



## **OFFER LETTER**

Ottawa, 31 March 2021  
*SOPF File:* 120-880-C1  
*CCG File:*

### **BY EMAIL**

Manager, Response Services and Planning  
Canadian Coast Guard  
200 Kent Street (Stn 5N167)  
Ottawa, Ontario K1A 0E6

**RE: *M/V Aura Lee* – Cowichan Bay, BC**  
**Incident Date: 2018-12-13**

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## **SUMMARY AND OFFER**

This offer letter responds to a submission from the Canadian Coast Guard (the “CCG”) received on December 8, 2020. The submission concerned an ex-fishing vessel 35’ in length and 11’ at the beam, and known as the *M/V Aura Lee* (the “Vessel”).

The Vessel was moored in Cowichan Bay, British Columbia on 13 December 2018. The Vessel began to sink, and may have dragged another Vessel down with it (the “Incident”).

The CCG responded to the reports of the sinking, with the Ganges Lifeboat station first attending the scene on 13 December 2018. CCG ER was subsequently mobilized and took charge of the incident.

The submission from the CCG presents \$42,176.45 in costs and expenses arising from the incident. The principal expense relates to raising the Vessel, which sunk in deep water.

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 \$33,908.13 (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.

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### **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 and supporting documents**

The CCG was advised of a sinking 35' vessel (the *Aura Lee*) at 09:55 on 13 December 2018. They were further advised it was attached to a 16' speedboat, which was also sinking.

No information is available as to what caused both Vessels to sink. It is presumed that the *Aura Lee* began to sink because it had become structurally unsound, allowing an ingress of water. Then, the *Aura Lee* dragged the speedboat down with it.

The CCG reports that they contacted the owner of the *Aura Lee* as part of the response. The owner could not advise as to how much fuel was aboard the *Aura Lee*. He apparently provided a response plan to the CCG. The CCG deemed the proposal inadequate.

The narrative does not indicate what steps were taken by the Lifeboat Station crew before they were left on the scene, but no claim is made for their efforts so no determinations are required.

CCG Environmental Response ("ER") began their response the same day the Incident was reported. The Personnel & Equipment Daily Log for that date notes that there was a visible sheen on the surface of the water and that sorbent materials were deployed.

A CCG ER crew of three attended the scene on 14 December 2018. They travelled from Victoria Base by land vehicle to the Institute of Ocean Sciences in Sidney. From there, they used a response craft to deploy to Cowichan Bay. The CCG indicates they used CGE705 "because of its close proximity to the incident".

According to the narrative, the ER crew arrived at the scene. The *Aura Lee* remained sunken and a sheen remained on the water. The crew replaced the sorbent boom.

Several salvage companies were contacted about raising the *Aura Lee*. Only one company was available, Cold Water Divers Inc. However, due to the weather forecast, salvage efforts could not commence for several days.

On 17 December 2018, 4 CCG ER crew attended from Victoria (via Sidney to travel by boat). By the time the CCG crew arrived, the *Aura Lee* was partially refloated. The CCG

crew assisted the effort by providing generators, pumps, vessel support, sorbents, containment boom positioning and containment boom removal.

After the Vessel was successfully lifted, dewatering efforts had to be maintained continuously. Water quickly entered the Vessel through a number of large holes in its hull. While those efforts continued, the Vessel was maneuvered to a nearby boat ramp to be removed from the water. The narrative indicates CCG personnel could not determine how much fuel was onboard the Vessel.

During the salvage effort, the 16' speedboat could not be located. The *Aura Lee* had sunk in approximately 80' of water, and the bottom of the bay in the area was littered with debris. The CCG decided that any release of oil from the speedboat must be minimal, given that it had only an outboard engine, and so the search was ended.

