



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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OFFER LETTER

Ottawa, 3 March 2021
SOPF File: 120-881-C
CCG File:

BY MAIL and EMAIL

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

RE: *M/V FRIDAY WHILE* – Van Isle Marina, Tsehum Harbour, Sidney, BC
Incident date: 2019-01-08

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the motor vessel FRIDAY WHILE (the “Vessel), which was involved in an incident on 9 January 2019 near the Van Isle Marina, in Tsehum Harbour, near the City of Sidney, in the Province of British Columbia.

On 7 January 2021, 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 advanced claims totaling \$27,442.55 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 and 106 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. The amount of \$10,531.22 (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 determinations, they are reviewed below.

The narrative

On 8 January 2019 at 1015, the CCG was alerted that a pleasure craft (the Vessel) had sunk northwest of the breakwater at the Van Isle Marina, in Tsehum Harbour. The harbour is located in the City of Sidney, in the Province of British Columbia.

An Environmental Response (“ER”) crew was dispatched by the CCG. They determined they should use a “CGE705” craft to assess the Vessel. Upon arriving at the scene, the Vessel was mostly sunken, with a small portion protruding above the water. There was also a light, unrecoverable sheen on the water.

Figure 1 - The Vessel as discovered by the CCG, excerpted from the CCG narrative

The CCG quickly determined that the Vessel should be raised, dewatered and possibly removed from the marine environment to protect against any oil pollution damage.

On 9 January 2019, the contractor Eagle Eye Marine was retained by the CCG to salvage the Vessel. That operation began on 11 January 2019 at low tide, using a diving company and lift bags.

On 11 January 2019, the CCG sent an ER crew to attend at the scene and assist with the salvage as might be necessary. The first salvage effort, to raise and dewater the Vessel, failed. A dive team from Advance Sub Sea carried out a survey. It was concluded the Vessel could not be refloated for dewatering because of holes in the hull. Lift-bags were used to float the Vessel and it was then towed to Vector Marine to be removed from the marine environment.

A marine survey was carried out by Building Sea Marine on 24 January 2019. Portions of the survey report which resulted were excerpted in the CCG narrative, as follows:

Survey of the vessel shows aspects to condition, as follow:

Vessel on blocks in the yard and leaking oily bilge water from several damaged sections of the hull.

The hull shell itself appears (where visible) to have been part-full of bilge water for quite a long time, as evidenced by the stain marks.

Fitted with single screw, shaft drive and Volvo Penta 6-cyl turbo diesel.

Main engine and gear fully submerged with no preservation efforts once vessel raised.

Multiple 12VDC batteries in the aft lazarette, perhaps 6 in total of various size and vintage.

Port and starboard fuel tanks could not be dipped due arrangement of fill and vents. Assumed to be full of diesel fuel/water mixture.

Fuel system appears to remain connected to the M/E and heating furnace through steel pipe and rubber hose.

Main engines and gear considered to remain with sump oils in place.

Hydraulic steering system appears to remain intact and so also full of oil.

The machinery is non-functional and there is no automatic bilge pumping capability.

Following survey with the vessel on blocks it is considered that:

The vessel requires very significant hull repairs.

All machinery, electrical and domestic require complete rebuilding.

The vessel carries no value whatsoever, whole or disassembled;

The vessel could not reasonably or economically be repaired & rebuilt to a seaworthy status; and,

The vessel is not currently seaworthy and is considered to be an immediate risk to foundering if put back into the water as is.

Full report with recommendations to follow.

Figure 2 - Excerpts of the survey report prepared by Building Sea Marine, as excerpted from the CCG narrative

The narrative indicates that based on the marine survey report by Building Sea Marine, a decision was made to deconstruct the Vessel.

