



OFFER LETTER

Ottawa, 26 May 2022
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VIA EMAIL

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

RE: *Federal Leda* – Beauharnois, QC – DOI: 21 November 2019

SUMMARY AND OFFER

- (1) This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the bulk carrier *Federal Leda* (the “Vessel”). The Vessel discharged oil while travelling through the St. Lawrence Seaway on 21 November 2019 (the “Incident”).
- (2) On 19 November 2021, 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 under sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”) totaling \$2,956.29 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 MLA.
- (4) The amount of **\$951.39** (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid, 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 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 these materials are relevant to the determination, they are reviewed below.

Narrative

- (7) On 21 November 2019, the St. Lawrence Seaway Authority reported a sheen of oil in the Seaway. The CCG was informed at approximately 11:00 of the pollution threat through the Réseau Avertissement Alerte (the “RAA”). According to the CCG’s narrative, the spill was in Lock 4 in Beauharnois, QC and was described as an 1800 square metre diesel sheen. However, when the CCG was contacted by the RAA, it was not possible to confirm if it was fuel or other oil. The pollution was found to be coming from the *Federal Leda* which had just left Lock 4 when the sheen was reported.
- (8) When the CCG became aware of the Incident there were already two inspectors from the St. Lawrence Seaway (Voie Maritime du Saint-Laurent) on site to analyse the situation. They confirmed that they had begun the process of containing the pollution.
- (9) The CCG determined that its response to the Incident would be to monitor it remotely.
- (10) The CCG contacted the St Lawrence Seaway inspectors to gather more information about the situation. They shared this information with other partners including Transport Canada, Urgence Environnement Québec, Centre national des urgences environnementales, Ministry of Public Safety, Environment and Climate Change Canada (ECCC), the RAA, and the RPA (liaison pour les communautés autochtones). At 13:32 the CCG was informed that the *Federal Leda* would anchor at Saint-Zotique while the pollution was investigated.
- (11) A liaison agent from the CCG’s environmental response team was deployed to maintain communication between all partners. There was some discussion of the CCG providing a helicopter for surveillance of the pollution, however this never took place due to weather conditions.
- (12) The Eastern Canada Response Corporation (operating as ECRC-SIMEC), responded to the Incident, including by containing the pollution and by providing divers to identify and plug the leak. According to a Transport Canada inspector, the source of the leak was found at 02:20 on 22 November 2019. The leak was caused by a problem with the cooler which was mixing cooling water with diesel, which resulted in a discharge of oil. Employees of ECRC-SIMEC also noted that when they arrived on the scene it was too dark to see any pollution, but they could smell diesel. The leak was fixed by 08:30 on 22 November 2019.

(13) The CCG imposed a departure ban on the *Federal Leda* at 13:10 on 22 November 2019. The St. Lawrence Seaway conducted the clean-up of the pollution in the locks, informed the CCG that it had completed its operation by 18:30 that day, and that it intended to fully reopen the locks by 22:00.

(14) At 17:52 on 23 November 2019, the CCG lifted the ban on departure for the *Federal Leda* following the request of a Transport Canada inspector. No other spill was reported concerning the *Federal Leda* in the following days. The CCG closed the case on 25 November 2019.

Cost summary

(15) The CCG submission summarizes its claimed costs as follows:

Table 1: CCG Cost Summary as included in the claim materials

| INCIDENT: Federal Leda | | | | Project code: FYBW3 | | | |
|---|--|--|--|----------------------------------|--|--|----------|
| INCIDENT DATE: 2019-11-21 | | | | DATE PREPARED: 2021-11-19 | | | |
| DEPARTMENT: CANADIAN COAST GUARD | | | | | | | |
| MATERIALS AND SUPPLIES | | | | | | | - |
| CONTRACT SERVICES | | | | | | | |
| TRAVEL | | | | | | | - |
| SALARIES - FULL TIME PERSONNEL | | | | | | | 968.24 |
| OVERTIME - FULL TIME PERSONNEL | | | | | | | 1,958.45 |
| OTHER ALLOWANCES | | | | | | | - |
| SALARIES - CASUAL PERSONNEL | | | | | | | - |
| SHIPS' COSTS (EXCL. FUEL & O/T) | | | | | | | - |
| SHIPS PROPULSION FUEL | | | | | | | - |
| AIRCRAFT | | | | | | | - |
| POLLUTION COUNTER-MEASURES EQUIPMENT (PCME) | | | | | | | |
| VEHICLES | | | | | | | |

