



## OFFER LETTER

Ottawa, 21 February 2023  
*SOPF File: 120-924-C1*

### VIA EMAIL

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

**RE: MV *Big T*— Victoria Harbour, British Columbia**  
**Incident date: 2020-07-15**

---

### SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a fishing vessel registered under the name *Big T*. That vessel was involved in a number of sinking or partial sinking events in Victoria Harbour, British Columbia on and around 15 July 2020 (the “Incident”).

[2] On 12 July 2022, 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”) totaling \$29,006.18 for costs and expenses arising 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 \$22,868.59 (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.

## **THE SUBMISSION RECEIVED**

[5] The submission includes a narrative that describes events relating to the Incident. It also contains documents in support of the CCG's claimed costs. With minor exceptions, those documents corroborate the claim and warrant no comment.

## **DETERMINATIONS AND FINDINGS**

### **The CCG's factual account of the Incident is accepted**

[6] The narrative provided by the CCG described the Incident. The narrative is accepted as a substantially accurate account of the events surrounding the oil pollution Incident involving the *Big T*. The facts as found are as follows.

[7] The *Big T* was a wooden-hulled (ex) fishing vessel of unknown displacement. It was 11.28 metres long and 3.35 meters at the beam. The hull was constructed of fiberglass over plywood. According to the survey report prepared by Meadows Marine Surveyors Ltd., the *Big T* was in poor condition, with unsound seams, decayed planking and extensive structural damage.

[8] The exact fuel capacity of the *Big T* is not known, but it reportedly had 400 litres of diesel on board at the outset of the Incident.

[9] There was a prelude to the Incident on 14 July 2020, when the owner of the *Big T* flagged down a CCG vessel in Victoria harbour. The owner said he had run out of fuel and requested a tow. The CCG assisted him at that time.

[10] The following morning (15 July 2020), the CCG received a pollution report from the manager of a building adjacent to Pier 1. The *Big T* had apparently arrived at Pier 1 overnight and was now taking on water at a concerning rate.

[11] The CCG dispatched an Environmental Response ("ER") team to assess the *Big T*. After they arrived, the team was advised by the owner of another ship at Pier 1 that he had already pumped out the *Big T* once and was now retrieving his pumps.

[12] At some point, the owner of the *Big T* arrived at the scene. His responsibilities as the owner of a vessel at risk of polluting were explained to him, and he acknowledged that he lacked the financial resources to carry out the necessary measures.

[13] The CCG arranged to have a contractor tow the vessel. The CCG escorted the contractor during the tow. After the tow, the *Big T* was removed from the water.

[14] Five days later, on 20 July 2020, the manager of the facility where the *Big T* had been landed called the CCG and advised that the owner was attempting to relaunch the vessel. The owner had apparently repainted the hull but had not carried out substantive repairs to address the seaworthiness issues.

[15] The CCG dispatched two response specialists to the scene. They issued the owner a formal direction order to take measure with respect to the *Big T*. The owner never complied.

[16] Shortly after the response specialists departed, the CCG received a phone call. The *Big T* had just discharged oil pollution into the facility's grounds.

[17] On 23 July, the owner advised the CCG that he lacked resources to repair the *Big T*. Nevertheless, he wanted to relaunch it as soon as possible.

[18] A surveyor assessed the *Big T* on 27 July, and the results were presented to the owner in person on 8 August. The owner responded by walking away.

[19] On 20 August, the CCG initiated a process to dispose of the vessel. It was deconstructed on 21 October.

#### The submission is admissible

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

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

[22] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.

[23] 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. Alternatively, those costs and expenses arise from 'preventive measures', as contemplated under the International Convention on Civil Liability for Bunker Oil Pollution Damage. In either case, some of the claimed costs and expenses are potentially eligible for compensation.

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

[25] Determinations are required with respect to the extent to which the measures taken by the CCG were reasonable.

The costs and expenses claimed

[26] The CCG submission summarizes its \$29,006.18 in claimed costs as follows:

MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	22,247.69	2
TRAVEL	144.30	3
SALARIES - FULL TIME PERSONNEL	886.81	4
OVERTIME - FULL TIME PERSONNEL	1,252.79	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)	4,316.16	11
VEHICLES	131.14	12
ADMINISTRATION	27.29	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 29,006.18</u>	

*Figure 1 – Screen capture of the cost summary*

Findings on reasonability

[27] The *Big T* posed a clear, if limited, risk of discharging oil pollution.

[28] The initial response, including having the vessel towed, is accepted as measures reasonably taken with respect to oil pollution. However, the reasonability of having a CCG team escort the contractor carrying out the tow has not been established on the evidence. While the CCG submitted that they needed to escort the vessel in case it discharged oil, it appears that the contractor had addressed this issue. The need for the CCG to escort the contractor has therefore not been established, so costs related to the tow are disallowed.

[29] This disallowance reduces the travel, salary, overtime, pollution counter-measures equipment and administration costs.

[30] After the tow was completed, the ship was removed from the water. Eventually it was deconstructed. It is often difficult to determine whether the costs of surveying and then deconstructing a ship are a reasonable measure taken with respect to oil pollution. Once a

ship is removed from the water, it typically ceases to be an oil pollution threat. The need to deconstruct a landed vessel must be established on the evidence.

[31] In this case, it is accepted that the owner of the vessel was incorrigible. He persisted with efforts to relaunch the ship despite its obvious seaworthiness problems. As well, the survey established that the ship was a hazard, and deconstruction prevented him from relaunching the ship which could be expected to cause a ship-source oil pollution incident.

[32] In light of those findings, the costs of the survey and deconstruction are accepted as having been reasonably incurred. It is noted that the *Big T*'s engine was sold, and that the amounts recovered from this have appropriately reduced the amount of the claim.

[33] Storage on land is not inherently a measure taken with respect to a risk of ship-source oil pollution. As with claims for deconstruction, claims for the costs of storing a ship after removing it from the water must be established with evidence. In this case, it was reasonable to pay for storage costs up to the point that the owner, faced with the survey, walked away from the ship. Thereafter, it is not clear why the vessel continued to be stored. Costs up to that date (8 August) are accepted, which means that 25 days at \$37.50 per day (total \$937.50) is considered reasonable.

### **OFFER SUMMARY AND CLOSING**

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

Schedule	Cost claimed	Recommendation
1 – Materials & Supplies	nil	nil
2 – Contract Services	\$22,247.69	\$21,617.69
3 - Travel	\$144.30	\$41.80
4 - Salaries - CFT personnel	\$886.81	\$886.81
5 - Overtime - CFT personnel	\$1,252.79	\$61.62
6 - Other allowances	nil	nil
7 – Salaries Casual Personnel	nil	nil
8 – Ships Costs (excluding fuel & overtime)	nil	nil
9 – Ships propulsion fuel	nil	nil
10 – Aircraft	nil	nil
11 - Pollution counter-measures equipment (PCME)	\$4,316.16	\$106.66
12 - Vehicles	\$131.14	\$131.14
13 - Administration	\$27.29	\$22.87
<b>Total</b>	<b>\$29,006.18</b>	<b>\$22,868.59</b>

*Table 1 – Summary of amounts claimed and allowed*

[35] Costs and expenses in the amount of \$22,868.59 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

\*\*\*

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

[37] 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.

[38] 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.

[39] 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.

[40] 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