**Summary of costs and expenses**

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

COST SUMMARY POLLUTION INCIDENT			
<b>INCIDENT:</b>	<b>AURA LEE</b>	<b>PROJECT CODE:</b>	<b>FHVF5</b>
<b>INCIDENT DATE:</b>	<b>December 1, 2018</b>	<b>DATE PREPARED:</b>	<b>15-Nov-20</b>
<b>DEPARTMENT:</b>	<b>CANADIAN COAST GUARD</b>	<b>PREPARED BY:</b>	<b>██████████</b>
			<u>SCH</u>
MATERIALS AND SUPPLIES	-		1
CONTRACT SERVICES	29,522.79		2
TRAVEL	-		3
SALARIES - FULL TIME PERSONNEL	2,406.97		4
OVERTIME - FULL TIME PERSONNEL	562.35		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)	9,457.11		11
VEHICLES	165.26		12
ADMINISTRATION	61.98		13
<b>TOTAL CCG COST OF INCIDENT</b>	<b>\$ 42,176.45</b>		

Figure 1 - Screen capture of CCG Cost Summary

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

				SCHEDULE #2
INCIDENT:	AURA LEE	PROJECT CODE:	FHVF5	
INCIDENT DATE:	December 1, 2018	DATE PREPARED:	November 15, 2020	
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:	██████	
CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
			-	
COLD WATER DIVERS	11,632.50	581.63	12,214.13	INV 407
			-	Paid Dec 27/18
COLD WATER DIVERS	12,666.44	633.32	13,299.76	INV 529
			-	Paid Oct 24/18
BUILDING SEA MARINE	\$1,662.00	\$83.10	1,745.10	INV 732
				Paid Feb 8/19
DON'S BOAT TRANSPORT	2156	107.8	2,263.80	INV 1445
			-	Paid by GAC
			-	
			-	
			-	
			-	
			-	
			-	
			-	
			-	
			-	
			-	
			-	
			-	
			-	
			-	
			-	
TOTAL CONTRACT SERVICES			<u>29,522.79</u>	

Figure 2 – Screen Capture of Contract Expense Summary prepared by the CCG

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**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 decision to deconstruct the Vessel**

After the Vessel was removed from the Water, a marine surveyor was retained to inspect it. According to the narrative, the purpose of the survey was as follows:

Lake, BC to await a survey. The purpose of the survey was to determine the overall condition of the Aura Lee, if the vessel could be efficiently repaired and placed back into the marine environment, if the vessel was a reasonable candidate for reconstruction and if there was any residual value if the vessel was deconstructed.

*Figure 3 - Excerpt from narrative*

The narrative further indicates, with respect to the decision to deconstruct the Vessel:

The expert opinion of surveyor ██████████, Building Sea Marine, confirmed that it would not be feasible to repair the vessel to a seaworthy state, and thus the vessel could never be reintroduced to the marine environment without posing a threat of oil pollution. Based on the information provided by the survey, and the owner’s inability to conduct repairs in any event, CCG decided that deconstruction was the only reasonable measure to prevent the risk of future oil pollution to the marine environment.

*Figure 4 - Excerpt from narrative*

The marine survey report included in the submission does not include a finding that the Vessel constituted a threat of oil pollution after it had been removed from the water. It includes only a finding that it posed a general pollution threat, a notation concerning the Vessel’s fuel tanks and the statement that the machinery space bilge is lightly fouled with oil and fuel.

Notwithstanding that the survey report does not include the conclusions as asserted in the narrative, it is concluded, given the Vessel’s hull type (wooden planks), the use to which it was put (a former troller/gillnet fisher converted to other purposes), its age (built circa 1960) and the photographs included with the submission that the machinery bilge space of the Vessel was likely saturated with oil.

In the result, it is accepted that the Vessel itself posed a risk of oil pollution and some deconstruction measures would be appropriate.

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### **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 2 – Contract Services**

**Claim: \$29, 522.79**

The contract services portion of the claim included two invoices from Cold Water Divers: one for \$12,214.13 for raising the Vessel, and one for \$13,299.76 for deconstruction of the Vessel.

With respect to raising the Vessel, the amounts claimed for raising a semi-submerged vessel with the dimensions of the Vessel, using 4 divers, lift bags, slings and compressors, is reasonable. The invoice for \$12,214.13 is accepted in its entirety.

The invoice for deconstructing the vessel (\$13,299.76) has been accepted as a measure taken with respect to oil pollution for the reasons noted above. The invoice itself shows a portion of this expense was to deal with hazardous material – but not oil. The hazardous material identified is asbestos lagging. Dealing with asbestos aboard a vessel is not inherently something that is compensable under the *Marine Liability Act*. However, the portion of the expense attributed to this cost is moderate (\$6,000). Moreover, the Administrator accepts that it is probable that if asbestos was found aboard the Vessel, then part of that asbestos was likely found in and around the Vessel’s machinery spaces. Those machinery spaces are also where the Administrator has accepted that oil saturation likely occurred. In the result, the Administrator accepts that some measures to deal with asbestos would have been necessary to deal with the oil pollution threat posed by the Vessel, and believes that the overall cost of dealing with the asbestos is reasonable such that an arbitrary measure to parse that expense and reduce compensation awarded is not appropriate. This expense is allowed in its entirety.