| | | | | | |
|---|--|--|----------------------------------|--|--|
| INCIDENT: Federal Leda | | | Project code: FYBW3 | | |
| INCIDENT DATE: 2019-11-21 | | | DATE PREPARED: 2021-11-19 | | |
| DEPARTMENT: CANADIAN COAST GUARD | | | | | |
| ADMINISTRATION | | | 29.59 | | |
| TOTAL CCG COST OF INCIDENT | | | \$2,956.29 | | |

CCG internal documentation

- (16) The original CCG submission contains spreadsheets listing the costs for each day of the Incident. Each spreadsheet shows the staff who worked that day, the times they began and finished work, the number of hours worked, the total cost of their time, and comments.
- (17) In addition, the submission includes photos from the response operation, email correspondence between the CCG personnel and other partners including Transport Canada and the captain of the *Federal Leda*, and the full internal CCG report.

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims

- (18) The Incident resulted in oil pollution damage, 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 prevent such damage. As a result, claims arising from the Incident are potentially eligible for compensation from the Fund.
- (19) The CCG is an eligible claimant for the purposes of section 103 of the MLA.
- (20) The evidence suggests that a discharge of oil occurred, and the submission arrived prior to the limitation period set out under paragraph 103(2)(a) of the MLA, which applies where oil pollution damage occurs.
- (21) Some of the claimed costs and expenses were incurred by the Minister of Fisheries and Oceans and arise from what appear to be reasonable measures “taken under paragraph 180(1)(a) of the *Canada Shipping Act, 2001*, in respect of any monitoring under paragraph 180(1)(b) of that Act or in relation to any direction given under paragraph 180(1)(c) of that Act” as contemplated under subparagraph 71(1)(b)(i) of the MLA.

(22) Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.

Identification and description of the *Federal Leda*

(23) Built in 2003, the *Federal Leda* is a bulk carrier flagged in the Marshall Islands. It has a gross tonnage of 22,654 and is 200 metres in length. The Vessel is owned by FedNav.

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

(24) The CCG included with its submission a narrative and supporting documents that set out the facts of the Incident and the response thereto in some detail. The descriptions of material events contained in the CCG's documentation are accepted as generally accurate.

Reasonable Monitoring Costs are Established

(25) According to the Marine Spills Contingency Plan – National Chapter, the Canadian Coast Guard does not have the role of Incident Commander when the spill takes place in the St. Lawrence Seaway, unless the St. Lawrence Seaway Corporation is unable or unwilling to ensure an appropriate response.¹ All available evidence suggests that in this case, the Incident was well managed by the St. Lawrence Seaway and the Vessel owner. The role of the CCG in this incident was to monitor the situation to determine if the St. Lawrence Seaway Management Corporation was unable or unwilling to ensure an appropriate response. In addition, Transport Canada is responsible for on-board investigation of ship-source pollution occurrences and as such Transport Canada investigators were on site during the Incident. Therefore, the CCG had a limited role to play in the response to the Incident.

(26) The CCG's role was to determine if the Seaway's response was adequate, and if it was not, to take over as Incident Commander. At no point did the CCG take over as Incident Commander. Put another way, the measures taken in response by other organizations were adequate.

(27) The time and expenses incurred by the CCG should accord with its limited role.

CLAIM AND OFFER DETAILS

(28) The CCG presented its costs and expenses across three schedules. It also provided a spreadsheet for each day of the response, which detailed the hours worked that day.

