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

Suite 830, 180 Kent St., Ottawa, ON K1A 0N5
Tel.: 613-991-1726 - Facsimile: 613-990-5423
www.sopf.gc.ca - info@sopf.gc.ca

Bureau de l'administrateur de la Caisse d'indemnisation des dommages dus à la pollution par les hydrocarbures causée par les navires

180, rue Kent, pièce 830, Ottawa, ON K1A 0N5
Tél. : 613-991-1726 - Téléc. : 613-990-5423
www.cidphn.gc.ca - info@cidphn.gc.ca

OFFER LETTER

Ottawa, 12 October 2022
SOPF File: 120-907-C1
CCG File:

VIA EMAIL

Acting Senior Director of Incident Management
Canadian Coast Guard
200 Kent Street
Ottawa, Ontario K1A 0E6

RE: *Mystery Spill* – Postville, Newfoundland and Labrador – DOI: 8 June 2020

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the "CCG") with respect to what was identified within the submission as a mystery spill, that is, a spill for which the source has not been identified. The spill manifested as a sheen of oil on the waters around Postville, Newfoundland and Labrador, on 8 June 2020 (the "Incident").

[2] On 1 December 2021, the office of the Administrator of the Ship-source Oil Pollution Fund (the "Fund") received a submission from the CCG. The submission advanced claims under sections 101 and 103 of the Marine Liability Act, SC 2001, c 6 (the "MLA") totaling $32,650.70 for costs and expenses arising from measures taken in response 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 $28,484.86 (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, along with a description of the submission.

Canada

THE SUBMISSION RECEIVED

[5] The CCG submission included a narrative which describes the Incident and the CCG's response to it, as well as logs, photographs and other documentation.

The narrative provided by the CCG

[6] On 7 June 2020, CCG Environmental Response ("ER") was notified of a small sheen (estimated at 0.2 litres) on the waters around Postville, Newfoundland and Labrador. That day, the chemical tanker *Tuvaq W* was in the area carrying out a ship-to-shore fuel transfer. The initial photographs provided to the CCG indicated that the sheen did not originate from the *Tuvaq W* or the fuel transfer lines. The CCGS *George R. Pearkes* had been escorting the *Tuvaq W* due to icy conditions and it was also in the vicinity on 7 June.

[7] With the fuel transfer operation completed at 16:00, the *Tuvaq W* and the *George R. Pearkes* departed Postville together at 18:00 on 7 June 2020.

Figure 1 – Photograph of the scene at Postville, taken from the CCG narrative

[8] On 8 June 2020, CCG ER again received reports of an oil sheen in the area. This time, the sheen was substantial, at approximately 3.5 nautical miles in length and 2,870 litres in volume. It was accompanied by a strong smell. An overflight was requested by CCG ER, as well as some follow up observations. Possible land-based sources for the sheen were checked, and no source was identified.

[9] Arrangements were made for a three-person CCG ER team to attend the scene, plus a resource officer. Prior to their departure, arrangements were made to have sorbent materials transferred to Postville. As well, the *George R. Pearkes* was tasked with returning to the scene to assist with response operations.

[10] On 9 June 2020, an overflight estimated the area of the spill as 6.2 nautical miles long by 1.2 nautical miles wide, representing an estimated volume of 980 litres.

[11] On 10 June 2020, another overflight was carried out. The sheen was measured at 8.3 nautical miles long, representing an estimated volume of 955 litres. The sheen was observed to be adjacent to the cove where the fuel transfer took place on 7 June, and it appeared to be coming from ice that was concentrated along the shoreline. Later the same day, it was estimated that the sheen had diminished to 330 litres in volume.

[12] That evening, CCG ER personnel arrived at the scene. The *George R. Pearkes* also arrived back at Postville.

[13] On 11 June 2020, CCG ER personnel conducted shoreline and on-water assessments and deployed absorbent boom in strategic areas. The *George R. Pearkes* provided support, including with boom deployment.

[14] Arrangements were made to have preventative supplies, including bird handling and oil sample kits transferred for use in the response. The supplies had to be flown in by helicopter given the remoteness of the location.

[15] An overflight on the morning of 11 June 2020 estimated a volume of 354 litres on the water, while an overflight in the afternoon observed a sheen estimated at 109 litres.

[16] On 12 June 2020, a planned fixed-wing aircraft overflight had to be abandoned because of inclement weather. The CCG instead deployed the helicopter which had been kept at the scene. No sheen was observed.

[17] On 13 June 2020, another helicopter overflight observed a patch of sheen that was 20 feet long by 10 feet wide. A follow-up flight identified no pollution. ER personnel continued their shoreline assessments and cleanup efforts.

