



OFFER LETTER

Ottawa, 18 August 2021
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CCG File:

BY EMAIL

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

**RE: *F/V SAN JOLYNE III* — Dusenbury Island, Pender Harbour,
British Columbia - Incident date: 2018-10-19**

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel SAN JOLYNE III (the “Vessel), which sank on 19 October 2018, at Dusenbury Island, Pender Harbour, British Columbia (the “Incident”).

[2] On 16 October 2020, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the CCG on behalf of the Administrator. The submission advanced claims totaling \$181,475.67 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

[3] 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*, SC 2001, c 6 (the “MLA”).

[4] The amount of \$127,118.46 (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid and in accordance with section 116 of the MLA, is offered with respect to this claim.

[5] The reasons for the Offer are set forth below, along with a description of the CCG’s submission.

THE SUBMISSION RECEIVED

[6] 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 corroborating documents are relevant to the determination, they are reviewed below.

The narrative and photographs

[7] According to the narrative, on 19 October 2018, the CCG was notified of an oil slick with a fuel-like odour about 100 to 150 yards in size between Francis Peninsula and Dusenbury Island in Pender Harbour, BC. Due to poor light conditions, the CCG requested that Transport Canada conduct an overflight of the area. Though Transport Canada was unable to do so, an aircraft of opportunity reported that the oily sheen covered most of the harbour.

[8] On 21 October, the CCG determined that the Vessel, which had sunk on 19 October, was the source of the oily sheen, and unsuccessfully attempted to contact the supposed owner. On 22 October, the CCG determined the Vessel to be the primary source of the oil pollution but also identified that certain nearby wrecked vessels were also a pollution threat. The CCG placed containment boom around the area.

[9] While the CCG personnel watched the boom, they observed the owner attempting to raise the Vessel from the water. A subsequent Transport Canada overflight indicated that the oily sheen on the water was still present.

[10] On 23 October, while the attempts of the supposed owner to raise the Vessel were unsuccessful, he stated that he had access to a barge with a crane that would be available in the coming days. The oily sheen was still present and unrecoverable, and the Pender Harbour Authority agreed to maintain the containment boom.

[11] Containment efforts were effective, and the CCG ordered the owner not to tamper with on-site pollution mitigation equipment and to provide a response plan. On 26 October, having been informed that he had successfully raised the Vessel, the CCG ordered the owner not to move it until a pollution assessment had been conducted.

Figure 1: The Vessel after being raised

[12] On 29 October, the CCG determined that the Vessel contained at least 250 liters of oil in addition to oily water and directed the owner to provide a marine survey report and a contract with the shipyard where the Vessel was to be moved. While the owner indicated the boat was to be towed to Texada Island Boat Yard, follow-up by the CCG revealed that no such contract existed.

[13] On 30 October, as the Vessel sank again. The CCG advised the owner that it would not interfere with his salvage operations until the arrival of a contractor, at which point the contractor would take charge of the response. The contractor, Mercury Transport, conducted preliminary work and a hull inspection. The CCG reports that the owner had negative interactions with those responding to the Incident.

[14] Mercury Transport towed the Vessel to Vancouver for a marine survey, and the CCG made efforts to minimize the risk of further pollution from the remaining derelict vessels in the area. A survey of the Vessel was scheduled for 5 November. On that day, the CCG removed all accessible pollution from the Vessel, totaling approximately 200 liters of oil. The survey results indicated that the Vessel was beyond repair and would pose a continued pollution risk if placed back in the water.

[15] The owner, refusing to pay the incurred costs, apparently abandoned the Vessel. Consequently, the CCG arranged for it to be deconstructed. Deconstruction began at the Mercury Transport facility in Vancouver on 6 November and finished on 7 November.