Summary of costs and expenses

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

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	16,950.89	2
TRAVEL	-	3
SALARIES - FULL TIME PERSONNEL	1,687.13	4
OVERTIME - FULL TIME PERSONNEL	168.71	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)	8,419.00	11
VEHICLES	173.39	12
ADMINISTRATION	43.44	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 27,442.55</u>	

Figure 3 - Screen capture of CCG Cost Summary

The CCG submission also included a summary of contractor expenses, as follows:

			SCHEDULE #2	
INCIDENT:	FRIDAY WHILE	PROJECT CODE:	FHVT5	
INCIDENT DATE:	January 8, 2019	DATE PREPARED:	Dec 29/20	
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:		
CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
EAGLE EYE MARINE	4,900.00	245.00	5,145.00	INV 1269
			-	Paid Jan 30/19
VECTOR YACHT SERVICES	9,354.20	467.71	9,821.91	INV 31157
			-	Paid April 3/19
BUILDING SEA MARINE	1,889.50	94.48	1,983.98	INV 737
			-	Paid Feb 25/19
			-	
			-	

Figure 4 - Contract Expense Summary prepared by the CCG

Contradictory evidence about oil pollution damage

The evidence in the submission concerning pollution was, in places, inconsistent or contradictory.

The CCG submission includes several documents bearing the title “Personnel & Equipment Daily Log”. There is one for each day CCG personnel were deployed with respect to the Incident. The log also includes a “notes” section, which often includes observations made by the CCG personnel. The log entry for the first day of the response, 8 January 2019, is notable in light of the facts as recounted in the narrative. It reads:

3 ER personnel were assessing a sunken vessel in Ganges when advised by ROC alerting desk that a vessel was grounded at the Van Isle Marina in Tsehum Harbour. On completion of assessment in Ganges, ER crew proceeded to Tsehum Harbour. On arrival a pleasure craft, approximately 35ft in length, was observed grounded. Unable to board to obtain any owner information or if pollution on board. No pollution observed, however, vessel deemed a high risk to pollute and should be removed from the marine environment. Arrangements to be made for salvage.

Figure 5 - Excerpt from Personnel & Equipment Daily Log for 8 January 2019

The key observation here is that there was “no pollution observed” on the first day of the response. The narrative asserts that pollution was visible when CCG personnel arrived at the scene.

It is further noted that the log for 11 January 2019 does record that a sheen was observed that day, “around the vessel and throughout the harbour.”

There is also a discrepancy as to the fuel tanks aboard the Vessel. The narrative reports, “Port and starboard fuel tanks could not be dipped due arrangement of fill and vents. Assumed to be full of diesel fuel/water mixture.”

Conversely, the marine survey report advises, at page 5, “The status of the port and starboard steel fuel tanks is not known, but they appear to be empty upon external tapping.” The report also notes, at page 6, “It is considered that the fuel tanks are likely 50% full of fuel/water mixture.”

These inconsistencies in the evidence submitted require consideration before appropriate determinations can be made.

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 CCG included with the submission a narrative which sets out the facts of the Incident in some detail. This description of the material events is accepted as generally accurate, except as is noted below.

The logs are, in places, inconsistent with the CCG narrative

The narrative and the observations recorded in the Personnel & Equipment Daily Log sheets is not consistent with respect to whether pollution was present in the water on the first day of the respond, 8 January 2019.

The narrative is generally created after the fact, whereas the Personnel & Equipment Daily Log sheets are prepared contemporaneously. Where there is an inconsistency in evidence, more recent evidence is considered less reliable than documentation created at or shortly after the pertinent events.

It is therefore determined that when CCG personnel arrived at the scene on 8 January 2019, no pollution was in fact observed in the water.

Notwithstanding the above finding, given the sinking, it was reasonable for the CCG to perceive the Vessel as creating a risk of causing oil pollution damage, even on 8 January 2019. For that matter, a release was documented on 11 January 2019, and it is possible a discharge in fact did occur earlier but was not observed.

In the result, it was reasonable for the CCG to respond to the Vessel as a minor threat of ship-source oil pollution damage.

The evidence does not establish the need to deconstruct the Vessel

The Vessel was a fiberglass hulled pleasure craft of approximately 31’ in length. It had suffered some damage after drifting, grounding and substantially sinking. The Vessel was equipped with multiple fuel tanks. While the evidence concerning the tanks is contradictory, it is concluded that the tanks were, after the Vessel was removed from the water, partially filled with a mix of diesel fuel and water.

Generally speaking, for the cost of deconstructing a Vessel to be recoverable, it must be established that the Vessel itself posed such a risk. That is, were the Vessel put back in the water, there would be a reasonable risk that oil pollution damage would result. This typically involves establishing that the materials used to construct the Vessel are saturated in oil. It would be unusual for fiberglass to be in such an oiled state.

