5a	OVERTIME - OTHER	-

<u>6</u>	OTHER ALLOWANCES	\$ -
<u>7</u>	SALARIES - CASUAL PERSONNEL	\$ -
<u>8</u>	SHIPS' COSTS (EXCL. FUEL & O/T)	\$ -
<u>9</u>	SHIPS PROPULSION FUEL	\$ -
<u>10</u>	AIRCRAFT	\$ -
<u>11</u>	POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	\$ -
<u>12</u>	VEHICLES	\$ -
<u>13</u>	ADMINISTRATION	112.92
	TOTAL CCG COST OF INCIDENT	\$3,767.18

Figure 6 – Copy of the CCG cost summary

[26] The CCG claim includes a form which shows a claim for administration costs in the amount of \$112.92. That amount has been included as a claimed cost or expense in the assessment.

Contractor documentation

[27] The initial submission from the CCG included limited contractor information. Namely, an invoice from Scruton marine Inc., dated 6 May 2021, the substantive part of which reads as follows:

DESCRIPTION	QUANTITY	RATE	AMOUNT
22' Cadorette at Scarborough Bluffs Park, April 19, 2021 Remove and Dispose Price per quotation		5,500.00	5,500.00
HST ON SALES ON		13.00%	715.00

Figure 7 - Excerpt from invoice from Scruton Marine Inc.

[28] The above document indicates “price per quotation”. The Fund requested the quotation from the CCG, and it was provided. The quotation included a salvage plan, the relevant parts of which are as follows:

Salvage Plan

- Initially, we will secure a safety line from the vessel to our shore-based equipment to provide a temporary hand-hold. This is due to the rocky terrain of the area.
- Following that, the batteries and fuel tank will be removed.
- We will attempt to remove any hydrocarbons from the engine with our extraction pump for proper disposal.
- The pumps will discharge into a containment area created by 8" absorbent boom if oil is observed. Gasoline or residual will not be contained. Fire extinguishers will be available should they be required.
- All contaminated absorbent products will be collected and kept on site in sealed, disposal containers until the salvage is completed, then disposed of in a responsible manner. Due to the size and specs on this vessel, it is suitable to utilize absorbent pads to absorb the oil. We do not expect much of a quantity of oil.
- An 80-ton mobile crane will be set up on the laneway to enable the vessel to be hoisted onto our trailer.

Figure 8 - Excerpt from undated quotation of Scruton Marine

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims

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

[30] The CCG is an eligible claimant for the purposes of section 103 of the MLA.

[31] The evidence suggests that a discharge of oil occurred, and the submission arrived prior to the limitation period set out under paragraph 103(2)(a) of the MLA, which applies where there has been oil pollution damage.

[32] 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, or under the International Convention on Civil Liability for Bunker Oil Pollution Damage, and are therefore potentially eligible for compensation.

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

[34] The extent to which the measures taken were reasonable must be evaluated.

Findings on the evidence submitted by the CCG

The facts of the Incident as set out by the CCG are generally accepted

[35] The CCG narrative is accepted as generally accurate where it describes observations. Where the narrative offers conclusions, that are accepted as accurate only where explicitly indicated.

The initial response to the Incident was reasonable

[36] The CCG's initial efforts were reasonable measures taken with respect to a perceived threat of oil pollution. After receiving a report of a vessel grounded on rocks, it was reasonable for the CCG to remotely investigate the situation and attempt contact with the owner. It was reasonable for the CCG to send personnel to the scene to assess the situation directly.

[37] As a result, the bulk of the measures taken up to Day 3 of the response (April 15) are accepted as reasonable.

An assessment was not completed before substantial costs were incurred

[38] The expenses associated with the Scruton Marine Inc. contract must be rejected. There are several, overlapping reasons for this.

[39] First, the Scruton Marine Inc. invoice indicates that it includes the cost of disposing of the vessel. Vessel disposable costs may be compensable, but are not presumptively so. The vessel at issue was a small, fiberglass hulled craft. There is no evidence the hull itself posed an oil pollution threat. The deconstruction cost is therefore disallowed. As the invoice does not allocate a value to deconstruction, any reduction must therefore be some estimation.