Figure 2– Photograph from the submission depicting oil pollution inside the Vessel
Figure 3– Photograph from the submission depicting the response to the Incident

Cost summary

[16] The CCG submission summarizes the claimed costs as follows:

COST SUMMARY			
POLLUTION INCIDENT			
INCIDENT:	SAN JOLYNES III	PROJECT CODE:	FHUI5
INCIDENT DATE:	October 19, 2018	DATE PREPARED:	Oct 1/20
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:	[REDACTED]
			<u>SCH</u>
MATERIALS AND SUPPLIES	-		1
CONTRACT SERVICES	150,386.74		2
TRAVEL	4,783.80		3
SALARIES - FULL TIME PERSONNEL	6,892.20		4
OVERTIME - FULL TIME PERSONNEL	3,286.88		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)	12,860.38		11
VEHICLES	2,940.38		12
ADMINISTRATION	325.29		13
	<u>\$ 181,475.67</u>		
TOTAL CCG COST OF INCIDENT			

Figure 4 – Screen capture of the cost summary

Contractor documentation

[17] The majority of the claimed costs arise from contract services. The CCG submission summarizes these costs as follows:

				SCHEDULE #2
INCIDENT:	SAN JOLYNES III	PROJECT CODE:	FHUI5	
INCIDENT DATE:	October 19, 2018	DATE PREPARED:	September 28, 2020	
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:	[REDACTED]	
CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
MERCURY TRANSPORT	142,425.46	7,121.28	149,546.74	INV 20182714
CHRIS SMALL MARINE SURVEYORS	800.00	40	840.00	Paid Jan 8/19 INV 10272
			-	Paid Nov 27/18
			-	
			-	
			-	
			-	
			-	
			-	
TOTAL CONTRACT SERVICES			<u>150,386.74</u>	

Figure 5 – Screen capture of contractor costs summary

[18] The claimed costs appearing in Figure 5 are supported by several invoices paid by the CCG, as well as secondary invoices from subcontractors and suppliers.

[19] The invoice from Mercury Transport Inc. is dated 30 November 2018. It covers most of the claimed contractor expenses, including the raising, removal, and deconstruction of the Vessel, as well as the dates on which each task was performed. It also includes a list of subcontractor and supplier expenses with applicable markup charges.

[20] A subcontractor invoice from Hydra Marine Services Inc., covering the salvage of the Vessel and its transit to the Mercury Transport facility in Vancouver, is also included. The attached Work Orders are faded and hard to read, as is the invoice from United Rentals for the rental of equipment.

[21] The CCG has also included invoices and receipts for travel, meal, and accommodation expenses.

[22] The submission also contains a copy of the survey report from Chris Small Marine Surveyors Ltd., which contains information about the Vessel and photos depicting its poor condition.

Additional CCG internal documentation

[23] The submission includes a Personnel & Equipment Daily Log (the “Log”) for each day of the CCG’s work during the response to the Incident. The Log indicates that 3-4 employees managed the response to the Incident each day and shows that 850 feet of 24-inch sorbent boom were used.

[24] The submission also includes schedule forms in support of the claimed salary, overtime, vehicle, and administrative costs.

DETERMINATIONS AND FINDINGS

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

[25] The Incident resulted in oil pollution damage suffered, or the threat of such damage, within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to mitigate further damage. As a result, claims arising from the Incident are potentially eligible for compensation.

[26] The CCG is an eligible claimant for the purposes of section 103 of the MLA.

[27] The submission arrived prior to the limitation periods set out under subsection 103(2) of the MLA.

[28] 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 potentially eligible for compensation.

[29] Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.

Findings on the evidence submitted by the CCG

The facts of the Incident as set out by the CCG are generally accepted

[30] 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.

The Vessel posed a pollution threat and some of the measures taken are admissible

[31] The CCG determined that the Vessel contained about 250 liters of oil, some of which was released into the water, resulting in an oily sheen. Additionally, the Vessel was in poor condition and had not been adequately maintained. It is thus accepted that the Incident as described by the CCG involved an oil discharge and resulting oil pollution damage.

[32] The initial efforts with respect to containing oil pollution after the first sinking are accepted as measures reasonably taken with respect to oil pollution.

[33] The involvement of the CCG with the Wrecked Vessels Removal Program in the response requires some comment. The involvement of that program suggests that, at least at some point, some consideration was given to whether the response involved an element of wreck removal. Wreck removal, per se, is not within the scope of what the can be compensated by the Ship-source Oil Pollution Fund. However, where a ship is itself an oil pollution threat (i.e. its hull is saturated with oil to the point that it will cause oil pollution damage should it sink), deconstruction of that ship can constitute a measure taken with respect to oil pollution.

