



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: *F/V Lady Miranda* – Cow Head, Newfoundland and Labrador
Incident date: 2018-08-17

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel *Lady Miranda* (the “Vessel”), which was involved in an incident on 17 August 2018, in Cow Head, Newfoundland and Labrador (the “Incident”).

On 25 May 2020, the office of the Administrator of the Ship-source Oil Pollution Fund (the “SOPF”) received a submission from the CCG on behalf of the Administrator. The submission, sent by the Regional Director, Incident Management for the Atlantic Region of the CCG, advances claims totaling \$7,569.90 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

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, 106 and 116 of the *Marine Liability Act* (the “MLA”). Also provided in this letter are a description of the CCG’s submission and an explanation of the findings.

The claim is allowed in its entirety. The amount of \$7,569.90 (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid and in accordance with s. 116 of the MLA, is offered with respect to this claim.

The reasons for the Offer are set forth below.

THE SUBMISSION RECEIVED

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 documents are relevant to the determination, they are reviewed below.

The narrative

This incident was reported to the CCG as a fishing vessel that caught fire and sunk at a dock in Cow Head, NL. Sorbents were deployed in the water and the Vessel was raised. The oil in the hull was pumped into a vacuum truck, after which boom trucks towed the Vessel to the high tide mark. An excavator was brought in to complete the towing. The Vessel was later demolished.

On 17 August 2018, at 06:00, a CCG Environmental Response Duty Officer (“DO”) received a report from the Rocky Harbour, NL, RCMP that a 45-foot fiberglass fishing vessel had caught fire and sunk at the dock in Cow Head, on the northern peninsula of Newfoundland. Ropes secured the sunken vessel to the dock, preventing it from drifting into the harbour.

When a CCG Senior Response Officer (“SRO”) from St. John’s arrived on the scene that afternoon, the shipowner had deployed sorbents provided by the harbour authority and was working with the crew to remove burned debris from the water. The owner also coordinated with his insurer to hire a contractor to raise and remove the Vessel. The CCG discussed a response plan with the owner.

On 18 August 2018, arrangements were made to lift the Vessel from the water with boom trucks and extract the oil in the hull with a vacuum truck the next day. Equipment resources, including a dive contractor, vacuum trucks, and a crane, were mobilized in preparation.

On 19 August 2018, the Vessel was lifted, and 20,000 liters of oil were extracted, including oily water. No oil was detected outside the boomed area in the water. The owner towed the burned hull to shore and the boom trucks towed the Vessel out of the water. As the boom trucks were unable to tow the Vessel past the high tide mark, plans were made to bring in an excavator the next day.

On 20 August 2018, an excavator was used to tow the Vessel past the high tide mark and demolition commenced. The CCG conducted a helicopter survey of the area to ensure that the adjacent Gros Morne National Park had not been impacted by the response to the Incident.

The CCG submission includes evidence that the CCG contacted the owner's insurance broker. The broker referred the matter to the owner, who apparently became unresponsive to the CCG.

The CCG seeks compensation for expenses that it incurred during its response to the Incident, namely travel expenses, salaries and overtime pay for two full-time personnel, and administrative costs.

Summary of costs and expenses

The claim that the CCG submitted includes the following summary of expenses incurred in responding to the Incident:

| COST SUMMARY POLLUTION INCIDENT | | | |
|---|----------------------|----------------|---------------|
| INCIDENT: | FV Lady Miranda | PROJECT CODE: | 2E125 |
| INCIDENT DATE: | August 17, 2018 | DATE PREPARED: | April 1, 2019 |
| DEPARTMENT: | Canadian Coast Guard | PREPARED BY: | [REDACTED] |
| | | | <u>SCH</u> |
| MATERIALS AND SUPPLIES | \$ - | | 1 |
| CONTRACT SERVICES | \$ - | | 2 |
| TRAVEL | \$ 3,121.81 | | 3 |
| SALARIES - FULL TIME PERSONNEL | \$ 1,327.65 | | 4 |
| OVERTIME - FULL TIME PERSONNEL | \$ 3,002.08 | | 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 | \$ 118.36 | | 13 |
| | | | |
| TOTAL CCG COST OF INCIDENT | \$ 7,569.90 | | |

Figure 1 - Screen capture of the CCG cost summary

DETERMINATIONS AND FINDINGS

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

The Incident resulted in damage suffered, or the threat of damage, within the territorial seas or internal waters 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).

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.

Accordingly, 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 travel expenses (Schedule 3) are substantiated by the submitted invoices. The salary expenses (Schedule 4) for the SRO and DO are reasonable and align with the timeframe of the Incident. The overtime expenses (Schedule 5) for the two employees are substantiated by documentation. While these expenses are relatively high, comprising about 40% of the total claim amount, this is explained by the fact that much of the response to the Incident took place on a weekend.

There are minor inconsistencies in the overtime pay records. Namely, certain amounts diverge from the Personnel & Equipment Daily Log forms by one-half hour, and the time summary sheets are difficult to read in places.

The F/V Lady Miranda initially posed a risk of discharging oil

It is estimated that, at the time of the Incident, the Vessel contained about 1,000 liters of fuel and an unspecified amount of engine lubes and hydraulic oils. Relatedly, CCG reports indicate that about 20,000 liters of oily water had been recovered from the Vessel as of

noon on 19 August 2018, and photos included in the CCG submission show contaminated sorbent boom.

Based only on the fuel estimate above and the fire damage that the Vessel suffered before sinking, the threat of oil pollution would not have been significant. Despite that, the possibility that the remaining oil products could coat the debris of the Vessel presented a significant pollution threat. Additionally, Cow Head is bordered by the Gros Morne National Park, a world heritage site, and Parks Canada authorities expressed concerns that oil from the Vessel would contaminate park lands.

