



OFFER LETTER

Ottawa, 13 April 2023
SOPF File: 120-934-C1
CCG File:

VIA EMAIL

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

RE: FV *Lurch* — Deep Bay, Vancouver Island, British Columbia
Incident date: 2020-11-09

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a motor vessel registered under the name *Lurch* (“vessel”). The vessel became partially submerged in Deep Bay, Vancouver Island, British Columbia on 9 November 2020 (the “Incident”).

[2] On 1 November 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 \$84,205.61 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 \$55,087.42 (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 generally 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 *Lurch*. The facts as found are as follows.

[7] On 9 November 2020 at 0845, the owner of the vessel *Lurch* reported to the CCG that his vessel sank and was partially submerged in Deep Bay, Vancouver Island.

[8] The *Lurch* was a carvel/flushed wood-hulled ex-fishing vessel built in 1946, measured at 41.4 ft long and equipped with one diesel engine. According to the CCG submission and in the 2016 photographs provided by the manager of the Deep Bay Harbour Authority, the *Lurch* was in poor condition at the time of the Incident.

[9] The exact fuel capacity of the *Lurch* was not initially known. An initial estimate by the owner indicated that it had 30 gallons (approx. 114 litres) of diesel on board. It was later discovered that the vessel in fact held more, CCG personnel removed 150 litres of diesel and 70 litres of hydraulic and engine oils.

[10] The CCG search and rescue lifeboat *Cape Kuper* was the first CCG responder to attend at the scene. It arrived at 1015. The CCG observed that a light continuous oil sheen was upwelling around the *Lurch* and that the bow was above the waterline. The *Lurch* was tied to a mooring dock located southwest of the Deep Bay breakwater and beyond the limits of the Deep Bay Harbour Authority.

[11] At 1151, Transport Canada's Dash 8-100 aerial surveillance aircraft (Transport 951) arrived on scene to conduct an overflight of the area. Aerial surveillance photographs show a light sheen tailing northwesterly from the vessel, and the estimated minimum amount of pollution was 1.6 litres.

[12] CCG engaged Western Canada Marine Response Corporation (WCMRC) to deploy boom around the vessel. The vessel was contained by 2000. CCG also engaged Colmor Marine & Salvage (Colmor) to raise and tow the vessel for its eventual removal from the water.

[13] On 10 November 2020, CCG personnel and Colmor transported a pollution response vessel II (PRV II, CCG 734) from Victoria to Deep Bay. When they arrived on site, they began the refloating operations. That afternoon, a diver plugged the fuel vents, but the *Lurch* continued to release minimal amounts of oil into the contained area.

[14] On 11 November, CCG removed the surface oils and floating debris from within the boomed area, and Colmor refloated the *Lurch*. The vessel was then towed to Union Bay, but unsafe weather conditions arose upon arrival, preventing them from bringing the vessel into the Bay facilities. They continued instead to Comox Harbour to secure the *Lurch* until it could be moved back to Union Bay.

[15] On 12 November, CCG assessed the vessel condition and returned to Victoria to pick up equipment for lightering the vessel of its fuel and oils.

[16] On 13 November in the afternoon, CCG returned to Comox.

[17] In the morning on 14 November, CCG removed diesel, hydraulic, and engine oils. By 1430, Colmor had towed the vessel back to Union Bay where it remained secured until it was removed from the water.

[18] On 19 November by 1145, Colmor removed the *Lurch* from the marine environment and placed it ashore. During the week of 23 November, it was deconstructed and disposed of because of the vessel's poor condition and the ongoing pollution risk it posed with its residual oils.

The submission is admissible

[19] 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.

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

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

[22] 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.

