



OFFER LETTER

Ottawa, 15 May 2024
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BY EMAIL

CEO
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Via email to ceo@peharbour.ca

**RE: F/V *ASTRONAUT* — Rushbrook Harbour, Prince Rupert, British Columbia
Incident date: 2022-12-06**

SUMMARY AND OFFER

- [1] This letter responds to a submission from the Port Edward Harbour Authority (the “PEHA”) with respect to the fishing vessel *Astronaut* (the “Vessel”), which partially sunk on or about 6 December 2022, near Port Edward, British Columbia (the “Incident”).
- [2] On 27 November 2023, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the PEHA on behalf of the Administrator. The submission advanced claims totaling \$45,794.20 for costs and expenses arising from measures taken by the PEHA 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 PEHA pursuant to sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”).
- [4] The amount of \$19,365.48 (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 PEHA’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 PEHA claims and corroborating documents. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

The narrative

[7] According to the submission, on 6 December 2022, the PEHA Operations Manager received a call from a patron that the Vessel had sunk at the docks at Rushbrook Harbour in Prince Rupert, British Columbia.

[8] Multiple PEHA employees attended the scene, as well as the Canadian Coast Guard (“CCG”) and Transport Canada (“TC”). A minimal sheen was reported around the Vessel. Many attempts were made to contact the owner, but these attempts were unsuccessful.

[9] The Vessel was secured to the dock, and an additional line was added to ensure the Vessel would not damage the anchor, floatation, or the dock itself. Boom was deployed around the vessel and absorbent pads were placed within the containment.

[10] An assessment of the Vessel revealed planks had come loose, and the Vessel was beyond saving. Wainwright was not available until 10 December. PEHA staff were on site from 0830 hours to 1700 hours, with checkups at 2100 hours, and 0100 hours and 0500 hours the next day.

[11] On 7 December 2022, the PEHA continued to monitor the Vessel in the same schedule as 6 December. The owner attended the incident site and used a small pump to remove water from the Vessel. The owner tried to refloat the Vessel, but the CCG rejected the plan for being unsafe.

[12] On 8 and 9 December 2022, PEHA staff regularly worked in the same schedule, and replaced pads when needed. The owner stated that only residual traces of fuel were remaining in the tanks, which was corroborated by the pollution discharge observed.

[13] On 10 December 2022, PEHA staff checked on the Vessel at 0830, 1230, 1630, and 2100 hours, as well as at 0100, 0500, and 0900 hours the next day.

[14] Along with Wainwright, the PEHA made the decision that the Vessel would be towed to Wainwright Yard and deconstructed. According to the submission, this decision was made because the quantity of pollutants onboard was unknown, pollution was leaking from the Vessel at a consistent pace, and the PEHA lacked the capacity to fully contain the pollutants safely.

[15] On 10 December 2022, PEHA staff and Wainwright worked together to remove the Vessel from the water and tow it away. PEHA staff removed all oil pads and booms. That concluded the PEHA operation.

Cost summary

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

Schedule	Cost claimed
Contract Services	\$42,764.00
Salaries - CFT personnel	\$947.24
Overtime - CFT personnel	\$2,082.96
Total Claim*	\$45,794.20

Figure 1: Screen capture of the claim cost summary

DETERMINATIONS AND FINDINGS

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

[17] 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.

[18] The PEHA is an eligible claimant for the purposes of section 103 of the MLA.

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

[20] 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.

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

Findings on the evidence submitted by the PEHA

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

[22] This description of the material events in the PEHA narrative is accepted as generally accurate.

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

[23] The Vessel was actively leaking pollutants during the response. A sheen of diesel fuel was visible throughout. However, the discharge was not voluminous. According to the CCG Pollution Report on 6 December, there was a light sheen observed with minimal discharge. Minimal amounts of hydraulic oil were recovered. The rest dissipated.

[24] In light of the above, the evidence establishes that, while it was sunk, the Vessel posed an oil pollution threat. It was therefore reasonable to raise the ship.

[25] However, after the raising the evidence does not establish the reasonability of all measures taken. The Vessel had been out of service for over two decades following a prior sinking. It had not been restored to an operational state. While some of that

information might not have been available or if available to PEHA while the Vessel was underwater – after it was raised the Vessel can and could have been assessed. There is no evidence an assessment took place. Decision making premised on the Vessel remaining a pollution threat despite its history and without an assessment would require compelling evidence or explanation. Neither is available in this case.

[26] The costs claimed after the raising, including ship disposal costs, are therefore substantially rejected.

CLAIM AND OFFER DETAILS

[27] The PEHA presented its claimed costs and expenses to the Fund across three schedules, each of which is outlined below.