[34] In this case, the Vessel was inspected by CCG officers just before the second sinking. It was noted to have fuel aboard. The second raising operation (i.e. the one carried out by the CCG) is therefore accepted as a measure taken with respect to a release or threatened release of oil, and admissible subject to a further discussion set out below.

[35] Moreover, based on the evidence of the state of the Vessel after it was raised, it is determined that the Vessel itself posed a threat of oil pollution. Therefore, deconstructing the Vessel could be a reasonable measure taken with respect to oil pollution, although the cost of that effort must also be established as reasonable. That is discussed in a following section.

Some parts of the claim should be disallowed

[36] Some elements of the CCG submission are problematic, or at least problematic when taken together.

[37] The CCG claims for time that personnel spent monitoring the raising of the Vessel the first time (i.e. by the owner) and maintaining the oil pollution boom placed around the Vessel. During the time the CCG spent monitoring the Vessel, dangerous activities by the owner were documented. The CCG did not take steps to intervene. As well, the CCG was not present when the Vessel was finally raised, but attended after.

[38] After the CCG attended, they concluded that the Vessel continued to pose a pollution threat. This was a reasonable conclusion as the Vessel had recently sunk and was of dubious seaworthiness, and still had oil aboard.

[39] The CCG did not place pumps or other equipment to keep the Vessel afloat. Instead, the CCG issued an order that the Vessel not be moved. They then departed the scene.

[40] It is understood that the CCG had concerns about the Vessel being moved to another location and releasing oil, and perhaps endangering anyone aboard. That said, the overall result was unfortunate. The owner spent days successfully refloating the Vessel, sometimes under CCG supervision, and ultimately succeeded. At that point, the CCG intervened and issued an order which would, for example, prevent the owner from removing the Vessel from the water. Shortly thereafter, the Vessel sunk again.

[41] These facts require consideration of whether the claimant's (the CCG's) conduct contributed to the damages for which it now claims. The office of the Administrator reached out and spoke with the owner of the Vessel about this matter. It was a challenging conversation and direct answers were not provided. What can be stated is that no evidence was raised that the CCG's conduct was negligent and contributed to the second sinking. In the result, the CCG's claim cannot be reduced on that basis.

[42] Some consideration was given as to whether the claim for the CCG time spent monitoring the Vessel while it was being raised, the first time, should be rejected. Ultimately this was considered inappropriate. While it was unfortunate that the Vessel sunk a second time and it would have been preferable to avoid such a result, the CCG effort, at least insofar as it was devoted to maintaining a boom in place around the Vessel to (successfully) contain oil pollution, was reasonable and a measure taken with respect to a discharge of oil. It is therefore accepted, notwithstanding the second sinking.

[43] However, the expenses incurred by the CCG in raising the Vessel (i.e. the second raising) were increased by the fact that the CCG used emergency contracting. It is considered that the oil pollution from the Vessel was largely contained by the boom the CCG placed. While the Vessel did need to be raised again and moved, the evidence does not establish, in all of the circumstances, that there existed a need to do so on an emergency basis, and therefore the added expense from an emergency response is considered unreasonable. Some write down of the CCG contracting expenses is therefore appropriate.

[44] Determining precisely what reduction should be made to the claim is a challenge. The claim documentation corresponding to the latter parts of the response include sufficient detail to permit a precise reduction. The documentation for the earlier parts of the response includes insufficient detail to allow a precise reduction, and so a percentage figure is used instead. The percentage selected results in a somewhat lesser per capita reduction for the earlier parts of the claim than for the latter (third) part, where the evidence allowed a more precise reduction.

CLAIM AND OFFER DETAILS

[45] The CCG presented its claimed costs and expenses to the Fund across seven schedules, each of which is outlined below.

[46] Under Part 7 of the MLA, the measures taken to respond to an oil pollution incident and the resulting costs must be reasonable in order to be compensable by the Fund. To the extent that reasons are not already set out in this letter, the sections below explain why certain portions of the CCG’s claim have been allowed while others have been disallowed.

