



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

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

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VIA MAIL AND EMAIL

Senior Director of Incident Management, Response Directorate
Canadian Coast Guard
200 Kent Street (5N177)
Ottawa, Ontario K1A 0E6

RE: *M/V TINKER II* – Campbell River, British Columbia
Incident date: 2018-01-20

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the vessel M/V TINKER II. The vessel was involved in incident on or about 20 January 2018, in or near Campbell River, British Columbia (the “Incident”).

On 7 January 2020, the office of the Administrator of the Ship-source Oil Pollution Fund received on the Administrator’s behalf a submission from the CCG. The submission advances claims totaling \$8,979.14 for costs and expenses arising from measures taken by the CCG in respect of the Incident.

The submission has been investigated and assessed as a submission to the Administrator under s. 103 of the *Marine Liability Act* (the “MLA”). Based on the investigation and assessment the Administrator has made determinations, including on what compensation is available.

This letter advances an offer of compensation to the CCG pursuant to sections 105, 106 and 116 of the MLA. Also provided in this letter are a description of the CCG’s submission and an explanation of the determinations reached by the Administrator.

The claim is allowed, in part. The amount of **\$3,892.56** (the “Offer”), plus statutory interest to be calculated at the time of payment in accordance with s. 116 of the *MLA*, is offered with respect to this claim.

The reasons for the Offer are set out below.

THE SUBMISSION RECEIVED

The submission includes a narrative that describes certain events relating to the Incident.

The submission also includes a summary of the costs and expenses claimed, backup documents related to some of those claimed costs and expenses, and documentation from contractors for work performed.

To the extent that those documents are relevant to the determination, they are reviewed below.

The narrative

According to the narrative, on 20 January 2018, “ROC Alerting Desk reports a 36ft Bayliner adrift [in] Discovery Passage. Campbell River Lifeboat Station tasked to respond. Vessel became stranded ashore near the ferry dock. Vessel name Tinker II, amount of fuel on board unknown and no owner. Campbell River Lifeboat Station unable to tow vessel from shore. Vessel tied off to shore to be re-assessed in the morning.”

On 21 January 2018, “Vessel owner has been located and advised of his responsibilities. ER to monitor his response. Vessel remained stranded and partially submerged through several tide cycles causing the vessel to be impacted by logs and rocks. Vessel should be removed from the marine environment to mitigate any threat of pollution.”

On 22 January 2018, “Owner was unable to respond appropriately. Contractor, Rilaur Enterprises Ltd., was hired and vessel craned ashore. Contractor kept a watch over vessel throughout the night. Vessel to be trailered out of the area once equipment is available. Building Sea Marine, [surveyor’s name], to survey vessel on Jan 24th.”

On 24 January 2018, “ER personnel, responding to another incident in Comox [...], were able to proceed to Campbell River to assess and attend the survey of the Tinker II. Vessel contained fuel tanks, however, unable to access and verify amount of fuel on board. Engine compartment contained oily debris. Two engines and two fuel tanks were later removed from the vessel. Remaining fuel, one barrel (approximately 200 liters) was removed from the fuel tanks. Survey concluded vessel was a wreck with no value and could not be rebuilt to a seaworthy status. Vessel was trailered from location and stored at Rilaur Enterprise Ltd.. Yard [to] await deconstruction.”

On 25 January 2018, “Tinker II has been deconstructed and disposed by Rilaur Enterprises. This incident is considered closed.”

Follow up questions to the CCG

On 30 January 2020, a request was sent to the CCG for further information and evidence in support of the claims submitted with respect to the M/V TINKER II. The information and evidence sought related to the vessel owner and explanations for apparent double billing of GST and other expenses.

DETERMINATIONS AND FINDINGS

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

The Incident resulted in damage suffered within the territorial seas of Canada, as well as in costs and expenses to carry out measures to avoid or minimize further damage. As a result, claims arising from the Incident are potentially eligible for compensation.

The CCG is an eligible claimant for the purposes of section 103 of the MLA. The submission arrived prior to the limitation periods set out under subsection 103(2).

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 eligible for compensation.

For the foregoing reasons, it is determined that the submission presents claims that are potentially eligible for compensation under s. 103 of the MLA.