[40] Further, the available evidence does not establish that the Scruton Marine Inc. costs were reasonably incurred. The vessel grounded on rocks by no later than 9 April 2021. Steps were taken by local authorities to secure it. As of 14 April 2021, it appeared the vessel was fixed in place. At this point an assessment was needed to determine whether the vessel posed a threat of oil pollution, and what measures should be reasonably taken in response.

[41] The CCG sent a crew from Sarnia to Toronto to carry out that assessment. The narrative indicates the assessment could not be completed because of a safety concern. The nature of the safety concern was not identified. The narrative indicates that rough weather was expected in the evening 15 April 2021 – but this would not have interfered with the assessment during daylight. As seen in Figure 4, it appears that conditions were excellent at the time the CCG crew attended prior to the CCG's arrival, which would seem to indicate they were able to gain sufficient access.

[42] Nor is it likely that site factors created a safety concern. The scene of the incident is Bluffer's Park, in Toronto. This is a man-made recreational area on Lake Ontario. It includes a marina and a boat ramp. It is used by thousands of members of the public every

year. Employees of the City of Toronto seem to have been able to access the vessel on days prior to the CCG arrival. Scruton Marine was able to access the vessel after the CCG attended. There is no evidence of a change in conditions that created a danger on 15 April 2021.

[43] Although the CCG narrative indicated that “the responders were not able to safely access the fuel tank to inspect for pollutants”, the conditions at the time CCG was on-scene were favourable, as evidenced by Figure 4. The CCG position can be contrasted with the City of Toronto employee seen in Figure 2. The city of Toronto employee is wearing waders and is in the water itself. It seems he was able to secure reasonable access the interior of the vessel, given the existence of the photograph at Figure 3.

[44] In this context, the generic reference to safety concerns in the narrative is insufficient to explain why the assessment was not carried out. It is accepted that the CCG crew sent from Sarnia was not able to complete the assessment. It is not accepted that the conditions on 15 April 2021 were unexpected. It is therefore determined that the inability to assess the vessel was the result of the crew which attended without being adequately prepared for the conditions, which should have been predicted.

[45] It is further determined that had an assessment been carried out, it would have resulted in a conclusion that the vessel posed minimal or no oil pollution threat. This determination arises from the observations made by others, who apparently had no trouble accessing the vessel, who concluded the fuel tank was empty and the vessel’s electronics had been stripped. This signals that the vessel had had valuable parts removed prior to the incident, including the fuel from the tank. Further, the mechanical parts had already been breached and had leaked oil, given the seen observed by the contractor inside the vessel. Since there were no reports of a sheen outside the vessel, at any point, the risk posed by that oil was negligible and, in the circumstances, insufficient to justify further steps as measures taken in anticipation of a release of oil pollution.

[46] Had an assessment been carried out it would have concluded that no further steps were needed to address the threat of oil pollution. Costs incurred after 15 April 2021 are therefore disallowed.

CLAIM AND OFFER DETAILS

[47] The CCG presented its costs and expenses across four schedules, each of which is outlined below. To the extent that reasons are not already set out in this letter, explanations are provided below as to why each portion of the claim has been allowed or disallowed.

Schedule 2 – Contract Services

Claimed: \$6,215.00

[48] All contractor expenses were incurred after 15 April 2021. For the reasons stated above, they are disallowed.

The contract services portion of the submission is rejected.

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$2,623.56

[49] The CCG claims for personnel time as follows:

Name	Hourly rate \$	Hours worked	Cost \$
April 13 (Day 1)			
GT-04-3	36.16	4.0	144.62
Coast Guard regular salary cost total (as per claim)			144.62
April 14 (Day 2)			
GT-04-3	36.16	5.5	198.86
Coast Guard regular salary cost total (as per claim)			198.86
April 15 (Day 3)			
GT-04-3	36.16	5.5	198.86
GT-07-1	48.46	5.0	242.29
GT-05-3	40.56	4.0	162.23
GT-05-1	38.21	2.0	76.43
GT-05-3	40.56	6.0	243.35
GT-04-1	34.04	6.0	204.26
GT-04-5	38.71	3.0	116.12
GT-04-2	35.10	4.5	157.94
Coast Guard regular salary cost total (as per claim)			1401.47
April 16 (Day 4)			
GT-04-3	36.16	1.0	36.16
GT-07-1	48.46	5.0	242.29
GT-05-1	38.21	1.5	57.33
GT-05-3	40.56	3.5	141.95
Coast Guard regular salary cost total (as per claim)			477.71
April 19 (Day 7)			
GT-04-3	36.16	7.5	271.17
GT-07-1	48.46	1.0	48.46
GT-05-3	40.56	2.0	81.12
Coast Guard regular salary cost total (as per claim)			400.74
Coast Guard total regular salary claim			2623.56