Schedule 2 – Contract Services

Claimed: \$150,386.74

[47] The CCG’s contract services in this case were divided among two contractors, Mercury Transport and Chris Small Marine Surveyors. These costs are summarized in the table below and individually explained thereafter.

Company	Invoice Date	Work Description	Claimed costs including GST
Mercury Transport	2018-11-30	Assess the Incident; raise, remove, and deconstruct the Vessel	\$149,546.74
Chris Small Marine Surveyors	2018-11-06	Marine survey of the Vessel	\$840.00

Table 1 – Summary and brief description of claimed contract services

Subcontractor markup

[48] The Administrator accepts the application of markups by a contractor to costs incurred by subcontractors for the purposes of supervision and contract management as an established business practice. However, in order to be accepted as part of a claim, markups must be at a reasonable rate, properly applied, and, preferably, established or advertised prior to the commencement of the work in question.

[49] In general, it is accepted that a reasonable markup would be 10%; however, the rates of approximately 15% are accepted largely because this rate was advertised prior to the start of the work. Mercury Transport charged a markup on all subcontractor costs, with the total markup costs amounting to \$13,453.13. These markups are listed in the table below.

CONTRACTOR	CONTRACTOR'S RATE	BASE MARKUP (15% BEFORE GST)	AMOUNT BILLED (ROUNDED UP)	TOTAL MARKUP	
Hydra Marine	8481.85	1272.28	9755.00	1273.15	0.150103
Pender Harbour Resort	1866.00	279.90	2150.00	284.00	0.152197
Garden Bay Pub (excl tip)	432.01	64.80	500.00	67.99	0.157381
Mercury Launch	30767.06	4615.06	35500.00	4732.94	0.153831
FRPD	39663.24	5949.49	45625.00	5961.76	0.150309
Harbour Air Seaplanes	1040.00	156.00	1200.00	160.00	0.153846
MacDonald Trucking	6426.71	964.01	7400.00	973.29	0.151445
Markup on Invoice 20182714				13453.13	

Figure 8 – Mercury Transport subcontractor markup costs

[50] Mercury Transport established these markups by applying a 15% fixed rate to subcontractor costs and rounding up to produce a whole number. Accordingly, the exact markup rates vary and are listed with four decimal places. This is not considered to be a reasonable method of fixing the markup cost for subcontractor expenses.

[51] Further, because the CCG established no Statement of Work, there was no oil pollution emergency demanding immediate action, and the CCG made no attempt to mitigate costs incurred in responding to the Incident, neither the markup rate nor the method in which it was applied is accepted as reasonable, with the exception of the markup applied to the rental and transportation of disposal equipment (Table 3), which is partially accepted.

[52] As the evidence does not support the subcontractor markup rate used, the more typical 10% figure is applied throughout the CCG claim submission.

Mercury Transport

[53] Mercury Transport does not have an in-house commercial diving team, and therefore subcontracts for those services (and others, such as specialty equipment) as necessary. A markup of at least 15% is applied for such subcontracted services. The work performed by Mercury Transport in responding to the Incident is subdivided below into three parts.

Part 1: Hydra Marine Services diving work ***\$9,755.00***

[54] On 30 October 2018, Mercury Transport engaged Hydra Marine Services for diving work in order to raise the Vessel. The work was conducted on 30 and 31 October, and the resulting costs arise from the labour of three divers, overnight accommodations and meals, a crew truck, a dive boat, and diving equipment.

[55] It is accepted that the Vessel remained a pollution threat, with oil aboard, and that it needed to be removed from the marine environment. This expense was necessary to facilitate that measure.

[56] The Hydra Marine Services invoice totals \$8,481.85. With the 15.0103% markup included, the amount rises to \$9,755. The invoice is itemized and supported by work orders included in the CCG submission. The basis for the markup on subcontractor costs is not established on the available evidence. The figure of 10% is allowed instead. While this work was apparently done on an emergency basis, it does not appear that a premium was charged or that unnecessary costs were incurred by Hydra Marine Services. Therefore no reduction is applied for this portion of work being done on an emergency basis.

This item is allowed in part, in the amount of \$9,330.04.