The marine surveyor submitted an invoice to the CCG in the amount of \$1,745.10. The evidence does not establish that the marine survey was secured primarily for the purposes of establishing the presence of oil pollution. The report itself was corroborative, rather than determinative, of the need for deconstruction, and the observations made by the surveyor

attributed to oil pollution can and should have been made by the CCG personnel who attended at the scene. This expense is disallowed.

The final contractor expense is one from Don’s Boat Transport, in the amount of \$2,263.80. Although the distance the Vessel had to be moved is relatively short, the amount of the invoice is considered to be competitive and reasonable in the circumstances. The amount of this invoice is accepted in its entirety.

**The contract services portion of this claim is allowed in the amount of \$27,777.69.**

<b>Item</b>	<b>Contractor</b>	<b>Service Provided</b>	<b>Cost</b>	<b>Recommendation</b>
<b>1</b>	Cold Water Divers	Raising the Aura-Lee and towing the vessel to shore	\$12,214.13	\$12,214.13
<b>2</b>	Cold Water Divers	Deconstruction and Disposal of the Aura-Lee	\$13,299.76	\$13,299.76
<b>3</b>	Building Sea Marine	Marine Survey of the Aura-Lee	\$1,745.10	0
<b>4</b>	Dons Boat Transport	Transport wreck from ramp at Cowichan Bay to Deconstruction site	\$2,263.80	\$2,263.80
	<b>Total</b>		<b>\$29,522.79</b>	<b>\$27,777.69</b>

*Figure 5 - Summary of Contractor expenses claimed and allowed*

***Schedule 4 – Salaries: Full Time Personnel***

***Claim: \$2, 406.97***

The CCG claims for 53.5 hours of salary time for four CCG personnel, distributed over three days (13, 14 and 17 December 2018). The submission is supported by timesheets. The work on 14 and 17 December 2018 is accepted in its entirety.

The 4 hours claimed for 13 December 2018 requires some comment. The four hours claimed on 13 December 2018 is for the CCG ER duty officer to receive a report about the Incident, and deploy the Ganges Lifeboat Station to respond to the incident. It is considered that 4 hours is excessive for the work done by the CCG ER duty officer that day. It would be appropriate to write down the CCG claim by three hours. However, it is also noted that no claim was made by the CCG for the work done by the Ganges Lifeboat crew who were dispatched to the scene and who carried out useful work with respect to preventing oil pollution (including deploying absorbent materials). It is concluded that the work done by the Ganges Lifeboat Crew on 13 December 2018 would have been well in excess of the four hours claimed by the CCG that day. In result, while the Administrator does not accept that the timesheets submitted with the claim support the claim for CCG salaries on 13 December 2018, it is nevertheless determined that the claim should be allowed as the hours and value of the work done by the CCG that day likely exceed the four hours claimed.

**The salaries portion of this claim is allowed in the amount of \$2,406.97.**





CCG/6031 CHARGE-OUT RATES  
RATES

Item	Included Items	Equipment Category	Estimated Replacement Cost	Daily Operational Charge-out Rate
Pumps - Peristaltic 2"	Complete	Non-Durable	12,500.00	416.67
Pumps - Gear - electric	Complete	Non-Durable	5,000.00	166.67
Centrifugal 1.5" - 2"	Complete	Non-Durable	600.00	20.00
Centrifugal 3" - 4"	Complete	Non-Durable	750.00	25.00
Diaphragm 1.5" Sandpiper	Complete	Durable	1,200.00	6.67
Diaphragm 1" Sandpiper	Complete	Durable	1,200.00	6.67
Portable fuel pump	Complete	Durable	4,400.00	24.44
Canflex 4" off-Loading Pump	Pump only	Durable	14,100.00	78.33
TK4	c/w power pack	Durable	28,000.00	78.33
TK 5	c/w power pack	Durable	30,000.00	155.56
TK6	c/w power pack	Durable	35,000.00	166.67
TK8	c/w power pack	Durable	40,000.00	222.22
Type 1 Emergency Offloading System	Complete	Durable	420,000.00	2,333.33
<b>Pressure Washers</b>				
Portable Pressure Washer - cold H <sub>2</sub> O	13HP/3500 psi/gas	Semi-Durable	1,750.00	19.44
Portable Pressure Washer - cold H <sub>2</sub> O	6.5HP/2700 psi/gas	Semi-Durable	1,250.00	13.89
Portable Pressure Washer - hot H <sub>2</sub> O	3000 psi/ gas	Semi-Durable	7,250.00	80.56
Portable Pressure Washer - hot H <sub>2</sub> O	3500 psi/gas	Semi-Durable	7,350.00	81.67
Pressure Washers -Landa SOS	c/w 2 axle trailer	Semi-Durable	30,500.00	338.89
Beach Flush - Large Container Unit	c/w 4" hose	Semi-Durable	35,185.00	390.94

