



OFFER LETTER

Ottawa, 26 July 2021
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CCG File: n/a

BY EMAIL

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

**RE: *Miss Tricia Lynn* – Cheticamp, Nova Scotia
Incident date: 19 May 2019**

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel *Miss Tricia Lynn* (the “Vessel”). The Vessel was 13.61 m long, of 16.4 gross registered tonnes and bore official number 835223. It burned to the waterline near Cheticamp Harbour, near the Village of Cheticamp, in the Province of Nova Scotia, apparently in the early morning hours of 19 May 2019 (the “Incident”).

[2] On 18 May 2021, the office of the Administrator of the Ship-source Oil Pollution Fund (the “SOPF”) received a submission from the CCG on behalf of the Administrator. The submission advanced claims totaling \$10,812.75 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* (the “MLA”). Also provided in this letter are a description of the CCG’s submission and an explanation of the findings.

[4] The claim is allowed. The amount of \$10,803.86 (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.

[5] The reasons for the Offer are set forth below.

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 documents are relevant to determinations, they are reviewed below.

The narrative

[7] The vessel caught fire while berthed at Cheticamp Harbour, burned through its lines and then drifted. The fire burned the Vessel to approximately the water line. During or after the fire, the Vessel released oil into the environment.

[8] The Incident was reported to the CCG in the early morning hours of 19 May 2019. The Incident therefore may have in fact commenced on 18 May 2019, or earlier.

[9] The CCG attended the scene with three crew members on 19 May 2019. They deployed sorbent materials. The Vessel's owner later began a response to the incident, which the CCG personnel on scene monitored.

Figure 1 –Excerpt from the CCG narrative, a photograph of the remains of the FV Tricia Lynn at 15:38 on 19 May 2019

[10] On 20 May 2019, the CCG crew was redeployed. They met with the marine surveyor appointed by the insurance company and the local contractor who would carry out the removal of the Vessel.

[11] Divers supplied by the contractor were unable to locate any oil remaining aboard the Vessel. However, it was also discovered that the stern was so badly burned that towing the Vessel would be challenging.

Figure 2 - Excerpt from the CCG narrative, a photograph of divers inspecting the FV Miss Tricia Lynn on 20 May 2019

[12] On 21 May 2019, the CCG again deployed three personnel to the site. Transport Canada had become involved, and plans were in place to remove the remains of the Vessel from the water. Excavators were used to drag the Vessel from the water and place it on a boat trailer, to haul it away by land. This exercise was completed with a small additional release of oil.

[13] On 23 May 2019, the CCG loaded soiled sorbent materials into a vehicle and hauled them for destruction, at a cost of \$3,886.43. This completed the CCG's monitoring of the response.

Figure 3 - The FV Miss Tricia Lynn after it was landed on 21 May 2019

Summary of costs and expenses

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

| COST SUMMARY | | | |
|---|-----------------------------|-----------------------|----------------------|
| POLLUTION INCIDENT | | | |
| INCIDENT: | FV Miss Tricia Lynn | PROJECT CODE: | 2E163 |
| INCIDENT DATE: | May 19, 2019 | DATE PREPARED: | March 2, 2020 |
| DEPARTMENT: | Canadian Coast Guard | PREPARED BY: | [REDACTED] |
| | | | <u>SCH</u> |
| MATERIALS AND SUPPLIES | \$ 292.50 | | <u>1</u> |
| CONTRACT SERVICES | \$ 3,886.46 | | <u>2</u> |
| TRAVEL | \$ 384.30 | | <u>3</u> |
| SALARIES - FULL TIME PERSONNEL | \$ 1,497.33 | | <u>4</u> |
| OVERTIME - FULL TIME PERSONNEL | \$ 4,343.83 | | <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) | \$ - | | <u>11</u> |
| VEHICLES | \$ 339.97 | | <u>12</u> |
| ADMINISTRATION | \$ 71.36 | | <u>13</u> |
| | | | |
| TOTAL CCG COST OF INCIDENT | \$ 10,815.75 | | |

Figure 4 - Screen capture of CCG Cost Summary

[15] The CCG submission also included a summary of personnel hours worked, as follows:

DETERMINATIONS AND FINDINGS

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

[16] 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. Further, the CCG incurred costs to monitor a response to the Incident carried out by others. As a result, claims arising from the Incident are potentially eligible for compensation.

[17] 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).

[18] 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, or the monitoring of a response to the Incident, and are therefore potentially eligible for compensation.

[19] 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

[20] The submission provided by the CCG is comprehensive. The narrative is fulsome and details not only what steps were taken by the CCG and when, but why decisions were made.

[21] The facts as described in the narrative are accepted as accurate. They establish that the remains of the Vessel posed a potential pollution threat and that a response was needed. The CCG response to the Incident and their monitoring of the owner’s response were successful and carried out at minimal cost to the public. The claims advanced are amply supported by the evidence included in the submission. The Administrator had no concerns about the claim submission.

CLAIM AND OFFER DETAILS

[22] 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.