[18] On 14 June 2020, CCG personnel completed their shoreline observations with no pollution observed. Demobilization plans were drafted, pending the results of an overflight on 15 June 2020.

[19] On 15 June 2020, an overflight observed no oil pollution. The *George R. Pearkes* was released from the scene and the ER personnel returned to Goose Bay by helicopter.

Overflights and other observations

[20] In its response, the CCG made extensive use of the *George R. Pearkes* and overflights to monitor the situation. The resulting observations are summarized in the table below:

Date (2020)	Actions taken	Results/observations
7 June – Day 1	Aerial surveillance overflight. Video and photographs taken.	Pollution observed 46 m length and 10 m long and estimated 0.023 L. Photos show sheen length well beyond 46 m.
8 June – Day 2	Aerial surveillance overflight.	Pollution observed and estimated 2 870 L. Sheen 3.5 nm long and 1 nm wide, 60% coverage. Photos show patches of sheen over much of the area.
9 June – Day 3	Aerial surveillance overflight.	Pollution observed and estimated 980 L. Sheen 6.2 nm long and 1.2 nm wide, 40% coverage. Photos show patches of sheen over much of the area.
10 June – Day 4	Aerial surveillance overflight. Helicopter overflight. *George R. Pearkes* deployed 180 ft of its boom.	Pollution observed and estimated 954 L. Sheen 8.3 nm long and 1.2 nm wide, 40% coverage. Photos show fewer patches of sheen over the area. Observed small sheen patches along south shoreline of bay.
11 June – Day 5	Aerial surveillance overflight. Shoreline assessment of north and south shores. Two helicopter overflights. *George R. Pearkes* retrieved its boom.	Pollution observed and estimated 354 L during morning overflight. Sheen 6.7 nm long and 1.7 nm wide, 10% coverage. Afternoon overflight estimated 108 L of product spanning 1,000 m along shoreline. Photos show reduced sheen. Observed small amounts of unrecoverable sheen along north shoreline. Observed various locations of unrecoverable sheen along south shoreline.
12 June – Day 6	Shoreline assessment of north shore. Helicopter overflight. Soil samples taken along north shoreline. Meeting between CCG ER, Postville mayor, and Nunatsiavut government official.	No oil observed along north shoreline. No oil observed during overflight. CCG informed meeting participants that sorbent pads do not pick up the oil sheen.
13 June – Day 7	Shoreline assessments of north and south shores of bay. Two helicopter overflights.	No oil observed along north and south shorelines of bay. One small sheen (10 ft by 20 ft) detected during overflight east of community halfway out of the bay. No oil observed during second helicopter overflight.
14 June – Day 8	Shoreline assessment of north shore. Overflight of the bay.	No oil observed along north shoreline. No oil detected during bay overflight. *George R. Pearkes* released from tasking.
15 June – Day 9	Overflight conducted.	No pollution observed. Response operations stood down. All four ER personnel departed Postville.

Table 1 – Summary of observations and actions taken in response to the Incident

Cost summary

[21] The CCG submission includes a summary of the expenses claimed as follows:

COST SUMMARY

POLLUTION INCIDENT

INCIDENT:	**Mystery Spill - Postville, NL**	**PROJECT CODE:**	**2E192**
INCIDENT DATE:	**June 8, 2020**	**DATE PREPARED:**	**November 17, 2021**
DEPARTMENT:	**Canadian Coast Guard**	**PREPARED BY:**	[redacted]

		SCH
MATERIALS AND SUPPLIES	$ 4,038.51	1
CONTRACT SERVICES	$ -	2
TRAVEL	$ 11,191.49	3
SALARIES - FULL TIME PERSONNEL	$ 6,081.14	4
OVERTIME - FULL TIME PERSONNEL	$ 10,586.93	5
OTHER ALLOWANCES	$ -	6
SALARIES - CASUAL PERSONNEL	$ -	7
SHIPS' COSTS (EXCL. FUEL & O/T)	$ -	8
SHIPS PROPULSION FUEL	$ -	9
AIRCRAFT	$ -	10
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	$ -	11
VEHICLES	$ -	12
ADMINISTRATION	$ 752.64	13
TOTAL CCG COST OF INCIDENT	$ 32,650.70	

Figure 2 – Screen capture of CCG summary of costs and expenses by category

[22] Despite the extensive use of both fixed-wing aircraft and helicopters to aid its response, the CCG does not claim for associated costs. It is considered probable that these costs would—if documented and sought by the CCG—considerably increase the quantum of the claim.