[57] The exact number of personnel from Mercury Transport and subcontractor Fraser River Pile & Dredge (“FRPD”) is unclear, as is the reasoning behind the premium salary rates that were charged. Additionally, except for the tug *Ocean Warlock* that was used to remove the Vessel, no other vessel logs are provided in the CCG submission. The identity of some vessels has been determined by matching acronyms in the invoices to vessels on Mercury Transport’s website and in the Transport Canada vessel registration database.

[58] A reasonable interpretation of the evidence provided in the submission is that on 30 October 2018, Mercury Transport mobilized crew members, a deck barge, a tug, a crane, the barge *Peter D Anderson*, and the tug *Ocean Warlock*, with work on the Vessel starting the next day. Mercury Transport also hired a crew of five personnel and a 350-ton crane from FRPD, retained a salvage master to direct the operation, and rented pumps from United Rentals. While the CCG was on site, the personnel and equipment logs in the submission do not provide an account of the contracted equipment and personnel.

Chargeout rate .

EQUIPMENT/CREW	RATE (PER)	RATE (PER)
	HOUR	DAY
Boat (incl salvage master & deckhand)	340	
Flat barge	400	
Standby (barge/crew)	300	
Barge (charter per day)		1500
Excavator	185	
Labour	85	

Figure 6 – Charge-out rate summary included in the Mercury Transport invoice

[59] The below table summarizes the work and costs covered by the Part 2 invoices. It is impossible to provide a full assessment of the assets that Mercury Transport used in this phase of the work given the lack of supporting details in the CCG submission.

Invoice Date	Work Description	Hours	Rate (if applicable)	Cost
2018-10-30	Travel to Pender Harbour	8	\$340.00/hour	\$2,720.00
2018-10-30	Accommodation at Pender Harbour			\$1,866.00
	15.2197% markup (accommodation)			\$284.00
2018-10-30	Meals at Pender Harbour			\$252.57
	15% markup (meals)			\$37.89

Invoice Date	Work Description	Hours	Rate (if applicable)	Cost
2018-10-31	Mobilize barge crew and equipment to Pender Harbour			\$1,040.00
	15.3846% markup (mobilization)			\$160.00
2018-10-31	Salvage master	15	\$340.00/hour	\$5,100.00
2018-10-31	Transport equipment to Pender Harbour			\$30,767.06
2018-10-31	15.3831% markup (equipment)			\$4,732.94
2018-10-31	Deck barge transit from Vancouver to Pender Harbour and loading Vessel	20	\$400.00/hour	\$8,000.00
2018-10-31	Deck barge overnight standby	7.5	\$300.00/hour	\$2,250.00
2018-11-01	Deck barge transport Vessel to Vancouver	10	\$400.00/hour	\$4,000.00
2018-11-01	Demobilize barge crew	8	\$340.00/hour	\$2,720.00
2018-11-01	Work of crane barge, equipment, and crew			\$39,663.24
2018-11-01	15.0309% markup (work)			\$5,961.76
Total, Part 2				\$109,555.46

Table 2 – Summary and brief description of Mercury Transport’s subcontractor and supplier invoices with costs (Part 2)

[60] The presence of an oily sheen in the water and an apparently belligerent owner do not provide sufficient justification for the CCG’s issuance of an emergency contract to have the Vessel raised and removed, given that the oil pollution from the Vessel had already been contained for several days. Notably, Transport Canada overflights conducted on 23, 24, and 29 October reported that the containment boom was containing the oil. The Incident had been stabilized and the Duty Officer’s evaluation indicated that there was no risk to people, the environment, or property.

**Canadian Coast Guard Environmental Response
Incident Information Form**

EVALUATION OF THE SITUATION BY THE DUTY OFFICER

Intervention Analysis	Opinion
Health and safety of people (What are the risks to people) <input type="checkbox"/> There is a risk to the health of people in the area. Describe the Risk.	<input type="checkbox"/> danger
<input checked="" type="checkbox"/> There is no risk to people in the area.	
Potential impact and damages to environment and property	<input checked="" type="checkbox"/> none

Figure 7 – CCG Incident Information Form by the acting Duty Officer

[61] It is clear that, at the time of the Incident, the Vessel was well beyond its life expectancy and posed an oil pollution threat. However, the nearly \$150,000 that the CCG paid for contractor expenses is not proportional to the threat, and therefore may not be accepted as reasonable. The CCG did not use local resources to remove the Vessel in a more cost-effective way, nor is there evidence that it engaged personnel with Transport Canada Vessels of Concern after the 24 October 2018 conference call to analyze other options.