In this case, the evidence does not allow a conclusion that the Vessel itself posed a risk of oil pollution damage. While it is accepted that the contents of the fuel tank may have posed such a risk, once the Vessel landed, there seems to be no reason why the fuel tanks could not have been pumped out, ending the pollution threat. This would not have required the deconstruction of the Vessel.

Moreover, there is no record of the CCG personnel who attended at the scene, or the contractors retained by the CCG, deploying oil containment or collection equipment during the response. Those responding to the Incident apparently did not consider the Vessel to be enough of a threat to deploy such equipment. Nothing in the evidence casts doubt on the responder's decision on that point. In such cases, strong evidence would be needed to show that the subsequent deconstruction of such a ship was necessary as a measure to prevent future oil pollution damage. In this case, the evidence is insufficient to allow such a determination to be made.

In the result, the deconstruction of the Vessel is not accepted as a measure reasonably taken with respect to oil pollution.

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 eligibility for compensation. In each portion of the CCG claim below, it will be discussed whether that has been established.

Schedule Two – Contract Services Claim: \$16,950.89

Three contractors were hired by the CCG to respond to the Incident:

- Eagle Eye Marine Services, who were retained to salvage the Vessel;
- Vector Yacht Services, who was hired to deconstruct the Vessel after it had been removed from the water; and
- Building Sea Marine, who was hired to conduct a survey of the Vessel and prepare a report.

The invoice for the work done by Eagle Eye Marine Services is dated 12 January 2019 and identified as invoice # 1269. The invoice contains sparse details for two line items.

The first line item is for the use of lift bags and a crew to tow the Vessel on 11 January 2019. These items total to \$3,200. The total was apparently calculated based on the length of the Vessel. Notwithstanding that the invoice indicates a length of 32', and the Transport Canada registration shows a length closer to 31', this entry is accepted as reasonable.

The second line item is for a 4-person dive team from Advance Subsea. The invoice from the subcontractor was not included in the submission. The charge from Advance Subsea totals to \$1,700 and is presumed not to include GST based on the even number. The need for divers to assist in raising the Vessel is apparent. This entry is accepted as reasonable.

In the result, the invoice from Eagle Eye Marine Services is accepted in its entirety in the amount of \$5,145.00, inclusive of tax.

Vector Yacht Services submitted an invoice dated 11 January 2019, under Service Order # 31157. The invoice totals to \$9,821.91. The main task carried out by Vector Yacht Services was the deconstruction of the Vessel. As a determination has been made that the deconstruction of the vessel had not been established as a measure taken to prevent oil pollution damage, much of the work Vector Yacht Services carried out cannot be accepted as a cost and expense. However, some of the incidental individual tasks carried out by Vector Yacht Services might be considered as measures taken with respect to oil pollution.

In determining whether individual tasks carried out by Vector Yacht Services might be eligible for compensation, the lack of a breakdown of costs makes it hard to identify costs and expenses which might be eligible. The invoice itself does not include information about the rate of pay for workers, the cost of equipment used, or the daily effort undertaken. No supporting or complimentary documents were submitted along with the invoice.

While presumably the oily water in the Vessel's fuel tanks was removed and disposed of at some point, there is no indication that that work was carried out or what costs and expenses were associated with that effort.

Only two tasks could be identified in the Vector Yacht Services invoice which were eligible for compensation as measures taken with respect to oil pollution. The first is the cost of hauling the Vessel out of the water and blocking it. That totals to \$606.00 plus GST. The second is the storage costs of one month, in the amount of \$606.00, plus GST.

In the result, the Vector Yacht Services invoice is accepted in the amount of \$1,272.60, inclusive of GST.

The third invoice is from Building Sea Marine in the amount of \$1,983.98. The survey report indicates that the survey was carried out to determine the "Condition and Salvage Value" of the Vessel. The contents of the report are consistent with that description, including only incidental information concerning the threat of oil pollution. It is therefore concluded that this report was not commissioned as a measure taken with respect to a threat of oil pollution. This invoice is rejected in its entirety.

The contract services portion of this claim is allowed in the amount of \$6,417.60.

Schedule 4 – Salaries: Full Time Personnel

Claim: \$1,687.13

Among the documents included in the submission were Personnel and Equipment Daily Log sheets for 8 and 11 January 2019. Those documents include hours worked by each CCG employee during deployment. There is a discrepancy between the amounts shown in the logs versus the amounts claimed. In all cases, fewer hours were claimed than were recorded as worked, so no determination must be made on that point.

