



OFFER LETTER

Ottawa, 13 April 2023
SOPF File: 120-940-C1
CCG File:

VIA EMAIL

Acting Senior Director of Incident Management
Canadian Coast Guard
200 Kent Street
Ottawa, Ontario K1A 0E6

RE: Unknown Name F/V— Valleyfield, Bonavista Bay, NL
Incident date: 2021-11-02

SUMMARY AND OFFER

- [1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to an unknown name 31-foot, fibreglass-hulled fishing vessel. The CCG received a report on 2 November 2021 that the vessel was sinking in Valleyfield Harbour on the western side in Bonavista Bay, Newfoundland (the “Incident”).
- [2] On 16 November 2022, 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 \$29,967.86 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 \$15,969.89 (the “Offer”) is offered with respect to this claim. If the Offer is accepted, accrued interest will be calculated in accordance with section 116 of the MLA to the date of payment. The reasons for the Offer are set forth below, along with a description of the submission.

THE SUBMISSION RECEIVED

- [5] The submission includes a narrative that describes events relating to the Incident. It also contains documents in support of the CCG's claimed costs. These costs are summarized as follows:

COST SUMMARY POLLUTION INCIDENT			
INCIDENT: SUNKEN FV - VALLEY FIELD, NL		PROJECT CODE: 72-2E209-00-00-00-A01	
INCIDENT DATE: NOVEMBER 02, 2021		DATE PREPARED: MAY 30, 2022	
DEPARTMENT: CANADIAN COAST GUARD		PREPARED BY:	
			<u>SCH</u>
MATERIALS AND SUPPLIES	\$	-	<u>1</u>
CONTRACT SERVICES	\$	16,707.39	<u>2</u>
TRAVEL	\$	3,807.90	<u>3</u>
SALARIES - FULL TIME PERSONNEL	\$	3,807.57	<u>4</u>
OVERTIME - FULL TIME PERSONNEL	\$	3,675.36	<u>5</u>
OTHER ALLOWANCES	\$	-	<u>6</u>
SALARIES - CASUAL PERSONNEL	\$	-	<u>7</u>
SHIPS' COSTS (EXCL. FUEL & O/T)	\$	-	<u>8</u>
SHIPS PROPULSION FUEL	\$	-	<u>9</u>
AIRCRAFT	\$	-	<u>10</u>
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	\$	694.45	<u>11</u>
VEHICLES	\$	1,008.10	<u>12</u>
ADMINISTRATION	\$	267.09	<u>13</u>
TOTAL CCG COST OF INCIDENT	\$	29,967.86	

Figure 1 - CCG cost summary

DETERMINATIONS AND FINDINGS

The submission is admissible

- [6] The CCG is an eligible claimant, and its claim was submitted within the applicable limitation period. The Incident occurred within the territorial sea or internal waters of Canada for the purposes of section 103 of the MLA and involved an identified risk of oil pollution from a ship.

- [7] The claims submitted by the CCG are for responding to a ship-source oil pollution incident. Such claims may be eligible for compensation.
- [8] Therefore, the claim is admissible, subject to a reasonableness assessment.

The CCG engaged in and monitored a reasonable pollution response

- [9] The vessel had been located at the wharf since 2017. The Valleyfield Harbour Authority repeatedly attempted to contact the owner over the years to take care of his vessel, to no avail. They had to periodically place pumps on the vessel to dewater it and prevent it from sinking.
- [10] On 2 November 2021, the Harbour Authority reported to the CCG that the vessel was sinking where it was located on the western side of the Harbour. The vessel rapidly took on water overnight. It contained an unknown quantity of fuel on board, engine oil, 15-20 gallons of hydraulic oil, and there was an oil sheen visible on the surrounding water surface. The Harbour Authority deployed sorbent boom to contain the oil.
- [11] That same day, three CCG response officers departed the Mount Pearl equipment depot at 1250 with a trailer and equipment and arrived on site and began assessing the vessel by 1650. They departed at 1720.
- [12] On the morning of 3 November, CCG attempted to contact the owner but were unsuccessful. They developed a statement of work for refloating, dewatering, decontaminating, and stabilizing the vessel. They contracted with Sea-Force Diving Ltd. to carry out the operations. No boom truck was available in the area at this time.
- [13] On 4 November, CCG observed that the vessel remained in the same condition as the previous two days. Sea-Force Diving operators plugged the holes, refloated the vessel, and dewatered it. All the recoverable pollutants were removed by 1535.
- [14] On the morning of 5 November, the vessel remained afloat, and there was no observable sheen, but there was some water in the stern bilge area and fish hold. After recommending actions for the vessel to the Harbour Master, CCG response officers departed the site. The Harbour Authority called the officers that afternoon and informed them that the vessel was taking on water in the lazarette. They used a pump to remove the water.
- [15] On 6 November, the CCG response officers arrived on site at 0810. They continued to dewater the vessel with the pump placed on board the previous day.
- [16] At 1000, the vessel was towed to the Harbour Authority's slipway where a front-end loader pulled the vessel up and out of the water. It was fully removed from the water by 1136. CCG intended to leave the vessel on the Harbour Authority's property as the Harbour Authority had applied for funding to have it removed due to the owner's

inaction. CCG response officers departed the site at 1200 and arrived at the Mount Pearl equipment depot at 1645.