[62] Additionally, rather than writing a statement of work or conducting an expedited bid process for the contractor work, the CCG entered into an emergency contract immediately after discovering that the Vessel had sunk. This approach heightened the confrontation between CCG personnel and the owner of the Vessel to the point that the RCMP was contacted.

[63] On the evidence, the CCG could have acted in a significantly more cost-effective way in responding to the Incident. The costs incurred by the CCG in raising and removing the Vessel should accordingly be reduced. As previously noted, the evidence from the contractor is rather limited and does not allow precise reductions to be made. It is noted that for the third part of the response (as discussed below), more information was available, allowing for a precise reduction. There the effective reduction is 49%. It is determined that it would be appropriate to reduce the CCG costs for the initial phase at a lesser rate of 30%, to account for the lack of bargaining power and corresponding higher cost resulting from the decision to proceed on an emergency basis. This figure is significantly less than the effective write down for the latter parts of the response, which is appropriate as it is not obvious that unnecessary equipment costs were incurred as was the case with the latter parts of the response. This somewhat smaller than possible write down is also appropriate

as the expenses of a barge have been disallowed in Part 3, and some additional costs in Part 2 might have therefore been necessary carry out the measures without the use of that barge.

This item is accepted in part, in the amount of \$76,688.82.

Part 3: Deconstruction and disposal of the Vessel \$23,115.00

[64] On 1 November 2018, the barge transporting the Vessel arrived at the Mercury Transport facility in Vancouver for deconstruction. From that day until 5 November, the CCG attempted to negotiate a settlement with the owner, had the Vessel surveyed, and removed all accessible oil. While the CCG submission indicates that the CCG removed 200 liters of oil, the submission provides no evidence of the disposal of liquid product or contaminated sorbent by either the CCG or Mercury Transport.

[65] This part of the contractor expenses involved 16.5 hours of work, the use of an excavator for 12.5 hours, the rental of garbage bins, and disposal costs.

[66] The table below summarizes the work and costs covered by the Part 3 invoices.

Item	Time	Rate	Cost claimed	Cost allowed
Labour	16.5 hours	\$85.00/hour	\$1,402.50	\$1,402.50
Excavation	12.5 hours	\$185.00/hour	\$2,312.50	\$2,312.50
Rental and transport of disposal equipment			\$6,426.71	\$6,426.71
Markup (disposal)		15.1445%	\$973.29	\$642.67
Barge rental	8 days	\$1,500.00/day	\$12,000.00	\$0
Total, Part 3			\$23,115.00	\$10,784.38

Table 3 – Summary and brief description of Mercury Transport’s subcontractor and supplier invoices with costs (Part 3)

[67] The costs for labour, excavation, and disposal equipment for the purpose of deconstructing the Vessel are accepted as reasonable, with the exception of the 15.1445% markup for the latter costs. A 10% markup is accepted as reasonable, for a total markup of \$642.67 rather than \$973.29.

[68] Had the CCG pursued more cost-effective options to address the oil pollution threat posed by the Vessel, such as engaging contractors through a standing offer agreement or with a Statement of Work on a non-emergency basis, the response could have been carried out at a reduced cost. With respect to these expenses, the breakdown does allow for a precise write down. It is likely that the barge rental costs would not have been incurred had

this contracting not been done on an emergency basis. These costs are a result of the emergency contract, and the CCG made no effort to mitigate them once the barge arrived in Vancouver. Accordingly, the \$12,000 claimed for the rental of the barge is rejected as unreasonable.

[69] This yields a subtotal of \$10,784.38. With the addition of the 5% GST rate of \$539.22, the total increases to \$11,323.60.

This item is accepted in part, in the amount of \$11,323.60.

Chris Small Marine Surveyors

[70] This contractor conducted a survey of the Vessel on 5-6 November 2018 at the Mercury Transport facility. The survey report relies on the rot, structural damage, and oil-soaked materials in the Vessel to conclude that the Vessel had no value.