The facts presented by the CCG are generally accepted

The narrative presented by the CCG sets out the facts of the Incident in some detail. The version of events presented there is accepted as generally accurate.

The CCG chose not to share some documents relevant to the Incident when they were requested for the purposes of investigating and assessing the CCG submission. Had the requested documents been disclosed, a different determination may have been reached by the Administrator.

The M/V TINKER II initially posed a risk of discharging oil pollution

On 20 January 2018, the M/V TINKER II was stranded near the breakwater in Campbell River, British Columbia. While no pollution was sighted, the CCG was not aware of how much oil was onboard the vessel and considered that the vessel could sink or be broken open, possibly discharging oil as a result. As well, the CCG apparently could not immediately contact the vessel’s owner to find out how much oil was aboard the vessel.

Based on these circumstances, it has been determined that it was reasonable for the CCG to conclude that the vessel posed a threat of discharging oil into the marine environment and to take some measures to mitigate that threat.

It has not been established that the M/V TINKER II continued to pose a risk after being moved to hard land

By 21 January 2018, when the CCG determined that the vessel should be removed from the water, the vessel had been submerged and subject to tidal wash over several cycles. With no reports of oil pollution resulting, it is likely that any pollutants which had been exposed had been flushed out of the vessel. It is accepted that the rough weather conditions may have prevented observation of small releases of oil from the vessel, as so it is possible that small-scale releases occurred. Overall, it is determined that by this point, the M/V TINKER II posed a minor oil pollution threat, at most.

On 22 January 2018, a contractor shifted the placement of the M/V TINKER II to hard land using a crane. Thereafter, the vessel was blocked and secured on the shore. There were no reports of oil pollution from the vessel at this stage.

With the vessel shifting completed, so that the vessel was away from the location where it had been battered by waves and debris, it is not apparent that the M/V TINKER II remained a risk of discharging oil pollution into the water, at least in the reasonably foreseeable future. Nor do the documents submitted by the CCG establish that such a risk continued to exist. It is therefore determined that, except as is otherwise noted in this letter of Offer and Decision, further measures taken with respect to the M/V TINKER II were not reasonably taken for the purposes of responding to oil pollution damage or the risk thereof.

Inspection of the vessel

On 24 January 2018, three CCG ER response officers attended at the scene to inspect the vessel. This followed their attendance down the coast at Comox, B.C. to inspect another vessel of concern.

The submission does not explain why the CCG determined that three response officers were needed at the scene of the vessel. The total claim for the attendance includes 15 hours of work. No description of the work they were required to do is included in the submission. It is noted that the vessel was not deconstructed until 25 January 2018, so it is presumed that the CCG personnel were there to monitor the M/V TINKER II and perhaps to interact with the surveyor, who attended that day.

On the evidence, the need for one CCG personnel to attend for monitoring purposes at the M/V TINKER II on 24 January 2018 is established. It was reasonable for the CCG to have someone attend to observe the state of the M/V TINKER II. The need for more than one CCG crewmember to attend, however, has not been established and the claimed expenses for more than one crewmember to attend is disallowed.

The narrative provided by the CCG suggests that on 24 January 2018, the amount of oil aboard the vessel could not be determined. However, the documentation suggests that 200 liters of oil were removed from the vessel that day (although that removal documentation, found in an invoice from Rilaur Enterprises, is incomplete as the receipt for disposal of the oily waste is missing).

A survey was carried out by a surveyor with Building Sea Marine on 24 January 2018. The invoice for the survey indicates, “Survey to assess the current condition and salvage value of the vessel.” The survey does not focus on the presence of oil onboard the vessel or whether the hull or vessel as a whole constituted an oily waste.

The survey report makes assumptions about quantities of oil aboard the vessel (20 gallons of hydraulic oils and 100 mixed water/gasoline) but it does not appear these values are backed by measurements. The fact that the survey did not involve confirming the quantity of oil pollutants onboard the vessel supports the finding that the survey was not a measure taken with respect to a threatened discharge of oil from the vessel. It is determined that the survey report was procured by the CCG for other purposes, and as a result this portion of the claim has not been established.

Deconstruction of the vessel

The M/V TINKER II was deconstructed on 25 January 2018.

First, the fuel tanks and engine were removed from the vessel. Subsequently, the remainder of the vessel was deconstructed.

