



## **OFFER LETTER**

Ottawa, 23 August 2022  
*SOPF File: 120-926-C1*

### **VIA EMAIL**

Pauquachin First Nation  
9010 West Saanich Road  
North Saanich, BC V8L 5W4

**RE: *Santa Rita* – Goldstream, British Columbia – DOI: 28 June 2022**

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### **SUMMARY AND OFFER**

- [1] This letter responds to a submission from the Pauquachin First Nation (the “PFN”) with respect to the motor vessel *Santa Rita*, which sank at a marina at Goldstream, British Columbia on 28 June 2022. After sinking, the vessel began upwelling oil pollution (the “Incident”).
- [2] On 12 July 2022, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the PFN. The submission advanced claims under the *Marine Liability Act*, SC 2001, c 6 (the “MLA”) totaling \$3,224.76 for measures taken by the claimant in response to the Incident. Specifically, the PFN seeks reimbursement for lab expenses arising from environmental monitoring.
- [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 PFN pursuant to sections 105 and 106 of the MLA.
- [4] The amount of \$3,224.76 (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. The reasons for the Offer are set forth below, along with a description of the submission.

## THE CLAIM SUBMISSION

- [5] The PFN submission was made by way of the Fund's General Claims Process Claims Form. The Form includes a narrative describing the Incident and the PFN's involvement.
- [6] An environmental report prepared by Pauquachin Marine is appended to the Form. This report provides additional background about the Incident and the measures taken by the PFN in response. Specifically, it states that the PFN collected samples and had them tested at a lab in order to examine shoreline contamination resulting from the Incident.
- [7] The submission also includes documentation from the Canadian Coast Guard (the "CCG"), which also responded to the Incident. That documentation includes an Incident Command System 201 form noting measures taken by the CCG and an email update distributed by the CCG to interested parties, including the PFN.
- [8] To the extent that they are pertinent to the Offer, these documents are reviewed below.

### The narrative

- [9] After becoming aware of the Incident, the PFN considered it appropriate to determine whether the containment boom placed around the *Santa Rita* by the CCG had been effective in containing oil pollution and protecting the local environment.
- [10] A member of the PFN staff had qualifications which could aid in evaluating and identifying damages. Specifically, that person had: a Registered Professional Biologist certification, a background in water quality testing, knowledge of traditional Indigenous foods and cumulative effects, and knowledge of the local at-risk species.
- [11] The PFN individual developed a sampling protocol to confirm hydrocarbon signals within the immediate spill area and to differentiate between the spill or background marina hydrocarbons.
- [12] As part of developing that plan, contact was made with the Bureau Veritas laboratory, which provides specialized testing services. This allowed confirmation of the testing protocol.
- [13] Thereafter, the samples were collected and submitted to Bureau Veritas for analysis.

Environmental testing report

- [14] The environmental testing report reiterates the basic facts of the case. It also includes a remark, at page 15 of the General Claims Form package, that non-recoverable oil apparently rising from the *Santa Rita* was observed outside of the CCG-deployed containment boom.
- [15] The report notes the historic importance of the geographical area around the Incident, including cultural considerations relevant to a number of nearby First Nations. The main concern identified was the presence of bivalves used by traditional harvesters. The filter-feeder nature of these species creates particular problems when pollution occurs in this environment. Other identified environmental sensitivities included a salmon stream, eelgrass, seal haulouts, kelp beds, and culturally significant fishing and harvesting sites.
- [16] According to the report, the sampling was insufficient to capture full signals from the wide potential spill area given the limited hydrocarbons present. Most samples returned below detection limits as defined by the laboratory (Bureau Veritas).

**FINDINGS OF THE ADMINISTRATOR**

Eligibility

- [17] The Incident resulted in oil pollution damage within the territorial seas or internal waters of Canada. As a result, claims arising from the Incident are potentially eligible for compensation.
- [18] The PFN is determined to be an eligible claimant.
- [19] Some of the claimed costs and expenses arise from what might be determined 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 under the International Convention on Civil Liability for Oil Pollution Damage, and are therefore potentially eligible for compensation.
- [20] Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.

The pollution threat posed

- [21] The *Santa Rita* (registered with Transport Canada under official number 130800) posed a modest oil pollution risk. While the vessel was not known to contain significant quantities of fuel, it was of moderate size (64 feet) and therefore it was reasonable to assume that it contained a volume of oils sufficient to pose some threat to the local marine environment.
- [22] In this case, it is also noted that the cost of the measures taken by the PFN was modest, at \$3,224.76. This cost is only for the laboratory expenses, and not the

report generated internally by the PFN. Additionally, this measure was directed at an identifiable purpose: identifying environmental impacts of oil pollution from the Incident subsequent to observations that some oil had not been successfully contained. The information obtained by this testing would be expected to be useful in evaluating the appropriateness of further measures.

- [23] The PFN has elected not to claim for internal personnel costs associated with the Incident.
- [24] It is determined that the decision to undertake environmental testing was a reasonable one. Further, the cost of the testing program itself was reasonable. It follows that that expense, as claimed by the PFN, is allowed.
- [25] As that was the only item claimed by the PFN, the claim is allowed in its entirety, in the amount of \$3,224.76, plus statutory interest accruing to the time the offer is accepted.

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- [26] In considering this Offer, please observe the following options and time limits that arise from section 106 of the MLA.
- [27] 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.
- [28] 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.
- [29] 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 efforts to pursue subrogation.

Yours sincerely,

Mark A.M. Gauthier, B.A., LL.B  
Deputy Administrator, Ship-source Oil Pollution Fund