On 8 January 2019, three CCG personnel were deployed to the Incident. This is accepted as reasonable, given that it was appropriate to deploy in a boat.

On 11 January 2019, four CCG personnel were deployed to the Incident. Given that a contractor had been retained to carry out the salvage, and that no pollution counter-measures had been deployed during the first deployment, it is counter-intuitive that the CCG increased its response that day. The evidence does not justify this escalation in the response. The cost of a fourth CCG crew member for the second day of the response is therefore rejected. This results in a reduction in the hours claimed by the CCG in the amount of 7.5 hours. A total of 30 hours is allowed as supporting measures reasonably taken with respect to oil pollution.

The salary portion of the submission is allowed in its entirety in the amount of \$1,349.70.

Schedule 5 – Overtime: Full Time Personnel

Claim: \$168.71

The CCG submission includes a claim of one and one-half hours of overtime, incurred on 8 January 2019. Time sheets and Extra Duty Reports and Authorizations were provided. This is accepted as an expense incurred supporting measures reasonably taken with respect to oil pollution.

The overtime portion of the submission is allowed in its entirety in the amount of \$168.71.

Schedule 11 – Pollution Counter Measures

Claim: \$8,149.00

The claim submission claims for the use of a CGE705 vessel for two days, on 8 and 11 January 2019. The rate charged for the use of the vessel is \$4,209.50, which is the rate associated with a CCG PRV III vessel. This expense is not accepted as reasonable.

The CGE705 is a 9m vessel, equipped with a hydraulic crane. It can be operated by a crew of two and includes accommodation space for 2.

The CCG PRV III class was built as a result of a 2013 program. The vessels are 14.32 m in length with a range of 200 nautical miles. The design included a drop style bow ramp and beach landing capability, enclosed wheelhouse, optimum deck space, removable bulwarks and the capability to deploy mini-sweep, bow sweep, slick lickers and other ER equipment. The vessels cost between \$750,000 and \$1,000,000. The CCG attributes a charge out rate of \$4,209.50 to the vessels.

At the rate charged by the CCG, the capital cost of the a PRV III craft would likely be recouped in approximately one year. The methodology used to price the PRV III has not been shared with the Administrator, but making reasonable assumptions about the expected lifespan of such craft, the rate suggested by the CCG is not obviously reasonable.

Moreover, it is not accepted that the CGE705 craft is properly categorized as a CCG PRV III craft. The rate sought by the CCG is not accepted on the available evidence.

In this case, the decision to use a vessel to attend the incident was reasonable, but the cost claimed is not. The CCG charges a daily rate of \$1,194.23 for PRV II class vessels. In the circumstances, that rate is considered a reasonable one.

The pollution counter measures portion of the submission is allowed in the amount of \$2,388.46.

Schedule 11 – Vehicles Claim: \$173.39

A Coast Guard vehicle was used on both January 8 and January 11, 2019. Copies of the vehicle logs were provided with the claim. The daily rate was \$65.57 with a kilometre rate of 22 cents. These costs are reasonable.

The vehicles portion of the submission is allowed in its entirety in the amount of \$173.39

Schedule 13 – Administration Claim: \$43.44

Coast Guard claimed administration costs of \$43.44 based on a rate of 3.09% and salary dollars. That rate has previously been accepted as reasonable by the Administrator.

As the salary costs accepted (\$1,079.76) were less than the amount claimed, the administrative cost was also recalculated. The result of that calculation is \$33.36.

The administrative costs portion of the submission is allowed in the amount of \$33.36.

OFFER SUMMARY AND CLOSING

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

Item	Claim \$	Offer \$
Contract Services	\$16,950.89	\$ 6,417.60
Salary	\$ 1,687.13	\$ 1,349.70
Overtime	\$ 168.71	\$ 168.71
Pollution Counter Measures Equip	\$ 8,419.00	\$ 2,388.46
Vehicles	\$ 173.39	\$ 173.39
Administration	\$ 43.44	\$ 33.36
Total	\$27,442.55	\$10,531.22

Table 1 - Summary of claims made and allowed

Costs and expenses in the amount of \$10,531.22 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 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.

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