



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

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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: *GRT-SYNERGIE* – DOI: 2018-05-13

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”). The Office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received the submission on 6 June 2020 on behalf of the Administrator. The submission was treated as a claim to the Administrator under section 103 of the *Marine Liability Act*, S.C. 2001, c.6, as amended (the “MLA”).

The submission sets out claims for various costs and expenses incurred by the CCG in taking measures in response to an incident involving the GRT-SYNERGIE (the “Vessel”). The GRT-SYNERGIE sunk at a dock in Baie des Chaleurs near Carleton-sur-Mer, QC, on 13 May 2018 (the “Incident”). The total amount claimed by the submission is \$10,449.10.

The submission has been assessed and a determination has been reached with respect to its claims. 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 findings and ultimate determination.

The claim is allowed in part. The amount of the offer of compensation is \$1,297.67 (the “Offer”), plus statutory interest to be calculated at the time payment is made on the Offer.

The reasons for the Offer are set forth below.

THE SUBMISSION RECEIVED

The submission includes a narrative that describes the Incident and the subsequent response.

The submission also includes pay sheets noting hours worked by employees of the CCG, as well as photographs of the Incident and invoices for contract services and administrative costs.

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

The narrative

The narrative included in the submission sets out a description of the Incident.

According to the narrative, on the afternoon of 13 May 2018 the CCG received reports that a 30-35 foot fiberglass-hulled fishing vessel, the GRT-SYNERGIE, had sunk at the Quai des Pêcheurs in Baie des Chaleurs, near Carleton-sur-Mer, Québec. The Vessel was believed to have come to rest on the bottom, with only the top portion of its cabin having remained above water.

The cause of the sinking was not known. No witnesses to the sinking itself were known and the Vessel's owner was not at the scene.

Reports from the scene suggested the release of a small but observable quantity of hydrocarbons. It was not known at the time how much oil was aboard the Vessel.

On the day of the Incident, the CCG attempted to contact the representative of the owner of the vessel, Les Pêcheries Charsimy (342 Chemin Saint-Hilaire, Grande-Rivière), the wharf master, and Transport Canada. The CCG also contacted several contractors before retaining a local outfit, Leblanc Environnement, to respond to the Incident.

At 15:48, the CCG auxiliary arrived at the scene. They reported that they could see no pollution on the surface of the water. Booms were subsequently deployed by Leblanc Environnement. At 16:40, the wharf master contacted the CCG and reported that he did not observe any pollution on the water's surface. He also advised that the owner of Leblanc Environnement, was now on site.

Leblanc Environnement had four workers deploy 150 feet of booms and eight packages of sorbent materials into the water. The Vessel was righted by a backhoe and pumped out into the water contained by the boom. The contractors completed their work at approximately 19:20 that night. The owner of Leblanc Environnement reported at this point that there was very little oil in the water, describing it as a light film that had likely come from the motors rather than from the tanks.

At 19:11 that same night, the owner of the Vessel (in fact, the representative of the owner) contacted the CCG. He couldn't understand why the boat had sunk as it had been in

excellent condition and only placed in the water the day before. He confirmed there were about 1000L of hydrocarbons on board. He acknowledged his liability under the polluter pays regime but noted his puzzlement as to how the sinking occurred (apparently, according to the emails, there was a pump malfunction that resulted in water being pumped into the vessel rather than the other way around).

The owner advised the CCG his plan was to remove the vessel from the water via a boat ramp within 100m of where the vessel sank, using cables attached to a front-end loader. He believed there was little risk of a large discharge as the fuel tanks were in excellent condition, however both the CCG and Leblanc Environnement deemed it necessary for Leblanc Environnement to remain on scene until the evolution was complete in case a release of hydrocarbons did occur.

At 22:41, Leblanc Environnement advised the CCG that efforts to remove the Vessel from the water had stopped because the available trailer was not compatible with the Vessel's hull. A pump was installed to keep the Vessel dry and one of Leblanc's workers was left overnight to monitor the situation.

On 14 May 2018, the contractors were in place shortly after 08:00, awaiting the arrival of the owner of the Vessel. Efforts were made to contact the owner's representative but were ultimately unsuccessful. By 10:00, Leblanc Environnement noted they were unable to find any trace of pollution in the water.

At 13:20, the owner's representative contacted the CCG and advised that his insurer's representative wanted to view the Vessel before it was moved. The owner's new plan was to pump out hydrocarbons from the Vessel, clean the ship's interior and exterior, and then refill the tanks with new hydrocarbons. The owner asked that the CCG work directly with his insurer to pay the invoice from Leblanc Environnement.