[50] The claim for costs on days 1, 2 and 3 of the response (i.e. up to and including 15 April 2021) are accepted without deduction. This includes the claim for CCG expenses

of attending at the scene for the assessment, notwithstanding that the assessment was not completed. The cost of an assessment was reasonable, and the fact the assessment failed is best dealt with by removing costs and expenses flowing from that failure, rather than deductions from the costs of the failed assessment.

The salaries portion of the submission is allowed in the amount of \$1,744.95

Schedule 5 – Overtime

Claimed: \$1,030.71

[51] The CCG claims for overtime as follows:

Name	Regular Hourly rate \$	Overtime hours worked	Cost \$
April 13 (Day 1)			
GT-04-3	36.16	1.0	54.23
Coast Guard overtime cost total (as per claim)			54.23
April 14 (Day 2)			
*GT-05-3	40.56	6.5	352.52
Coast Guard overtime cost total (as per claim)			352.52
*Two hours was originally claimed here. 4.5 have been added. Those hours were claimed for on 19 April 2021. However, The activity log sheet appears to show they were incurred on 14 April.			
April 15 (Day 3)			
GT-04-3	36.16	0.5	27.12
GT-07-1	48.46	1.0	72.69
Coast Guard overtime cost total (as per claim)			99.80
April 16 (Day 4)			
GT-07-1	48.48	3.5	254.40
Coast Guard overtime cost total (as per claim)			254.40
April 17 (Day 5 - Saturday)			
GT-04-3	36.16	0.5	27.12
GT-07-1	48.46	0.5	36.35
Coast Guard overtime claim total			63.46
April 18 (Day 6 – Sunday)			
GT-04-3	36.16	0.5	36.16
GT-07-1	48.46	0.5	48.46
Coast Guard overtime claim total			84.61

Name	Regular Hourly rate \$	Overtime hours worked	Cost \$
April 19 (Day 7)			
GT-04-3	36.16	6.5*	352.52
Coast Guard overtime claim total *4.5 of these hours appear to have been incurred on April 14.			352.52
Coast Guard total overtime claim			\$1030.71

[52] The amount claimed is accepted for days 1, 2 and 3 of the response. The amounts claimed after Day 3 (i.e. after 15 April 2021) are rejected, save for some amounts claimed on 19 April 2021 which are reallocated.

The overtime portion of the submission is allowed in the amount of \$506.55.

Schedule 13 – Administration

Claimed: \$112.92

[53] Pursuant to an agreement between the Commissioner of the CCG and the Administrator, CCG administrative costs are accepted at a rate of 3.09% on costs, including salary expenses.

[54] The accepted salary costs of \$1,744.95 are reduced by 20% to account for employee benefits plan expenses, and then multiplied by 3.09% to arrive at \$43.14. That amount is accepted.

The administration portion of the submission is allowed in the amount of \$43.14.

OFFER SUMMARY AND CLOSING

[55] The following table summarizes the claimed and allowed expenses:

Schedule	Claimed	Allowed
2 – Contract Services	\$6,215.00	\$0
4 – Salaries – Full Time Personnel	\$2,623.56	\$1,744.95
5 - Overtime	\$1,030.71	\$506.55
13 – Administration	\$112.92	\$43.14
Totals	\$9,982.19	\$2,294.64

Table 3 – Summary of amounts claimed and allowed

[56] Costs and expenses in the amount of \$2,294.64 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[58] 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.

[59] 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 the named Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

[60] 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 be issued.

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

Yours sincerely,

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