Some costs were not reasonably incurred

- [17] The CCG claims contract service costs in Schedule 2 in the amount of \$14,304.49 for Sea-Force Diving Ltd. to refloat the vessel and \$2,402.90 for Pardy's Waste Management and Industrial Services Ltd. to remove 1,500 litres of oily water.
- [18] The amount allowed for contract services paid to Sea-Force Diving is reduced from \$14,304.49 to \$12,492.09 as the claimed hours of work are not fully established in the evidence. The CCG confirmed that the only available documentation for this evidence is the invoice included in the submission, which accounts for seventeen (17) hours of work for the five-man crew on-site and 10 hours for a two-man equipment cleanup crew. Considering the documented arrival and departure times on 4 November (1110-1400), the travel time (approx. eight hours), preparations (approx. one hour), active work (approx. three hours), and demobilization (approx. one hour), it is reasonable to conclude that thirteen (13) hours of claimed costs were incurred.
- [19] The remaining Sea-Force Diving costs are reasonable and accepted.
- [20] The amount for contract services paid to Pardy's Waste Management is reduced from \$2,402.90 to \$1,813.72 as some of the claimed overtime hours are not established in the evidence. Travel between Mount Pearl and the Incident site takes approximately four hours, so a roundtrip with oily water in tow on the return would total approximately 8.5 hours (an extra half hour to account for the load of oily waste). This travel time in addition to the time working on site would reasonably amount to ten (10) hours, not thirteen (13) as claimed. This adjustment results in a reduction of the accepted from five (5) to two (2) overtime hours (from \$742.50 to \$297.00) and, accordingly, the fuel surcharge from \$252.98 to \$186.15.
- [21] The amount offered for Schedule 2 contract service costs, therefore, is \$14,305.81.
- [22] Schedule 3 sets out \$3,807.90 claimed for travel costs. Most of these costs are rejected as they are not reasonably incurred or established in the evidence.
- [23] Because the Incident was under the authority and control of the Harbour Authority who had the capacity to manage operations and oversee the contractors, and considering the Incident posed a low pollution threat, it was unreasonable for CCG response officers to travel to and from the site multiple times. According to the narrative, the CCG was aware of the Harbour Authority's application for funding to remove the vessel from the marine environment at least as of 5 November, leading the CCG to the decision to leave the vessel under their control.
- [24] Moreover, dispatching three response officers as opposed to the usual two to oversee contractor operations was unreasonable and not established in the evidence as necessary. Contractor operations were completed in one day (4 November), requiring

CCG monitoring services only on that day. The Harbour Authority already intended on removing the vessel from the water, so CCG involvement was unnecessary as they could have issued the Harbour Authority a response order for the vessel removal and worked with them to develop a plan.

- [25] Travel costs are accordingly reduced, save for meals, to \$149.20.
- [26] Schedule 4 establishes claimed salary costs in the amount of \$3,807.57. For the reasons stated above regarding travel costs, some of the claimed salary costs are unreasonable and not accepted. The amount of \$748.13 claimed for work and travel on 4 November is accepted.
- [27] The above reasons also apply to the claimed Schedule 5 overtime costs, which amount to \$3,675.36. The amount of \$412.34 is accepted.
- [28] Schedule 11 sets out \$694.45 in claimed pollution countermeasure equipment costs. This amount is rejected due to the reasons stated above. Any equipment brought by the CCG was unnecessary or duplicative to the contractors' equipment and was not specifically requested.
- [29] The amount of \$1,008.10 is claimed in Schedule 12 for vehicle costs for traveling to and from the Incident site. Following the reasons above, the vehicle costs should have been only for one full day (4 November). The roundtrip costs incurred between 5 and 6 November best represent the actual costs and mileage, so the 6 November gas receipt for \$264.04 is accepted plus the daily vehicle rate of \$67.56. The amount of \$331.60 is, therefore, allowed.
- [30] Schedule 13 establishes \$267.09 for the claimed administration costs. The reduced travel and salary costs previously discussed result in a reduced administrative cost of \$22.81.

OFFER SUMMARY AND CLOSING

[31] The following table summarizes the claimed and allowed expenses:

Schedule	Claimed	Allowed
2 – Contract Services	\$16,707.39	\$14,305.81
3 – Travel	\$3,807.90	\$149.20
4 – Salaries – Full Time Personnel	\$3,807.57	\$748.13
5 – Overtime – Full Time Personnel	\$3,675.36	\$412.34
11 – Pollution Counter-measures Equipment	\$694.45	\$0.00
12 – Vehicles	\$1,008.10	\$331.60
13 – Administration	\$267.09	\$22.81
Total Claim	\$29,967.86	\$15,969.89

Table 1 – Summary of amounts claimed and allowed

[32] Costs and expenses in the amount of \$15,969.89 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[33] In considering this Offer, please observe the following options and time limits that arise from section 106 of the MLA.

[34] 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.

[35] 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.

[36] 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 be issued.

[37] 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.
Administrator, Ship-source Oil Pollution Fund