The owner of Leblanc Environnement called the CCG at 19:07 to advise that there was an agreement to clean the boat inside and out, remove fuel and oil from the vessel and pump the interior out into the boomed-in area, while moving the Vessel closer to the quay. Work was scheduled to begin at 07:00 the next morning. At 19:35, the owner's representative advised that the insurer's representative had approved this plan and he (the owner's representative) would be present throughout the operation to observe.

Leblanc Environnement did complete the work as agreed on 15 and 16 May 2018. However, Transport Canada did not allow the Vessel to sail on its own power and demanded that it be towed from the scene.

Thereafter, the insurer of the Vessel first agreed to pay the response for Day 1 (13 May 2018), then failed to pay for that day, then failed to pay the contractor for the other work. The CCG ultimately paid Leblanc Environnement for the work performed on May 14-16, 2018, as a gesture of goodwill to maintain a good working relationship.

The costs and expenses summary

The CCG’s submission to the Fund seeks to recover \$10,449.01 in costs and expenses incurred in response to the Incident. The CCG cites sections 101 and 103 of the MLA as grounds for the claim. The CCG submission includes a Cost Summary, which is set out below:

COST SUMMARY		
POLLUTION INCIDENT		
INCIDENT: GRT Synergie	PROJECT CODE: FYBE8	
INCIDENT DATE: 2018-05-13	DATE PREPARED: 2020-05-07	
DEPARTMENT: CANADIAN COAST GUARD	PREPARED BY: [REDACTED]	
		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	9,872.90	2
TRAVEL	-	3
SALARIES - FULL TIME PERSONNEL	559.02	4
OVERTIME - FULL TIME PERSONNEL		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	17.09	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	\$ 10,449.01	

Figure 1 - The CCG cost summary

The CCG submission included three schedules totaling \$10,449.01, as indicated in the above table.

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, the claims submitted are potentially eligible for compensation.

The CCG is considered 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.

Therefore, the investigation and assessment proceeded in accordance with section 103 the MLA.

The facts presented by the CCG are accepted

The narrative presented by the CCG set out the facts of the Incident. The version of events presented therein is accepted as generally accurate.

Most of the response to the Incident comprised a salvage operation

The Vessel sank on 13 May 2018, and CCG engaged Leblanc Environnement for environmental response work which was completed that same day. The invoice for this work was included with the claim package but did not form part of the claim itself, as the invoice was paid by the owner’s insurer. A photograph of the Vessel taken at 19:30 on 13 May 2018, showed it floating at an acceptable draft and both the proclaimed owner and the CCG agreed the Vessel was no longer a significant pollution threat.

From May 14-17, 2018, Leblanc Environnement was contracted by either the owner or his insurer to work on the Vessel. CCG staff decided to monitor the work remotely. The invoices for this work are included in the claim package and do form part of the claim. No signs of pollution were observed by either CCG staff or Leblanc Environnement between May 14-17, 2018. The work performed by Leblanc Environnement included draining the Vessel of hydrocarbons, cleaning the interior and exterior, and refilling the Vessel with new diesel and hydraulic oils. Given the nature of the work performed, it is reasonable to conclude that its purpose was to salvage the Vessel and restore it to operational status rather than provide additional environmental response measures. As remuneration for salvage operations is not the responsibility of the Fund under any part of the MLA, it would not be reasonable for the Administrator to provide compensation for these expenses.

The GRT-SYNERGIE was a minimal oil pollution threat

The Vessel had been in good repair and only trace indicators of pollutants were detected within the boomed area on the date of the Incident. Once it was pumped out and refloated, the risk of discharge from the Vessel was identified as being low and the CCG accepted this risk level. Despite a soiled hull and the continued presence of hydrocarbons aboard, no indication of further pollution from the Vessel was observed from May 14-17, 2018, and it was not at risk of sinking. Therefore, it can be concluded that the pollution risk had been mitigated on 13 May 2018.

While the work performed by Leblanc Environnement from May 14-17, 2018, may have been necessary for the owner to restore the Vessel to an operational state, it did not further mitigate the pollution risk. Rather, the draining and refueling of the Vessel while in the water, rather than after landing it, increased the risk of pollution, hence the decision by CCG to monitor that work remotely. It follows that while the remote monitoring performed by CCG was a measure reasonably taken in response to the Incident, any work performed by Leblanc Environnement after 13 May 2018, was not.