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

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

Individual costs and expenses

[25] The CCG submission summarizes its \$84,205.61 in claimed costs as follows:

INCIDENT:	FV THE LURCH	PROJECT CODE:	FHUJ7
INCIDENT DATE:	November 9, 2020	DATE PREPARED:	October 5, 2022
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:	
			<u>SCH</u>
MATERIALS AND SUPPLIES		-	1
CONTRACT SERVICES		\$60,413.87	2
TRAVEL		\$2,662.54	3
SALARIES - FULL TIME PERSONNEL		\$4,604.70	4
OVERTIME - FULL TIME PERSONNEL		\$9,936.22	5
OTHER ALLOWANCES		\$0.00	6
SALARIES - CASUAL PERSONNEL		\$0.00	7
SHIPS' COSTS (EXCL. FUEL & O/T)		\$0.00	8
SHIPS PROPULSION FUEL		\$0.00	9
AIRCRAFT		\$0.00	10
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)		\$5,971.15	11
VEHICLES		\$416.28	12
ADMINISTRATION		\$200.84	13
		<hr/>	
TOTAL CCG COST OF INCIDENT		<u>\$84,205.61</u>	

Figure 1 – Screen capture of the cost summary

Findings on reasonability

[26] The majority of the response is accepted as measures reasonably taken with respect to oil pollution. However, some of the costs have not been established on the evidence and are not accepted.

[27] Schedule 2 sets out claimed costs for contract services—\$60,413.87. The amount of \$37,467.70 is offered with respect to this portion of the claim.

[28] There were three contractors engaged in the response operation: Western Canada Marine Response Corp. (WCMRC), Colmor Marine Group Inc. (Colmor), and Terrapure Environmental (Terrapure). The CCG reimbursed WCMRC \$16,055.14 in total—\$11,090.31 for the initial mobilization, the deployment and monitoring of containment boom, and \$4,964.83 for demobilization. CCG reimbursed Colmor \$28,355.25 for the refloating and removal of the vessel and \$14,873.25 for its disposal. CCG reimbursed Terrapure \$1,130.23 for the transportation and disposal of oily wastes and paint cans recovered from the vessel.

[29] The costs incurred by WCMRC on November 9 and 10 are reasonable and accepted. The cost for the boom is reduced to 14.5 hours of use (when the vessel was towed

from the Incident site at 1425 on 11 November) but still includes recovery costs based on those incurred on 2 December. This partial disallowance is due to CCG's arrangement with Transport Canada (TC) to keep the boom in place after the *Lurch* was removed from the Incident site.

[30] The narrative included in the claim submission does not mention this arrangement, but it was indicated in the two invoices from WCMRC and acknowledged in subsequent requests for information from the Fund. In this correspondence, CCG stated, "all boom and labour costs from November 12th [sic], 2020 onwards were assumed by TC because they were not part of CCG's response," and that "CCG paid for the costs associated with demobilization on December 3rd, 2020."¹

[31] CCG did not require boom at the Incident site once the vessel was towed from the area on November 11. TC requested that the boom remain in place around the mooring site and debris, and that it would pay the associated costs to maintain the boom in place. CCG indicated that there was a splitting of costs with TC related to the deployment of boom and associated labour costs incurred by WCMRC. CCG's portion of WCMRC's costs were for the first three days of the response and demobilization.²

[32] By having the boom remain in place for the purpose other than oil pollution countermeasures, TC effectively took over the responsibilities to manage the contractor (WCMRC). Thus, CCG's obligation towards WCMRC ended when TC took over responsibility for the boom, including the costs incurred with the boom removal and equipment decontamination.

[33] The CCG reimbursed Colmor a total of \$43,228.50—\$28,355.25 for refloating and removing the *Lurch* and \$14,873.25 for disposing of it. Most of these costs are reasonable and accepted. Some of the costs are not accepted as they are not reasonable or established in the evidence. The amount of \$30,313.50 is offered for these costs.

[34] It was reasonable to have the vessel towed to Union Bay, where it was subsequently secured and lifted from the water. The evidence does not establish the decision to forego securing the vessel in the Union Bay facilities on 11 November. The detour to Comox and associated costs are not established or accepted as the vessel was ultimately secured in Union Bay during weather conditions which were very similar to those which allegedly prompted the redirection to Comox. Accordingly, the costs claimed for approximately two hours of towing to and from Comox and the overnight standby personnel hours for 11-12 November are rejected.

[35] Terrapure was reimbursed \$1,130.23 for transporting and disposing of toxic wastes from the vessel. These claimed costs are reasonable and accepted in full.

¹ CCG ER Cost Recovery RSP email of December 13, 2022, 1:56 PM.

² In its email of December 13, CCG stated that its portion of the costs incurred by WCMRC was associated with three days of boom deployment (November 9-11) and demobilization (December 3). The December 3 costs are for the decontamination of the boom—it did not include the boom removal costs incurred on December 3.