In these circumstances, it was reasonable for the CCG to conclude that the Vessel posed a threat of discharging oil into the marine environment. Consequently, it was appropriate to take measures to mitigate that threat.

An apparent discrepancy in the biographical details of the Vessel

Documentation submitted by the CCG indicates that the Vessel had a fiberglass hull; however, the Vessel's Transport Canada registration page indicates that the hull was wooden. An explanation for this apparent discrepancy is available.

The Transport Canada registration for the Vessel shows that it was built in 1980. Wooden-hulled vessels generally have a lifespan of 10 to 20 years, depending largely on maintenance and the conditions to which the vessels are subjected. Considering the harsh conditions of commercial fishing and the minimal maintenance that many fishing vessels receive, a realistic life expectancy for the Vessel would have been closer to 10 years than to 20 years. At the time of the Incident, the Vessel was 38 years old and had thus far surpassed its expected lifecycle.

In some cases, fiberglass is installed over a preexisting wooden hull to extend the life of an aging vessel. While this practice is relatively common, it increases the probability of damage in the event of a vessel fire.

In this case, it is accepted that the Vessel involved in the Incident is the same one described in the Transport Canada registration. The discrepancy in biographical details for the Vessel is explained by accepting that, at some point, the Vessel's wooden hull was covered in fiberglass to extend the Vessel's working life.

CLAIM AND OFFER DETAILS

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

According to s. 51, 71, and 77 of the MLA, both the measures taken to respond to an oil pollution incident and the resulting costs must be reasonable in order to trigger the liability of the SOPF. In each portion of the CCG claim below, it will be mentioned whether both factors have been established.

Schedule Three – Travel

Claim: \$3,121.81

This portion of the claim arises from travel expenses incurred by the CCG SRO who traveled from St. John's to Cow Head to respond to the Incident. In doing so, the SRO incurred costs for airfare, a vehicle rental and fuel, accommodation in a hotel, an allowance for incidental expenses, and taxi fare. All of these costs are substantiated by invoices included in the CCG submission and align with Treasury Board policies regarding travel expenses for government employees.

It was reasonable for the CCG to deploy an SRO to oversee the owner's response to the Incident. While in some cases it is possible for the CCG to monitor the response remotely, the Incident occurred in mid-August, the height of the Newfoundland tourism season. During this time, Cow Head and the surrounding areas rely on the fishing industry and ecotourism, both of which would be significantly impacted by oil pollution. It is not clear that local resources would have been available to monitor the response on behalf of the CCG, and in any event, the cost to have one CCG officer attend was modest. In this case, the travel expenses for one SRO to attend are considered reasonable.

The travel portion of the submission is allowed in its entirety in the amount of \$3,121.81.

Schedule 4 – Salaries: Full Time Personnel

Claim: \$1,327.65

The salary costs claimed are for two CCG personnel: one SRO at the rate of \$48.96 per hour including EBP and one DO at the rate of \$39.55 per hour including EBP. The SRO traveled from St. John's to Cow Head to oversee the response to the Incident, while the DO stayed in St. John's and monitored the SRO's progress. The salary costs of the SRO are accepted as reasonable.

Although it is likely that on 17 and 20 August 2018, the DO performed a mixture of duties, some of which were directly connected to the Incident and some of which were not, the salary costs claimed are also accepted as reasonable, in the circumstances. The SRO was sent to a relatively remote location alone; keeping in contact with a DO aligns with labour regulations for employees working alone. Additionally, this approach was more economical than sending two SROs to the site of the Incident.

The salary portion of the submission is allowed in its entirety in the amount of \$1,327.65.

Schedule 5 – Overtime: Full Time Personnel

Claim: \$3,002.08

The overtime costs are for both the SRO and the DO and are documented in a spreadsheet and time summary sheets submitted by the CCG. The level of effort and distribution of hours appear to align with the CCG’s response to the Incident, and the costs documented in the time summary sheets match the amount claimed on the Schedule 5 summary sheet.

There are minor inconsistencies between the spreadsheet and the Personnel & Equipment Daily Log sheets; certain amounts diverge from the log forms by one-half hour, and the time summary sheets are difficult to read in places.

As most of the work was done over the weekend of 18-19 August 2018, the overtime costs are relatively high. However, the work is documented in the Personnel & Equipment Daily Logs and the Extra Duty Pay forms. Given the circumstances, the overtime costs are reasonable, especially considering that the CCG did not incur any significant costs for things such as contracting services.

The overtime portion of the submission is allowed in its entirety in the amount of \$3,002.08.

Schedule 13 – Administration

Claim: \$118.36

The administration rate was calculated at 2.53%. This amount applies to a portion of the CCG salaries paid and comprises about 1.5% of the total claim amount. These costs are accepted as reasonable.

The administrative costs portion of the submission is allowed in its entirety in the amount of \$118.36.

OFFER SUMMARY AND CLOSING

The following table summarizes the claimed and allowed expenses with respect to the CCG claim regarding the Vessel:

| Description | Claim | Offer |
|----------------|-------------------|-------------------|
| Travel | \$3,121.81 | \$3,121.81 |
| Salaries | \$1,327.65 | \$1,327.65 |
| Overtime | \$3,002.08 | \$3,002.08 |
| Administration | \$118.36 | \$118.36 |
| Total | \$7,569.90 | \$7,569.90 |

Table 1 - Summary of claims made and allowed

Costs and expenses in the amount of \$7,569.90 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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