[71] On 29 October 2018, the CCG had conducted a hydrocarbon assessment of the Vessel after it had been raised and estimated that it contained 250 liters of hydrocarbons. Given the information and photos provided in the CCG submission relating to this assessment, as well as the condition of the Vessel and the fact that it had sunk twice in the same week, it is clear that the condition of the Vessel was known to the CCG. Therefore, there was no need to commission a marine survey to determine the remaining hydrocarbons in the Vessel.

This item is disallowed in its entirety.

[72] The following table summarizes the claimed and allowed Schedule 2 contractor costs.

Contractor	Service	Cost claimed	Cost allowed
Mercury Transport	Salvage and transport of the Vessel from Pender Harbour to Vancouver; deconstruction and disposal of the Vessel	\$140,851.85	\$97,342.46
Chris Small Marine Surveyors	Survey of the Vessel	\$840.00	\$0
Total		\$150,386.74	\$88,012.42

Table 4 – Claimed and accepted contractor costs (Schedule 2)

The contract services portion of the claim is allowed in the amount of \$97,342.46.

Schedule 3 – Travel

Claimed: \$4,783.80

[73] These costs arise from two round trips from Richmond, BC, to Pender Harbour, including the use of a ferry. The first trip on 22 October 2018 involved three CCG personnel who used two vehicles to tow a trailer of containment boom and a boat trailer. These costs are documented on Expense Report Statements and supported by hotel and ferry receipts. As this trip was for the initial on-site response to the Incident, the travel costs of three CCG personnel are accepted as reasonable.

[74] The second trip on 29 October 2018 was for an oil pollution assessment of the Vessel. When the Vessel again sank the next day, the CCG retained Mercury Transport to remove it, and three CCG personnel were on-site for four days to monitor this operation. Despite the finding that the work performed by Mercury Transport was unreasonable, it was reasonable for the CCG to monitor the operation. These costs are also documented on Expense Report Statements and supported by hotel and ferry receipts, and are accepted as reasonable.

The travel portion of this claim is allowed in its entirety.

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$6,892.20

[75] These costs are for five CCG Response Specialists at the GT-04 level, with a rate of \$43.76 per hour, including employment benefit contributions. These Response Specialists collectively worked a total of 157.5 hours over the course of the 20-day response to the Incident.

[76] With the exception of 31 October 2018, when one Specialist was replaced due to illness, the number of personnel on-site never exceeded three. Given the work that the personnel performed, the salary costs are accepted as reasonable. Despite the fact that the costs of the wreck removal contract services are unreasonable, the involvement of CCG personnel, namely to place boom around the Vessel and monitor the work of contractors and subcontractors, was reasonable.

[77] Similarly, the work conducted by three CCG personnel on 5 November 2018 to remove oil and oily water from the Vessel is also reasonable. The salary costs are supported by Personnel & Equipment Daily Log sheets.

The salaries portion of the submission is allowed in its entirety.

[78] These costs arise from the work of three Response Specialists at the GT-04 level at a rate of \$36.47 per hour and one at the GT-05 level at a rate of \$40.94 per hour. Both of these rates exclude employee benefit contributions. There was a \$.14 per hour difference between the claimed GT-05 rate of \$40.94 per hour and the calculated GT-05 rate of \$40.80 per hour; nonetheless, as this difference had a negligible impact on the final assessment, it was accepted.

[79] The overtime costs for the three Specialists at the GT-04 level are accepted as reasonable on grounds similar to those mentioned with regard to the salary costs above. However, the involvement of the Senior Response Officer at the GT-05 level is not supported by personnel logs. Additionally, as the CCG submission notes that he served as a duty officer and did not travel to the site of the Incident, none of his salary time is attributable to the claim. Rather, only overtime costs are claimed for him.

[80] The hours attributed to him, as evidenced by the Extra Duty Forms, total 15 hours, of which 13.5 hours are charged at a rate of 1.5 and the remaining 1.5 hours are charged at double rate. This gives a total of \$991.87 claimed overtime costs for this Senior Response Officer. However, in the CCG submission, the Schedule 5 summary provides for 15 hours at the 1.5 rate, which would yield a claimed total of \$1,043.97. As the Extra Duty Forms were signed by both the employee and manager, precedence was given to this document.