[36] Schedule 3 sets out the claimed travel costs—\$2,662.54. These costs are reasonable and accepted in full.

[37] Schedule 4 sets out the claimed salary costs—\$4,604.70. This amount covers salary costs for four regular days, but one of the claimed dates was a statutory holiday (11 November) and hours worked on that day would be claimed as overtime (and appear to have been so claimed). It is concluded that the time claimed for November 11 was mistakenly included. The amount offered is accordingly reduced to \$3,453.54.

[38] Schedule 5 sets out the claimed overtime costs—\$9,936.22. The amount of \$7,278.27 is offered, as adjusted for the overtime costs which are established in the evidence provided. There is little documentation reviewing the work performed, so the submitted CCG EDP forms are reviewed in comparison to the contractor information.

[39] On 11 November, a statutory holiday, overtime is claimed for 0600 to 2400. After the *Lurch* was dewatered and lifted out, it was towed to Comox by 1930 after which time only Colmor remained on site to monitor the vessel overnight. The overtime costs for 1930 to 2400 are not established and are therefore rejected.

[40] On 12 November, overtime is claimed by response officers for 1400 to 2000 and a third for one hour for 0000 to 0100. The CCG field notes do not include any entry of work done matching to those times, and the Daily Trip Report for vehicle use indicates that it returned to base at 1421 with a reasonable amount of time allotted after arrival to secure the vehicle. Accordingly, costs claimed after 1500 are not established and are not accepted, nor for the one hour of 0000 to 0100 claimed.

[41] On 13 November, overtime is claimed by response officers for 6.5 hours (1400 to 2030) and by one response officer for 5.5 hours (1500 to 2030). There are no CCG field notes submitted for that day. CCG's only work that day was returning to Comox, an approximately three hour drive which could have been completed during normal working hours. These hours are rejected.

[42] On 14 November, overtime is claimed for each response officer for approximately fourteen hours, with the exception of one member who claimed an additional 1.25 hours at the X1.75 rate. Given the absence of supporting documentation for this difference, it is reduced to 6.5 hours to align with the other two response officers' hours.

[43] On 15 November, overtime costs are claimed for one response officer. There is no evidence establishing these incurred costs; they are not accepted.

[44] Schedule 11 sets out the claimed pollution countermeasure equipment costs—\$5,971.15. These costs are partially accepted. An amount of \$3,582.69 is offered. These costs were incurred for the use of a PRV II. The initial costs for 10-12 November are accepted, but there is no evidence establishing its use on 13 and 14 November. The costs incurred on these two days are therefore rejected.

[45] Schedule 12 sets out the claimed vehicle costs—\$416.28. An amount of \$482.51 is offered, which is more than the amount identified by the CCG for this item in its materials. This increase is due to accounting for the daily rate of \$65.57 for the vehicle (CCG Truck

19-802), plus a kilometric rate of \$0.22/km for 703 km over five days. The evidence establishes this higher use, and the increased award on this item still fits within the total amount claimed by the CCG.

[46] Schedule 13 sets out the claimed administrative costs, but there is a discrepancy between the cost summary and the actual Schedule. The cost summary page indicates \$200.84, but the Schedule sets out \$177.03. The administration costs cover travel and salaries. As the accepted cost for salaries is different than that claimed (see above at paragraph 36), the accepted administration cost is accordingly reduced. An amount of \$160.17 is offered.

OFFER SUMMARY AND CLOSING

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

Schedule	Claim Amount	Offer Amount
1 – Materials & Supplies	nil	nil
2 – Contract Services	\$60,413.87	\$37,467.70
3 - Travel	\$2,662.54	\$2,662.54
4 - Salaries - CFT personnel	\$4,604.70	\$3,453.54
5 - Overtime - CFT personnel	\$9,936.22	\$7,278.27
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)	\$5,971.15	\$3,582.69
12 - Vehicles	\$416.28	\$482.51
13 - Administration	\$200.84	\$160.17
Total	\$84,205.61	\$55,087.42

Table 1 – Summary of amounts claimed and allowed

[48] Costs and expenses in the amount of \$55,087.42 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[50] 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.

[51] 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.

[52] 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.

[53] 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.
Administrator, Ship-source Oil Pollution Fund