The CCG submission claims for the entire deconstruction of the M/V TINKER II. The claim does not establish how the vessel might have been considered an oil pollution risk even after its engine and fuel tanks were removed. These measures have not been established as reasonable.

CLAIM AND OFFER DETAILS

The submission breaks down the claim for costs and expenses into several categories. This section of the offer letter reviews each of those categories of claim in detail, and provides reasons as to why portions of the claim have been allowed or disallowed.

Schedule Two – Contract Services

Claim: \$8,225.93

The CCG claims for contract services provided by Rilaur Enterprises Limited (“Rilaur”) to respond to the M/V TINKER II. Rilaur first moved the M/V TINKER II up the beach to hard land, and then subsequently disposed of the vessel.

The initial CCG submission included an invoice from Rilaur that, during the assessment, was determined to be problematic. Double counting of GST, for example, was apparent. In response to questioning about the submission, the CCG produced a second, corrected invoice from Rilaur.

The CCG also produced an invoice from Building Sea Marine for the marine survey conducted on the vessel on 24 January 2018, as well as for a subsequent written report about the vessel.

The contractor claims in the CCG submission are summarized in the table below, together with observations made about the documents:

Table 1 - Observations on contractor documentation

Company	Work Performed	Invoice Cost and Comments
Prime Contractor #1		
Rilaur Enterprises Ltd Invoice	Manage salvage and disposal operation, subcontract work as identified on this table.	\$7,090.88 includes GST 5% on total of invoices from sub-contractors and 10.65% add on to manage Salvage and Disposal Operation. On February 7, 2020, CCG adjusted the invoice to \$6918.71. This removed the double counting of GST. This will be further reduced by the \$70.00 claimed by C and L for pick-up and delivery costs that were double counted. The Final Invoice Cost by Rilaur Enterprises Ltd is therefore \$6848.71.
Sub-Contractors to Prime #1		
RKM Crane Services Invoice	Truck/crane and operator to hoist out the Tinker II, Jan 22	\$714.00 includes GST 5%
Night Watchman Invoice	Overnight Jan 22/23	\$100.00
C and L Supply Invoice 122513	Excavator Jan 24/25 This invoice includes \$70.00 for pick-up and delivery. This amount was also claimed by Rilaur and will be deducted from their gross amount of \$6918.71.	\$529.20 includes GST 5% PST 7%
C and L Supply Invoice 122506	7 inch angle grinder Jan 23/25 To enable removal of engines and fuel tanks from the vessel	\$37.46 includes GST 5% PST 7%
Campbell River Landfill Receipts #1 January 24 \$32.75 #2 January 29 \$647.75	Material Charges and site access fees	\$647.75

Company	Work Performed	Invoice Cost and Comments
Gorosh Cranes Invoice	January 25, travel to Campbell and load boat onto trailer for removal	\$872.81 includes GST 5%
Bowline Boat Moving Ltd Invoice includes moving the boat and Landfill disposal costs	Move Tinker II, to storage lot and then to landfill	\$1,192.00 (bowline plus landfill) \$577.00 includes GST 5% plus
Prime Contractor #2		
Building Sea Marine	Survey of Tinker II, by Building Sea Marine to assess the current condition and salvage value of the vessel	\$1,135.05

Based on the prior determinations made concerning which measures were reasonably taken in response to an oil pollution incident, the following table was created to review which contractor expenses correspond to measures reasonably taken in response to an oil pollution threat:

Table 2 - Identifying which contractor expenses have been established

Invoice	Description	Claimed	Recommended
Rilaur 021518	An updated original invoice was provided with the CCG claim on February 7, 2020 in response to our request. It changed from \$7,090.88 to \$6,918.71 correcting the double billing of GST. January 22, Rilaur Claim, labour 3.5 hours initial set up	\$175.00	Established in Part \$175.00
Rilaur 021518	January 22, Rilaur Claim, Labour 4 hours, trucks(2) 2 hours	\$900.00	Established \$900.00
Rilaur 021518	Invoice RKM January 22 Crane Services	\$680.00	Established \$680.00
Rilaur 021518	Invoice Night Watchman; The vessel was blocked and on the hard. This was overnight on January 22/23. It is concluded that the watchman was not required. The vessel was on the hard and marked.	\$100.00	Not Established \$000.00