¹ Marine Spills Contingency Plan – National Chapter, CCG/6044, 2018, page 21, footnote 7, available: <https://www.ccg-gcc.gc.ca/publications/environmental-environnementale/marine-pollution-deversements-en-mer/docs/MSCP2018-eng.pdf>

(29) To the extent that reasons are not already set out in this letter, the below explains why certain portions of the CCG's claim have been allowed while others have been disallowed.

Full-Time Personnel Claimed: \$968.24 (Salary) and \$1958.45 (Overtime)

Table 2 - CCG Hours of Work Claimed and Established

| | Nov 21 Thursday | Nov 22 Friday | Nov 23 Saturday | Nov 24 Sunday | Nov 25 Monday | Total |
|------------------------------|---|---|----------------------------|--------------------------|--------------------------|-----------------|
| Hours Claimed | 21 | 25.75 | 6.75 | 4.0 | 1.0 | 58.50 |
| Hours Found to be reasonable | 6 at the GT-04 rate and 2 at the GT-07 rate | 4 at the GT 04 rate and 1 at the GT 07 rate | 2 at the GT 04 rate | 2 at the GT 04 rate | 1 at the GT 04 rate | 18.0 |
| Salary | | \$145.44 plus \$45.50 | | | \$36.36 | \$227.30 |
| Overtime | \$327.24 plus \$136.50 | | \$109.08 | \$145.44 | | \$718.26 |
| Total | | | | | | \$945.56 |

Note: Hourly rate for GT-7 (\$45.50), hourly rate for GT-04 (\$36.36)

Day 1 – Thursday, 21 November 2019

(30) On the first day of the Incident, the CCG claimed 21 hours of work by three personnel who were engaged from approximately 15:00 to 00:00. They report setting up the Incident Command Structure, establishing roles for the different officers, communicating with external partners including the Seaway, FedNav, and ECRC-SIMEC, and they requested an emergency plan which minimized pollution. In addition, the CCG planned an aerial observation of the site for November 22, which was later cancelled due to weather. These actions are all reasonable, however the amount of time claimed to carry them out is not.

(31) The Coast Guard did not and was not required to travel to the scene. When the CCG was notified of the Incident, the spill was already contained, and a full response was underway. Once it had been determined that the response was well-managed, there was little left for the CCG to do beyond preparing a response to media requests.

(32) While setting up the Incident Command Structure may not have been strictly necessary, given the CCG's role of remote monitoring, it is considered reasonable in the circumstances. That said, the procedure for setting up the Incident Command

System (“ICS”) structure is well-established. It should not have taken very long.² As well, assigning roles and responsibilities to two other people is not a five-hour task for a superintendent. Therefore, it is not accepted that 21 hours of work on the first day was reasonable. Six hours at GT-04 rate and 2 hours at the GT-07 (superintendent) rate are determined to be reasonable.

Day 2 – Friday, 22 November 2019

- (33) On Day 2, the CCG documents report work on the Incident between 00:00 and 20:00. This leads to a total of 25.75 hours of effort by two officers.
- (34) The following activities were reported for Day 2: the Incident Commander held meetings to clarify the ICS roles, he contacted the pilot of the Vessel and explained the expectations of the CCG, and he contacted Transport Canada to discuss plans to move the Vessel and the clean-up plans. The Deputy Commander planned a team meeting to share information, verified the availability of the helicopter, and was in communication with other partners to keep everyone up to date. The planned aerial observation by helicopter was cancelled due to weather.
- (35) Similar to Day 1, although remote monitoring of the Incident was reasonable, the number of hours claimed is not. According to the CCG narrative, the source of the leak was found around 02:20 on 22 November 2019 and it was fixed by 08:30 the same day. The St. Lawrence Seaway reported that the clean-up of the spill in the locks was completed by 18:30 that day. In sum, on the second day of the Incident, the response was largely completed and little remained for the CCG to do.
- (36) Continued logistics meetings and meetings delineating roles are not reasonable at this stage in the Incident. The CCG did impose a departure ban on the *Federal Leda* on Day 2 which was a valuable contribution to the response effort and some time and effort would have been required for this.
- (37) In light of the foregoing, 27.5 hours of effort was not reasonable for an incident that was already largely resolved. Only 5 hours of effort is accepted as reasonable in the circumstances.