This conclusion is supported by the nature in which the CCG incurred the claimed contractor expenses. That is, the shipowner and/or the insurer agreed to retain the contractor to do work on the Vessel. Thereafter, they failed to pay the contractor for reasons which are not clear on the evidence. The contractor contacted the CCG and asked to be paid, and the CCG apparently agreed to this. It appears the rationale was to avoid discouraging a marine contractor, located in a moderately remote area, from responding to oil pollution incidents. While this desire to keep marine contractors content to respond to oil discharge incidents is laudable, generally speaking this type of payment does not come within the mandate of the Fund. On the particular facts of this case, some level of compensation is available notwithstanding the respective motivations of the CCG and the owner/insurer. The steps taken were related to oil containment and would likely have been necessary even had the owner landed the Vessel. The details of this finding are set out in detail within the section on the contract services expense.

In summary, the majority of the claimed costs and expenses are not considered to be measures reasonably taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship, as contemplated under Part 6, Division 2 of the MLA. Those costs and expenses are therefore ineligible for compensation.

The reasonableness of the remaining costs and expenses must be considered in accordance with s. 77(2) of the MLA.

CLAIM AND OFFER DETAILS

The submission breaks down the claim for costs and expenses into three 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.

This portion of the CCG submission is divided into three items, as detailed below.

Item 1 – Leblanc Environnement (Invoice #13359)

This invoice is dated 14 May 2018. It is for an amount of \$901.95 and is addressed to the owner/operator of the vessel. It pertains to work performed by Leblanc Environnement on 14 May 2018. In particular, it refers to the replacement of soiled absorbent pads and on-going rental of a boom.

This invoice refers to work contracted by either the owner/operator of the Vessel or his insurer. According to the CCG narrative, the insurer had originally agreed to pay the cost of this work but ultimately refused to do so. As a gesture of goodwill to maintain positive relations between themselves and Leblanc Environnement, the CCG offered to pay this invoice.

The fees charged are considered reasonable for the services rendered, as is the time claimed for the work performed and the cost of supplies. However, this expense was undertaken by the CCG to secure the goodwill of a contractor desired for future work. Further, the services rendered under this invoice appear directed towards an effort to salvage or repair the Vessel rather than response measures taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship. Such expenses are not clearly within the mandate of the Fund.

With respect to the CCG having reimbursed a contractor for work ordered but not paid for by the owner or insurer, it is considered that the CCG effectively took an assignment of a claim against the Vessel’s owner and insurer. In the circumstances, it is considered that the CCG has a financial interest in having some response carried out. Absent a response by the owner and its insurer, the CCG would have had to incur, in some cases, effectively the same costs in order to carry out an oil pollution response. Therefore, the fact that the CCG has taken the unconventional step of indemnifying a contractor for unpaid work, is not, by itself, disqualifying on the particular facts of this case. The CCG had a legal and economic interest in having the Vessel restored, and so issues of champerty and maintenance do not arise.

Notwithstanding the above, in paying the contractor’s invoice, the CCG has paid the contractor for their profit. Had the contractor made a claim directly to the Fund, they may have been entitled to compensation for costs and expenses, but not profits unless they established lost opportunity (i.e., an economic loss of opportunity to profit elsewhere). It is not appropriate to assume a lost opportunity to profit exists. Therefore, the invoice must be written down. It is considered that a profit margin of between 15 and 25% can be reasonably assumed within the field of marine contracting. The Administrator chooses the midpoint of that range, and thus this invoice should be reduced in the amount of 20%.

The efforts actually undertaken by the contractor also require comment. The work done on the second day of the recovery effort was intended to facilitate a salvage or repair effort,

rather than measures reasonably taken in response to the threat of oil pollution. This conclusion is reached primarily because, had this been purely a pollution response, it would have been sensible to complete the effort of hauling the Vessel out of the water— an effort thwarted only by having an incorrectly sized trailer. The removal of the Vessel from the water would have allowed for the reset of the repairs to take place, but also would have obviated the risk of marine pollution – showing that those further measures were taken in a salvage or repair capacity. The owner and his insurer chose not to take those steps, in favour of doing necessary repair work while the Vessel stayed in the water.

Notwithstanding the above, had the repairs not been undertaken it would have been necessary to take measures to prevent oil pollution. More specifically, the expense of hauling the Vessel out of the water and taking interim measures to prevent oil pollution would have had to have been incurred.