[23] According to ss. 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 1 – Materials and Supplies

Claim: \$292.50

[24] The claim submission indicates that the CCG used 3.5 bundles of sorbent pads, seven bundles of eight-inch sorbent boom and one Snare/Pom-pom in responding to the Incident. The prices claimed for these materials are accepted as reasonable, as was the decision to deploy them.

The materials and supplies portion of the submission is allowed in its entirety in the amount of \$292.50.

Schedule 2 – Contract Services

Claim: \$3,886.46

[25] The CCG incurred expenses to dispose of soiled sorbent materials with Terrapure Environmental Solutions. This cost was supported by an invoice, SD144465, which was dated 31 May 2019. It identifies 9 barrels of waste and 105 litres of pollutants.

[26] The disposal of soiled sorbent materials was a necessary part of the response, and the cost incurred is reasonable. This part of the claim is considered admissible.

The contract services portion of the submission is allowed in its entirety in the amount of \$3,886.46.

Schedule 3 – Travel

Claim: \$384.30

[27] Travel expenses were incurred for two employees to travel on 19-21 and 23 May 2019 to respond to the Incident, or monitor the response to the Incident. The claimed expenses include meals, which is appropriate considering the remote deployment. A third CCG employee was apparently on scene but no claim was made for his travel expenses.

[28] The submitted expenses were supported by a summary chart and Expense Report statements. They are in conformance with the National Joint Council Allowance Rates.

The contract services portion of the submission is allowed in its entirety in the amount of \$384.30

Schedule 4 – Salaries: Full Time Personnel

Claim: \$1,497.33

[29] The submission includes a claim for hours worked by three salaried CCG officers who attended at various times on 21 and 23 May 2019. The hours include time to transport soiled materials to Terrapure on 23 May 2019.

[30] The hours worked by the CCG in respect of this claim were reasonable in the circumstances of the Incident. They are supported by Daily Field Supervisor Reports and individual salary calendars for each employee.

The salaries portion of the submission is allowed in its entirety in the amount of \$1,497.33.

Schedule 5 – Overtime: Full Time Personnel

Claim: \$4,343.83

[31] The submission includes a claim for overtime expenses for three employees on 19 to 21 May 2019. The overtime is claimed at one and one-half times the regular salaried rate or double time rates, depending on when it was incurred.

[32] The claimed overtime was reasonable or entirely unavoidable in the circumstances, considered that the Incident started on a Sunday. As well, it appears that the CCG claim for overtime ought to have been higher, but some time apparently worked by CCG personnel in response to the Incident was not made part of the claim.

[33] It is determined that overtime expenses were unavoidable in the circumstances, and in any event were sensibly and prudently incurred. The claim is supported by Daily Field Supervisor Reports and individual salary calendars for each employee.

The overtime portion of the submission is allowed in its entirety in the amount of \$4,343.83

Schedule 12 – Vehicles

Claim: \$339.97

[34] Two CCG vehicles were used over the 4 days of the response. They were identified by numbers 17-240 and 17-241. The daily cost claimed was \$67.56 plus \$0.22/km driven. That rate is accepted as reasonable.

[35] Vehicle 17-241 was used on 19-21 May to travel to and from Canso Depot and the location of the Incident. A total distance travelled of 905 km is claimed, which is accepted given the locations involved. This part of the claim is supported by a Vehicle Trip Report record.

[36] Vehicle 17-240 was used on 23 May to travel from Canso to Debert and return. A total distance travelled of 381 km is claimed, which is accepted given the locations involved. This part of the claim is supported by a Vehicle Trip Report record.

[37] The submitted expenses were supported by a summary chart and Expense Report statements. They are in conformance with the National Joint Council Allowance Rates.

The vehicles portion of the submission is allowed in its entirety in the amount of \$339.97.

Schedule 13 - Administration

Claim: \$71.36

[38] Pursuant to an agreement, the administrator has allowed an administration rate of 3.09% on particular CCG expenses, included salaried time (exclusive of EBP), materials and supplies and travel.

[39] In this case, the CCG made the appropriate calculation, which resulted in a figure of \$59.47. However, the CCG then calculated costs to include EBP, resulting in the claimed amount of \$71.36. This is contrary to the agreement and was not accepted.

The administrative costs portion of the submission is allowed in the amount of \$59.47.

OFFER SUMMARY AND CLOSING

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

| ITEM | CLAIM | OFFER |
|---------------------|--------------------|--------------------|
| Materials | \$292.50 | \$292.50 |
| Contractor Expenses | \$3,886.46 | \$3,886.46 |
| Travel | \$384.30 | \$384.30 |
| Salaries | \$1,497.33 | \$1,497.33 |
| Overtime | \$4,343.83 | \$4,343.83 |
| Vehicles | \$339.97 | \$339.97 |
| Administration | \$71.36 | \$59.47 |
| Total | \$10,815.75 | \$10,803.86 |

Table 1 - Summary of claims made and allowed

[41] Costs and expenses in the amount of \$10,803.86 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[43] 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.

[44] 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.

[45] 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.

[46] 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