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Figure 7 – Excerpt of page 7 of the CCG charge-out manual, with annotations in red

As well, the costing of the charge-out rates is not established. Given the needs, a 2-inch dispersant pump would have sufficed. That pump has a charge-out rate of \$15.37. That amount is allowed, for one pump.

A similar issue arises with respect to the use of the CGE 705. The CCG proposes a charge-out rate of \$4,209.50 per day for that craft. That is based on the valuation the CCG attributes to PRV III class vessels built by Robert Allen Ltd., which have a replacement cost of \$757,710.79. Arriving at the rate proposed by the CCG for the PRV III class of vessels given their age and base cost is not problematic, and in any event the CGE 705 is not one of those vessels and does not have the capabilities of that vessel. The PRV II rate of

\$1,194.23 per day is considered a more appropriate match to the CGE 705, and that rate is applied instead.

**The pollution counter-measures portion of this claim is allowed in the amount of \$2,933.88.**

Item	Rate	Date	Amount
CGE 705	\$1,194.23 per day	Dec 14 <sup>th</sup> and Dec 17 <sup>th</sup>	\$2,388.46
1 Generator (2000 watt)	\$8.05 per day	Dec 17 <sup>th</sup>	\$8.05
1 Electric Pump (2-inch)	\$15.37 per day	Dec 17 <sup>th</sup>	\$15.37
150-feet of 24-inch containment boom	\$0.67 per foot per day	Dec 14 <sup>th</sup> to 17 <sup>th</sup>	\$402.00
1 bundle sorbent boom	\$75.00	Replacement cost	\$75.00
1 bundle sorbent pads	\$45.00	Replacement cost	\$45.00
<b>Total</b>			<b>\$2,933.88</b>

Figure 8 - Summary of pollution counter-measures equipment claims allowed

**Schedule 12 – Vehicles**

**Claim: \$165.26**

The vehicles claim is supported by Daily Trip Reports rather than Vehicle Logs, which are more typically used. Gas receipts were not provided, but a rate of \$0.22/km is claimed and accepted. The total distance travelled is 137 km, which roughly matches what would be expected. The daily rate of \$67.56 for a vehicle is accepted.

**The vehicle portion of this claim is allowed in the amount of \$165.26.**

**Schedule 13 - Administration**

**Claim: \$61.98**

The CCG submission advances a claim for administration costs at a rate of 3.09%, applied against claimed salaries, less the 20% markup associated with the costs of the employee benefits plan.

The 3.09% rate is generally accepted as reasonable. This portion of the claim is accepted as is.

**The administration portion of the submission is allowed in the amount of \$61.98**

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### **OFFER SUMMARY AND CLOSING**

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

<b>Schedule</b>	<b>Cost claimed</b>	<b>Recommendation</b>
1 – Materials & Supplies	nil	nil
2 – Contract Services	\$29,522.79	\$27,777.69
3 - Travel	nil	nil
4 - Salaries - CFT personnel	\$2,406.97	\$2,406.97
5 - Overtime - CFT personnel	\$562.35	\$562.35
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)	\$9,457.11	\$2,933.88
12 - Vehicles	\$165.26	\$165.26
13 - Administration	\$61.98	\$61.98
<b>Total Claim</b>	<b>\$42,176.45</b>	<b>\$33,908.13</b>

*Table 1 - Summary of claims made and allowed*

Costs and expenses in the amount of \$33,908.13 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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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