[23] Likewise, no claim was submitted for the use of the *CCGS Pearkes*. The full cost of using a vessel of that size may not be recoverable in a claim such as this, but it seems plausible that part of the costs could have been recoverable had it been documented.

FINDINGS WITH RESPECT TO THE SOURCE OF THE DISCHARGE

[24] The CCG claim documentation describes the Incident as a mystery spill. If it is determined that a discharge did not originate from a ship, the claim must be disallowed pursuant to subsection 105(4) of the MLA.

[25] There were two ships in the vicinity of Postville on 6 through 8 June 2019: the CCGS *George R. Pearkes* and the chemical tanker *Tuvaq W*. Either or both of those ships could plausibly have been the source of the oil pollution.

[26] Alternatively, there are a number of shore-adjacent facilities in Postville which could potentially have been the source of the oil pollution.

[27] An investigation was carried out. Subpoenas were sent to Transport Canada, the Newfoundland Ministry of the Environment, and the owner of the *Tuvaq W*, Coastal Shipping Limited, a subsidiary of the Woodward Group of Companies ("Woodward"). The results from those subpoenas included important information, most notably reports on a number of hydrocarbon samples collected at the scene.

[28] First and foremost, the environmental reports concluded that the sheen arose from a relatively light hydrocarbon, in the kerosene to diesel range. Based on that, ship lubricant oils can be eliminated as a potential source of the sheen.

[29] As well, the *George R. Pearkes* can be eliminated as a possible source of the oil pollution. The marine diesel carried as its primary fuel source was dyed red. No red dye was observed in any of the sheens. While the CCGS *George R. Pearkes* carried Jet A1 fuel (similar to kerosene, but somewhat lighter) for helicopter operations, no such operations were carried out at the material times. While its helicopter fueling system did undergo some maintenance work around the time of the Incident, this work did not occur until the vessel had departed Postville. It is therefore concluded that the *George R. Pearkes* is not a plausible source for the oil pollution.

[30] With respect to the *Tuvaq W*, its reason for traveling to Postville was to deliver fuel, including ultra-low sulfur kerosene ("ULSK"), to a Woodward company and NL Hydro. The vessel was pumping fuel to shore starting on the evening of 6 June 2020 when its operations were interrupted by reports of ice in the area. The operation was completed the next day (7 June).

[31] As with the *George R. Pearkes*, the *Tuvaq W*'s primary fuel (diesel) was dyed red. No dye was found in the samples collected at the scene. It can therefore be concluded that the *Tuvaq W*'s fuel systems were not the origin of the discharge.

[32] Information was obtained via subpoena to Woodward as to the quantities of cargo oil carried by the *Tuvaq W*. That information is summarized in the tables below.

Ship volumes (m3) of ULSK delivered to Woodward and NL Hydro			
	Ship pump log	Ship ullage report	
	Totals from report	Totals from report	Totals of individual tanks
1. Arrival at Postville	6,012	6,011.373	6,012.469
2. After delivery to Woodward	5,950	5,948.012	5,948.591
3. Difference (1 less 2)	62	63.361	63.878
4. Start of delivery to NL Hydro	5,948		
5. Difference (2 less 4)	2		
6. Departure (after delivery to NL Hydro)	5,607	5,611.689[1]	5,611.689
7. Difference (4 less 6)	341		
8. Difference (2 less 6)		336.323	336.902
9. Total of differences (3, 5, 7 and 8)	**405**	**399.684**	**400.780**
Invoiced volume (L) of ULSK compared to ship volumes			
ULSK invoice to Woodward	60,828	60,828	60,828
ULSK invoice to NL Hydro	343,152	343,152	343,152
Total ULSK invoiced at Postville	**403,980**	**403,980**	**403,980**
Less 9 (converted to L)	405,000	399,684	400,780
Difference (loss)	**(1,020)**	**4,296**	**3,200**

Table 2 – ULSK carried and transferred from the Tuvaq W

Ship volumes (m3) of Regular unleaded gasoline ("RUL") delivered to Woodward			
	Ship pump log	Ship ullage report	
	Totals from report	Totals from report	Totals of individual tanks
1. Arrival at Postville	1,214	1,214.424	1,214.600
2. After delivery to Woodward	1,145	1,146.364	1,146.446
3. Difference (1 less 2)	69	68.060	68.154
4. Departure		1,144.399	1,144.399
5. Difference (2 less 4)		1.965	2.047
6. Total differences (3 and 5)		**70.025**	**70.201**
Invoiced volume (L) of RUL compared to ship volumes			

[1] The temperature reading for No.1 CARGO TK. (P) indicated in Ullage Report is 20.000. This is likely an entry or sensor reading error. The temperature correction factor of 1.0069 for No.1 CARGO TK. (S) is used for the calculations.

