



OFFER LETTER

Ottawa, 11 March 2024
SOPF File: 120-959-C1

BY EMAIL

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*Via email to [DFO.CCGERCostRecoveryRSP-
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**RE: UNKNOWN NAME (Ladysmith Harbour) – Ladysmith, British Columbia
Incident Date – 2021-12-24**

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the vessel with an unknown name (the “Vessel”), which sank on or about 24 December 2021, near Ladysmith, British Columbia (the “Incident”).

[2] On 28 June 2023, 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 totaling \$61,856.62 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 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”).

[4] The amount of \$10,064.20 (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.

[5] The reasons for the Offer are set forth below, along with a description of the CCG's submission.

THE SUBMISSION RECEIVED

[6] 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. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

The narrative

[7] According to the narrative, on 24 December 2021, the CCG duty officer was notified that a vessel was taking on water in Ladysmith Harbour, British Columbia. Saltair Marine Services Ltd ("Saltair") was in the area to conduct an assessment for another vessel close by. The narrative indicates that, according to Saltair's report, the vessel was actively polluting. The vessel had a wooden hull, and was in a state of disrepair with clear degradation to the hull. Saltair also reported a sheen around the vessel. CCG accepted that the vessel was at risk of sinking completely and that a response was warranted.

[8] The CCG contracted Saltair to deploy containment boom around the vessel, and attempt to raise the vessel with salvage pumps. While the pumps helped keep the vessel from sinking, Saltair was unable to raise the vessel due to large amounts of water ingress. Saltair was unable to board the vessel due to large quantities of garbage on board. The owner was unable to be located. The CCG determined that the only way to eliminate the pollution threat was to remove the vessel from the marine environment.

[9] At 1718 hours, Saltair successfully raised the vessel, then transported it to their facility in Ladysmith for a survey.

[10] On 1 April 2022 the survey was conducted by Frykas Marine Services Ltd ("Frykas"). It determined the hull was soaked in oil, and could not be returned to the marine environment.

[11] In August 2022, the vessel was transported to the facilities of Khowutzun Industrial & Joint Venture ("Khowutzun") for deconstruction. That concluded the CCG operation.

Cost summary

[12] The CCG submission summarizes the claimed costs as follows:

Schedule	Cost claimed (\$)
1. Material and supplies	Nil
2. Contract services	61,856.62
3. Travel	Nil
4. Salaries – Full time personnel	Nil
5. Overtime – Full time personnel	Nil
6. Other allowances	Nil
7. Salaries – Casual personnel	Nil
8. Ship costs (excluding fuel & overtime)	Nil
9. Ship propulsion fuel	Nil
10. Aircraft	Nil
11. Pollution countermeasures equipment	Nil
12. Vehicles	Nil
13. Administration	Nil
Total claim	61,856.62

Figure 1: Screen capture of the claim cost summary

DETERMINATIONS AND FINDINGS

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

[13] 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.

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

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

[16] 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.

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

Findings on the evidence submitted by the CCG

The evidence submitted is largely insufficient to support a claim

[18] This submission suffers from a lack of evidence.

[19] No CCG officers attended at the scene to inspect the vessel during the incident.

[20] Photographs show that the vessel was in a similar state of disrepair on days prior to the supposed incident date. The narrative suggests a change in its condition took place. The evidence does not assist in resolving this point of confusion.

[21] Similarly, the narrative indicates that contractors surrounded the vessel with boom. The pictures show the placement of boom did not surround the vessel, but instead surrounded a sunken ship adjacent to the vessel. Again, the evidence is insufficient to allow this confusion to be resolved.

[22] The narrative indicates that the vessel was deconstructed as the ship itself posed an oil pollution threat. Deconstruction can be a valid measure taken with respect to a ship-source oil pollution threat, including where the evidence demonstrates that such a measure has been reasonably taken to avoid ship-source oil pollution damage. There is no such evidence.

[23] On that specific issue, the narrative indicates that the survey prepared by a contractor found that the vessel was “oil soaked” and “the vessel would pose a risk of oil pollution discharge if returned to the marine environment”. That would constitute evidence of a need for deconstruction. However, the narrative is inaccurate. No such statements could be located in the survey report. The survey report does not even mention “oil” or “pollution”. The furthest the report goes to conclude the vessel is a “constructive total loss being an environmental and financial liability” and indicating that the vessel should be disposed of in an “environmentally responsible manner”. These comments apply to almost every vessel beyond its economic service life, whether the vessel constitutes an oil pollution threat or not.

[24] The narrative indicates that the vessel was the source of an oily sheen in the water. The evidentiary basis is apparently a report from the contractor on the scene (i.e. the contractor who alerted the CCG to the incident in the first place). Again, no direct documentation is available, and any notes that were taken about the report from the contractor have been omitted, rendering this assertion double hearsay at best. Moreover, there is no explanation as to how it could be determined that the oil originated from this particular vessel and not one of the numerous other vessels in the area (including one that had apparently sunk and been boomed).

[25] In short, there is very little evidence to establish that a ship-source oil pollution incident occurred at all, let alone to establish the reasonableness of the moderately expensive measures taken.

The photographs are useful evidence

[26] While the documentary evidence in this claim is lacking, photographs were included in the submission. Those photographs are somewhat helpful.

[27] The photographs demonstrate that the vessel was listing in the water and in generally poor condition. Debris attached to the vessel included a jerry can, which is typically used as a container for hydrocarbons.

[28] Based on that evidence, it was reasonable for the CCG to have the vessel monitored and then removed from the water, along with associated environmental containment efforts. The costs of those measures are set out in Saltair Marine invoice 1265.

[29] Invoice 1265 is generally accepted save that it includes storage for 53 days. Owing to the Christmas holidays, nine days of storage to allow the vessel to be inspected for a continuing hydrocarbon threat would have been reasonable. Notably, the vessel was not inspected during that time, or apparently at all for the purposes of evaluating it as an oil pollution threat, and therefore storage costs beyond nine days are rejected.

[30] The other contract expenses, including for the deconstruction of the vessel, additional storage, and the survey are not shown by the evidence to have been incurred as measures taken with respect to ship-source oil pollution. They are therefore rejected.

The contract services portion of the submission is accepted in part in the amount of \$10,064.20.

OFFER SUMMARY AND CLOSING

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

Schedule	Cost claimed (\$)	Offer \$
Material and supplies	Nil	Nil
Contract services	61,856.62	10,064.20
Travel	Nil	Nil
Salaries – Full time personnel	Nil	Nil
Overtime – Full time personnel	Nil	Nil
Other allowances	Nil	Nil
Salaries – Casual personnel	Nil	Nil
Ship costs (excluding fuel & overtime)	Nil	Nil
Ship propulsion fuel	Nil	Nil

Schedule	Cost claimed (\$)	Offer \$
Aircraft	Nil	Nil
Pollution countermeasures equipment	Nil	Nil
Vehicles	Nil	Nil
Administration	Nil	Nil
Total claim	61,856.62	10,064.20

Table 1 – Summary of amounts claimed and allowed.

[32] Costs and expenses in the amount of \$10,064.20 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[33] 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.

[34] 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.

[35] 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.

[36] 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 its claim, and further it must cooperate with the Fund in its subrogation efforts.

Yours sincerely,

Chiamaka Mogo, MPPGA
Deputy Administrator, Ship-source Oil Pollution Fund