Invoice	Description	Claimed	Recommended
Rilaur 021518	The pollution threat was partially mitigated on January 22 and fully mitigated on January 24. Invoices from C and L January 24, Rilaur Claim Excavator and Angle Grinder, to remove Engine and fuel tanks	\$505.25	Established \$505.25
Rilaur 021518	The pollution threat was partially mitigated on January 22 and fully mitigated on January 24, Rilaur Claim partial dismantling Vessel, labour 8.5 hours and heavy-duty truck to remove engines and fuel tanks.	\$1,150.00	Established \$1,150.00
Rilaur 021518	January 24, Rilaur Dump Fee Landfill	\$32.75	Not established \$000.00
Rilaur 021518	Invoice Gorosh Cranes, January 25, Load boat onto boat trailer	\$831.25	Not established \$000.00
Rilaur 021518	January 25, Rilaur Claim Labour 4 hrs.; includes double billing of delivery/pickup claimed in C and L invoice	\$400.00	Not established \$000.00
Rilaur 0215128	Invoice Bowline Boat Mover	\$1,165.00	Not established \$000.00
Rilaur 021518	January 25, Rilaur Claim, Manage Salvage	\$650.00	Not established \$000.00
Rilaur Total		\$6,589.25	Total Established \$3,310.25
	GST at 5%	\$329.46	\$170.51
Rilaur Total with GST		\$6,918.71	\$3,580.76
Building Sea Marine	Survey cost including GST	\$1,133.05	Not Established \$000.00

The contractor portion of the submission is allowed, in part, in the amount of \$3,580.76.

Schedule 4 – Salaries Full Time Personnel

Claim: \$648.45

Three CCG ER officers attended at Campbell River on 24 January 2018 to inspect the M/V TINKER II as it sat on dry land. The CCG submits a claim for five hours worked for each officer.

At the time the CCG personnel attended in Campbell River, the M/V TINKER II was no longer in the marine environment and had not been observed to be releasing oil pollution. Consideration could have been given to monitoring the vessel remotely. The CCG had personnel already in Comox and determined they could be shifted to attend in Campbell River. In the circumstances, this was a reasonable alternative to remote monitoring.

While it was reasonable for a CCG crewmember to attend from Comox and ascertain and monitor the status of the M/V TINKER II, the submission does not justify why three CCG personnel attended. Beyond communications with the surveyor, the documents included in the submission do not explain what measures required the attendance of three crewmembers. The expense for the one CCG crewmember to attend, for five hours, is allowed. The rest of this claim for costs and expenses has been determined to be not reasonable in the circumstances and is therefore not allowed.

This portion of the claim is allowed, in part, in the amount of \$216.15.

Schedule 12 - Vehicle

Claim:\$91.09

The CCG personnel used a vehicle to transit between Comox and Campbell River on 24 January 2019. This measure was determined to be reasonable for the purposes of monitoring the M/V TINKER II. The cost and expense is based only the CCG daily rate of \$56.57 plus 22 cents per kilometer. Both these amounts and the total cost and expense are reasonable.

This portion of the claim is allowed in its entirety.

Schedule 13 – Administration

Claim:\$13.67

The administration rate charged was 2.53%. This amount applies to a portion of the CCG salaries paid. Adjusting for the reductions in salary cost to reflect one person (\$180.03), the administration charge works out to \$4.56. This is considered reasonable, and form part of reasonable measures taken by the CCG in response to the Incident.

This part of the claim is allowed, in part, in the amount of \$4.56.

OFFER SUMMARY AND CLOSING

The following table summarizes the claimed and allowed expenses with respect to the CCG claim for the M/V TINKER II response:

Description	Claim	Offer
Contract Services	\$8,051.76	\$3,580.76
Salaries	\$648.45	\$216.15
Vehicles	\$91.09	\$91.09
Administration	\$13.67	\$4.56
Total	\$8,804.97	\$3,892.56

Figure 2 - Summary of claims made and allowed

The amount of the Offer is \$3,892.56, plus statutory interest.

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.

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.

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 issue.

Finally, where a claimant accepts an offer of compensation from the Fund, the Fund 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