Ship volumes (m3) of Regular unleaded gasoline ("RUL") delivered to Woodward			
RUL invoice to Woodward	67,510	67,510	67,510
Less 6 (converted to L)	69,000	70,025	70,201
Difference (loss)	**(1,490)**	**(2,515)**	**(2,691)**

Table 3 – RUL carried and transferred from the Tuvaq W

[33] The numbers show a net loss of 1,020 litres of ULSK when the invoice issued by Woodward is compared to the ship's pump logs. However, there is also a net gain of 3,200 to 4,296 litres when the invoice is compared to the ullage reports. Discrepancies with respect to the volumes of hydrocarbons on board a tanker after a delivery can be expected because of movement of the cargo, wind and sea conditions, as well inaccurate gauges or misreading. For the purposes of this offer letter, no conclusion is drawn from the Woodward figures, save that the Woodward logs do not exclude the *Tuvaq W*'s cargo as the source of the spill.

[34] For its part, Woodward asserted that the mystery spill was caused by a shore-side spill from a disused tank at a former grocery store. Woodward indicated that, later in 2020, it participated in an environmental response at the site of the former Postville grocery store. This event was presented as the most plausible explanation for the release.

[35] No evidence has been identified which supports Woodward's contention that the tank at the former grocery store discharged fuel into the water at the material times. No witness observed oil pollution from the former grocery store at the time of the incident. This despite numerous land-based surveys of the area which would be expected to observe oil from the former grocery store if it had been the source of the discharge.

[36] More generally, information provided by the CCG shows that the CCG and Nunatsiavut officials inspected all plausible sources of a shoreside release. No responder observed evidence of a land-based leak or spill, including during visual checks of the following shore-side sites:

- Aurora Energy fuel storage tanks;
- NL Hydro diesel generating plant, fuel storage facility, and discharge areas for water from with the dyked area of the facility;
- Woodward's fuel storage facility and the discharge areas for water pumped from within the dyked area of the facility;
- Fuel storage tanks in the Postville community, including the storage tanks at the school, community centre and the former grocery store;
- Town land fill site and drainage area;

- Sewage outfalls;
- The dock area including the lift station located near the dock; and
- Scrap metal and old vehicle storage areas.

[37] A shoreline survey was also carried out by an officer with the Department of Digital Government and Service of Newfoundland and Labrador, beginning on 11 June 2020. The survey covered the entire shoreline from Sandy point (300 metres southwest of the Woodward and NL Hydro oil handling facilities) to the drainage area for the Postville landfill (750 metres north from the ferry terminal). In the area of the Postville dock, an oil sheen was detected that extended along the shoreline to just short of the drainage area of the landfill side, but no land-based source was identified as being associated with this sheen. An examination of the oil handling facilities and their drainage areas, as well as the various tanks in town, did not identify a leak or spill.

[38] The Fund obtained a photograph taken during the overflight on 7 June 2020:

Figure 3 – The Tuvaq W on 7 June 2020 at Postville (source PAL Aerospace) with annotations added

[39] The grocery store pointed to by Woodward as the origin of the spill is not in a location which is consistent with the location of the slick observed on 7 June 2020.

[40] In short, no evidence of a shore-side release was found, and the surveys carried out would likely have found such evidence had the cause of the discharge been shore-side.

[41] Conversely, the *Tuvaq W* was an oil tanker in the process of discharging its cargo in the approximate area where the sheens were first observed, shortly before the sheens were observed and the smell of hydrocarbons was noted in the community. The logs from that ship do not allow it to be ruled out as the source of the oil pollution.

[42] On the available evidence, it would not be appropriate to conclude that the discharge which caused this incident was *not* from a ship. The CCG's claim is therefore not disallowed pursuant to subsection 105(4) of the MLA.

FURTHER FINDINGS AND DETERMINATIONS

Eligibility of the claimant

[43] The CCG is an eligible claimant and the Incident occurred within the territorial sea or internal waters of Canada.

[44] An oily sheen was observed in the water near Postville. This constitutes oil pollution damage. Measures taken in response to the Incident might qualify as reasonable and may therefore be eligible for compensation.

[45] The claim is therefore determined to be eligible for compensation under section 103 of the MLA, subject to an examination of the costs claimed.

CLAIM AND OFFER DETAILS

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

[47] The CCG's costs as claimed are summarized below, followed by an examination of each schedule.