[81] While the work that this Senior Response Officer performed is accepted as reasonable overtime work, the amount of work attributed to him is unreasonable. By allowing for a maximum of one hour of work for what he did, his overtime commitment is reduced to 7 hours. This reduction is applied against 6 hours at the 1.5 rate and 1 hour at the double rate. The total reduction is \$450.35.

The overtime portion of the submission is allowed in part in the amount of \$2,693.26.

[82] These expenses arise from the use of 850 feet of 24-inch containment boom and a PRV 2 vessel. The vessel was used for six days to deploy and maintain the boom at the site of the Incident and to monitor the work of Mercury Transport.

[83] The expenses are supported by Personnel & Equipment Daily Log Forms, and the charge-out rate used matches the rate provided in the CCG charge-out rate manual. The use of the PRV 2 and resulting costs are accepted as reasonable.

[84] The CCG submission notes that reports from the Transport Canada flyovers indicated that the containment boom effectively controlled the pollution from the Vessel. The associated expenses are supported by Personnel & Equipment Daily Log Forms, and the charge-out rate used matches the rate provided in the CCG charge-out rate manual. As

these costs do not exceed the replacement cost of 850 feet of 24-inch containment boom, they are accepted as reasonable.

The pollution counter-measures portion of the submission is allowed in its entirety.

Schedule 12 – Vehicles

Claimed: \$2,940.38

[85] The CCG used two vehicles in responding to the Incident: a Dodge 3500 pickup truck at the rate of \$65.57 per day, and a 5-ton truck at the rate of \$777.78 per day. The vehicles were used to transport containment boom, a PRV 2 vessel, and CCG personnel to the site of the Incident. These expenses are supported by Personnel & Equipment Daily Log Forms and vehicle log forms, and the daily use rates match those provided in the CCG charge-out manual.

[86] The mileage on the 5-ton truck seems low but is nonetheless accepted as reasonable, along with the other mileages. While the CCG submission contains no gas receipts, its fuel expenses are based on a rate of \$.22 per kilometer. This rate has been used by the CCG in other claims and is accepted as reasonable.

[87] With the exception of the work done on 5 November 2018, the daily use of these vehicles is accepted as reasonable. On 5 November, CCG personnel could have carried all of the necessary equipment to remove oil from the Vessel in the Dodge 3500 pickup truck. Consequently, the charge of \$777.78 for the use of the 5-ton truck on this day is rejected as unreasonable and is replaced with the daily rate of \$65.57 for the Dodge 3500 pickup truck.

The vehicles portion of the submission is allowed in part in the amount of \$2,228.17.

Schedule 13 – Administration

Claimed: \$325.29

[88] The CCG submission advances a claim for administration costs at a rate of 3.09%, applied against claimed salaries and travel expenses.

[89] The 3.09% rate is generally accepted as reasonable. In calculating the accepted amount of administration costs, the 20% markup associated with the employee benefits plan was subtracted from the claimed salary costs. Applying the 3.09% rate to the resulting total travel and salary expenses of \$10,297.56 yields \$318.19.

The administration portion of the submission is allowed in part in the amount of \$318.19.

OFFER SUMMARY AND CLOSING

The following table summarizes the claimed and allowed expenses:

Schedule	Claimed	Allowed
2 – Contract Services	\$150,386.74	\$97,342.46
3 – Travel	\$4,783.80	\$4,783.80
4 – Salaries – Full Time Personnel	\$6,892.20	\$6,892.20
5 – Overtime – Full Time Personnel	\$3,286.88	\$2,693.26
11 – Pollution Counter-measures Equipment	\$12,860.38	\$12,860.38
12 – Vehicles	\$2,940.38	\$2,228.17
13 – Administration	\$325.29	\$318.19
Totals	\$181,475.67	\$127,118.46

Table 5 – Summary of amounts claimed and allowed

[90] Costs and expenses in the amount of \$127,118.46 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[91] 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.

[92] 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.

[93] 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.

[94] Finally, where a claimant accepts an offer of compensation, the Administrator 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