[28] 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 PEHA’s claim have been allowed while others have been decreased.

Contract Services **Claimed: \$42,764.00**

[29] These costs arise from two invoices for services provided by two different companies: Wainwright in the amount of \$39,052.00 and Adams Diving & Marine Services (“Adams”) in the amount of \$3,712.00. The Wainwright invoice is for the refloating and deconstruction of the Vessel. The Adams invoice is for the diving services in support of the Vessel recovery operations.

[30] Wainwright was hired by PEHA to lift, remove, and deconstruct the Vessel. The individual aspects of those three elements of the operation were not broken down separately except deconstruction in the amount of \$25,000.00. The invoice breaks down the rates for units such as crane, salvage team, tug, and barge, all of which are reasonable.

[31] The costs incurred for lifting the Vessel are reasonable. The Vessel was actively polluting, it was impossible to assess the pollutants onboard when the Vessel was partially submerged, and the owner was unable to respond to the situation.

[32] When the Vessel was lifted, it was clear from the salvager’s observation that there were no pollutants onboard, no visible signs of damage causing sinking, and no water ingress. This means that the pollution threat posed by the Vessel was mitigated by the lifting operation. With no evidence showing that the Vessel remained an oil pollution threat, and in fact the available evidence suggesting otherwise, costs associated with removal and deconstruction are considered wreck removal rather than expenses incurred for the purpose of mitigating oil pollution. They are not accepted as valid expenses under the MLA. The deconstruction expenses are disallowed. The Wainwright invoice is accepted, in part, in the amount of \$14,052.00.

[33] The Adams invoice is accepted in its entirety. The divers placed straps used to lift the Vessel safely, which was an acceptable measure at a reasonable cost.

The contract services portion of the submission is accepted in part in the amount of \$17,764.00.

Salaries – Full Time Personnel

Claimed: \$947.24

- [34] These costs are for the regular hours worked by three PEHA employees. The costs are assessed based on the narrative provided.
- [35] The PEHA claims 12 hours from 6 and 7 December for the Operations Manager, and eight hours worked by two other employees from 6 to 8 December.
- [36] The eight hours worked by the two employees are accepted. Their work was part of the initial response and was part of the monitoring aspect of the response, which was an acceptable measure.
- [37] The eight hours claimed by the Operations Manager on 6 December are accepted, as his role in the initial response would have been significant. However, only one of the four hours claimed on 7 December are accepted. The evidence for what was done during these hours is limited. The available evidence shows the day mostly consisted of the CCG rejecting the owner's refloating plan, and finalizing the salvage operations with the contractor. It is not clear what other work might have been done, or why this work would have taken more than one hour. Therefore, one hour is accepted for 7 December.

The salaries portion of the submission is allowed in part in the amount of \$820.37.

Overtime – Full Time Personnel

Claimed: \$2,082.96

- [38] These costs are for the overtime hours worked by four PEHA employees. The costs are assessed based on the narrative provided. This assessment is done in such a way that the overtime hours worked are shared evenly between the employees.
- [39] 16 hours are claimed for three employees: one with a \$31.86 hourly rate, one with a \$28.43 hourly rate, and one with a \$26.50 hourly rate.
- [40] It is assumed that a PEHA employee was on site to monitor the contractor's salvage operations on 10 December, which occurred from about 1030 hours until 1500 hours. As such, six hours of overtime are accepted for one employee. The remaining 10 hours for that employee are rejected for a lack of evidence of what was done in those hours.
- [41] For the other two employees, six out of 16 hours are accepted for each. This reflects the monitoring operations at irregular hours from 6 to 8 December for one employee, and from 8 to 10 December for the other employee. It is unclear, based on the evidence, what each of them were doing for the remaining hours claimed.
- [42] In addition, eight hours of overtime are claimed for one employee. Based on the tables provided, this appears to be a typo. This employee's total costs as submitted do not line up with the eight hours of overtime to the claimed salary costs. Thus, these costs are rejected.

The overtime portion of the submission is allowed in part in the amount of \$781.11.

OFFER SUMMARY AND CLOSING

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

Schedule	Cost claimed	Recommendation
Contract Services	\$42,764.00	\$17,764.00
Salaries - CFT personnel	\$947.24	\$820.37
Overtime - CFT personnel	\$2,082.96	\$781.11
Total Claim*	\$45,794.20	\$19,365.48

Table 1 – Summary of amounts claimed and allowed.

[44] Costs and expenses in the amount of \$19,365.48 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[45] 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.

[46] 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.

[47] 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.

[48] 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 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