Schedule	Claimed
1 – Material and supplies	$4,038.51
3 – Travel	$11,191.49
4 – Salaries – Full time personnel	$6,081.14
5 – Overtime – Full time personnel	$10,586.93
13 – Administration	$752.64
Total	**$32,650.70**

Table 4 – Summary of claimed expenses

[48] With respect to the bulk of Schedule 1 costs, it is not clear that the items claimed for were actually used in the response. Specifically, the claim is for sorbent boom ordered by the CCG and shipped to it on 12 June 2020.

[49] The log of the *George R. Pearkes* indicates that on 10 June 2020 its crew deployed approximately 80 feet of boom near the Postville wharf. Another 100 feet was placed near the ferry dock. The boom was retrieved and restored on 11 June. There is no indication that this boom was disposed of or otherwise needed to be replaced. The sorbent materials kept aboard the *George R. Pearkes* were not apparently deployed.

[50] The claim documentation indicates that on 12 June 2020, "soiled sorbents were collected and stored onboard the "*CCGS George R Pearkes*" for transport and disposal"; however, no other descriptive or quantitative information is provided to indicate whether the soiled sorbent was part of the purchase of sorbent boom. As well, by 11 June, the sheen on the water was apparently unrecoverable.

[51] There is also a statement that "arrangements were made with local officials to store unused sorbents in Postville."

[52] In short, while it is accepted that the CCG purchased sorbent materials for the response, and that those materials are part of its claim, the evidence is not clear that those materials were actually used. Further, while there is clear evidence that some materials and equipment were used, it is not clear those materials were damaged or otherwise needed to be replaced.

[53] Claimants should be aware of the importance of itemizing the use of disposable items when submitting claims.

[54] In the result, the portion of the claim relating to Schedule 1 items is rejected, save for $119.31 for waterproof notebooks and pens used during the response, which is accepted.

[55] The claims for salary and overtime, at Schedules 4 and 5, require some consideration. By 11 June 2020, the observable sheen around Postville had dissipated to approximately 354 litres. The CCG deemed it to be unrecoverable. On 12 June an overflight in the area observed no oil pollution at all. The CCG continued its response for two more days thereafter before ending its deployment on 15 June.

[56] In other circumstances, it might have been unreasonable for the CCG to continue its operations after 12 June. There may be little to be gained in continuing a response where the observable oil is unrecoverable or no further oil can be observed, as was the case by the end of the day on 12 June.

[57] However, it must be acknowledged that the CCG was dealing with a mystery spill. The source of the discharge, to the extent it was not the *Tuvaq W*, had not been identified. As well, as noted in Figure 2, a further sheen was observed on 13 June. This indicates that the local conditions were dynamic, and that a decision to end the deployment after a single day of no observable sheen may have been inappropriate. Therefore, it is considered that, on the available evidence, it was reasonable for the CCG to continue its deployment on 13 and 14 June, before demobilizing on 15 June. The salary and overtime expenses are allowed.

[58] The travel expenses are accepted. It is noted that the original plan was to have a CCG crew member flown directly to Postville by charter, but the local runway proved to be too short. This necessitated that officer to travel first to Goose Bay. While this was not ideal, in the circumstances including the urgent need to have CCG officers attend at the scene, the expense is accepted. The other travel costs are accepted as reasonable and in line with government policy.

[59] The administration cost requires a minor adjustment. The rate of 3.09% as applied to materials and supplies, travel and full-time salaries has been accepted by the Administrator as reflecting underlying costs of administering CCG resources used in responses. The administration cost claim was recalculated to reflect reductions with respect to Schedule 1 expenses.

Accepted Costs for Administration Consideration	
Description of Accepted Costs	**Amounts**
1 – Materials and supplies	$119.31
3 – Travel	$11,191.49
4 – Full time personnel salaries (less 20% EBP)	$5,067.62
Subtotal	$16,378.42
Administration cost – 3.09% of subtotal	**$506.09**

Table 5 - Administration cost calculation

OFFER SUMMARY AND CLOSING

[60] The following table summarizes the claimed and allowed expenses.

Schedule	Claimed	Offered
1 – Materials and supplies	$4,038.51	$119.31
3 – Travel	$11,191.49	$11,191.49
4 – Salaries – CFT personnel	$6,081.14	$6,081.04
5 – Overtime – CFT personnel	$10,586.93	$10,586.93
13 – Administration	$752.64	$506.09
TOTAL	**$32,650.70**	**$28,484.86**

Table 6 - Total allowed claims

[61] Costs and expenses in the amount of $28,484.86 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

***

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

[63] 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.

[64] 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.

[65] 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.

[66] 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