Given that finding, it is considered that some of the expense for the salvage or repair effort may nevertheless be admissible, despite the finding as to the owner and insurer's intention. Further on this point, the measures described in this invoice involved the deployment of boom and sorbent materials – which would have been very similar to the expenses which would have been incurred to facilitate hauling the Vessel out of the water. As such, it is considered that in this particular case, the expense can be considered a measure taken to prevent oil pollution, notwithstanding the true intention of the owner and its insurer.

This portion of the claim is allowed in the amount of \$721.56 (i.e., the invoice amount less 20% to account for profit).

Item 2 – Leblanc Environnement (Invoice #13361)

This invoice is dated 15 May 2018. It is for an amount of \$5,206.88 and is addressed to the owner/operator of the vessel. It pertains to work performed by Leblanc Environnement on 15 May 2018. In particular, it refers to the cleaning of the Vessel's hull and the pumping out of hydraulic oil and motor oil.

The services rendered under this invoice were for a salvage operation rather than response measures taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship. Specifically, since the vessel ought to have been beached prior to this point, the taking of these steps is not admissible in that they should not have been necessary in order to abate a risk of oil pollution – the Vessel ought to have been on land by this point. Therefore, this cost and expense is not within the mandate of the Fund and this portion of the claim is not admissible.

This portion of the claim is rejected.

Item 3 – Leblanc Environnement (Invoice #13363)

This invoice is dated 16 May 2018. It is for an amount of \$3,764.07 and is addressed to the owner/operator of the vessel. It pertains to work performed by Leblanc Environnement on 16 May 2018. In particular, it refers to cleaning the Vessel's hull, pumping out the fuel

tanks, disposing of 5400 litres of contaminated water, and disposal of five barrels of contaminated absorbents.

The services rendered under this invoice were for a salvage operation rather than response measures taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship. Such expenses are not within the mandate of Fund and is therefore not admissible.

This portion of the claim is rejected.

Schedule 4 – Salaries

Claim: \$559.02

The claim includes the salary costs of two CCG staff who responded to the Incident on 13 May 2018. It also includes subsequent tasks related to the remote monitoring performed by one CCG staff member.

Table 1 - Summary of costs and expenses

Date	Personnel	Work Done	Hours	Cost
13 May 2018	(Incident Commander)	Identify CCG response plan and local responder(s).	2	\$91.84
	(Response Officer)	Locate owner; plan, execute and monitor response plan.	4	\$133.48
14 May 2018	(Response Officer)	Liaise/consult with Transport Canada; Discuss original and new plan with owner.	5	\$166.85
15 May 2018	(Response Officer)	Discussions with owner and Leblanc Environnement.	2	\$66.74
16 May 2018	(Response Officer)	Monitor boat cleaning and tank pump-out; Consultation with Transport Canada.	2	\$66.74
17 May 2018	(Response Officer)	Complete filing, finalize paperwork and close incident.	1	\$33.37
TOTAL:			16	\$559.02

The claim includes daily pay sheets documenting hours worked by CCG personnel, their individual tasks and the rate of pay. According to the CCG submission, the Incident Commander is paid at the GT-07-1 level, which is 45.92 per hour including EBP, and the Response Officer is paid at the GT-04-2 level, which is \$33.37 per hour including EBP.

The rates comply with Treasury Board standards in place at the time of the Incident. Given the degree of liaison and consultation required, the remote location and nature of the Incident, the hours worked, and costs claimed for monitoring are reasonable in the circumstances.

This portion of the claim is allowed in its entirety.

Schedule 13 – Administration Costs

Claim: \$17.09

The rate claimed for administration is within the maximum of 3.09% negotiated between the Administrator and the CCG. The rate has been applied only to the salary costs, excluding EBP. As the salary claim was considered reasonable, so too are the administration costs.

This portion of the claim is allowed in its entirety.

OFFER SUMMARY AND CLOSING

The following table is provided to summarize the claimed and allowed expenses with respect to the CCG claim for the Incident:

Table 2 - Summary of claims made and allowed

Schedule	Amount claimed	Amount allowed
1 – Materials & Supplies	nil	nil
2 – Contract Services	\$9,872.90	\$721.56
3 - Travel	nil	nil
4 - Salaries - CFT personnel	\$559.02	\$559.02
5 - Overtime - CFT personnel	nil	nil
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)	nil	nil
12 - Vehicles	nil	nil
13 - Administration	\$17.09	\$17.09
Total	\$10,449.01	\$1,297.67

The amount of the offer of compensation is \$1,297.67 (the “Offer”). Statutory interest calculated in accordance with s. 116 of the MLA will be included with the payment made should the Offer be 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