Day 3 – Saturday, 23 November 2019

- (38) On Day 3 of the Incident, the CCG claimed 6.75 hours of effort by three personnel. Their claimed activities are a meeting held to discuss the current status and expectations, the collection of documentation, including requesting photographs of the deployed boom, and a discussion with Transport Canada regarding lifting the

² See “Marine Spills Contingency Plan – National Chapter”, CCG/6044, 2018, page 1, available: <https://www.ccg-gcc.gc.ca/publications/environmental-environnementale/marine-pollution-deversements-en-mer/docs/MSCP2018-eng.pdf> ; see also Canadian Coast Guard, “Annex C National Environmental Response Standards”, available <<https://www.ccg-gcc.gc.ca/publications/environmental-environnementale/marine-pollution-deversements-en-mer/annex-c-eng.html>>; see also Canadian Coast Guard, “Incident Management Handbook”, November 2016.

departure ban. Around 17:52 on 23 November 2019, the CCG lifted the ban on departure for the *Federal Leda* following the requests of a Transport Canada inspector. As it was a Saturday, all hours worked were overtime.

- (39) By 23 November 2019, the Incident was largely over, the clean-up was completed and the source of the leak had already been fixed. Again, the amount of time claimed on this day is determined to be excessive. Two hours are accepted as a reasonable amount of effort for lifting the departure ban and collecting documentation.

Day 4 – Sunday, 24 November 2019

- (40) On Day 4 of the Incident, the CCG claimed 4 hours of effort. Activities included collecting documentation with regards to lifting the departure ban, receiving information that no pollution was observed, sharing the status of the Incident with partners and confirming the CCG's availability in the event of a further oil spill.

- (41) As stated above, the Incident was largely concluded at this time. Limited effort on the part of the CCG was needed to monitor the situation. Two hours of effort are accepted as reasonable. As it was a Sunday, all hours worked were overtime.

Day 5 – Monday, 25 November 2019

- (42) The CCG claims 1 hour of effort by one of its personnel, who confirmed the CCG's availability in the event of a future oil spill and closed the incident file at 14:31. The one hour of work required to close the file is determined to be reasonable.

The overall wages portion of the submission is allowed in the amount of \$945.56, including \$718.26 for overtime and \$227.30 for regular salaries.

Administration Costs

Claimed: \$29.59

- (43) In its claim materials, the CCG calculated administration costs using a rate of 3.09% on a salary base of \$806.87. The base reflected claimed salary costs minus the employee benefits plan ("EBP"), calculated at 20% of base salaries.

- (44) Based on the established salary amount of \$227.30 and using the CCG rate of 20% for EBP and 3.09% for the administration rate, the calculated administration costs are **\$5.85**.

The administration portion of the submission is allowed in the amount of \$5.85.

OFFER SUMMARY AND CLOSING

(45) The following table summarizes the claimed and allowed expenses in the *Federal Leda* incident:

| Schedule | Claimed | Allowed |
|-------------------------------|-------------------|-----------------|
| Salaries- Full Time Personnel | \$968.24 | \$227.30 |
| Overtime- Full Time Personnel | \$1,958.45 | \$718.26 |
| Administration | \$29.59 | \$5.83 |
| Total | \$2,956.29 | \$951.39 |

(46) Costs and expenses in the amount of **\$951.39** are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

(47) In considering this Offer, please observe the following options and time limits that arise from section 106 of the MLA.

(48) 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 made to you without delay.

(49) 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.

(50) 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.

(51) 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