



## OFFER LETTER

Ottawa, 26 April 2022  
*SOPF File:* 120-910-C1  
*CCG File:* n/a

### VIA EMAIL

Manager, Response Services and Planning  
Canadian Coast Guard  
200 Kent Street (5N177)  
Ottawa, Ontario K1A 0E6

**RE: MV *Tecumseh* – Detroit River, Windsor, ON – DOI: 15 December 2019**

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### **SUMMARY AND OFFER**

- (1) This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the bulk carrier *Tecumseh* (the “Vessel”). The Vessel caught fire in the Detroit River on 15 December 2019 while travelling from Thunder Bay, ON, to Windsor, ON (the “Incident”).
- (2) On 14 December 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 \$9,752.43 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 \$4,803.52 (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) According to the narrative, on 15 December 2019 the CCG was advised that the Vessel's engine room had caught fire while the Vessel was in transit in the Detroit River, which forms part of the border between Canada and the United States. While smoke was reportedly emanating from the Vessel, there was no visible oil pollution. The United States Coast Guard (the "USCG") and local firefighting and rescue personnel were present at the scene.
- (8) That night, parties including the CCG, USCG, Transport Canada, the Joint Rescue Coordination Centre (the "JRCC"), and the Port of Windsor held a teleconference to discuss a salvage plan that would adequately mitigate the oil pollution threat that the Vessel posed. The parties determined to tow the Vessel to a marine terminal in Windsor to assess the damage caused by the fire.
- (9) During a second teleconference held early on the morning of 16 December, it was established that the fire appeared to be under control. Additionally, Eastern Canada Response Corporation (the "ECRC"), a marine response organization, confirmed to the CCG that its personnel would arrive at the scene at approximately 3:00am on the morning of 16 December.
- (10) Hours later, the CCG was informed that JRCC crew members were spraying water onto the Vessel to prevent it from freezing. A CCG vessel used by JRCC for search and rescue purposes arrived at the scene shortly thereafter.
- (11) At 5:00am on 16 December, ECRC informed the CCG that it had begun to place sorbent boom around the Vessel and that a salvage team from a local contractor had arrived. The booming was reportedly complete by 7:00am.
- (12) At approximately 11:00am, the marine terminal in Windsor confirmed that the Vessel was secured in its facility. The JRCC then confirmed that the fire had been extinguished. An assessment of the Vessel's engine room by Detroit firefighters revealed that the cargo was filled with canola grain.
- (13) Arrangements were made for the CCG to take over the operation from JRCC, and CCG personnel arrived at the scene at approximately 1:30pm. The CCG requested that one of its vessels be used to take pictures and conduct an assessment of the Vessel that evening. However, these materials were apparently lost or deleted later due to CCG technology updates. The CCG also requested a written lightering plan for the removal of the Vessel's oils, to be approved by Transport Canada.

- (14) Another teleconference was held on the morning of 17 December, during which it was established that the Vessel was safely moored and its engine room ventilated. It was determined that the crew of the Vessel should assess its fuel and ballast tanks. The Vessel was believed to contain 205 tons of IFO 80 fuel, 60 tons of diesel, and 4,000 liters of bulk lubricants.
- (15) By the morning of 18 December, the Vessel's engine room and accommodation areas had been ventilated. While a complete inspection of the Vessel was still underway, an initial inspection revealed no evidence of structural loss.
- (16) On 19 December, the corporate owner of the Vessel confirmed that electricians would install temporary lighting and heating panels to keep the Vessel's valves from freezing. Another contractor was expected to remove waste oil from the bilges to enable an assessment of the Vessel's cargo of canola grain.
- (17) On 20 December, the owner reported that the contents of the Vessel's bilge were being unloaded. Approximately 33,500 liters of oil had been removed. The Vessel's hatches would remain closed until a representative of its insurance company arrived to inspect the cargo. Two CCG personnel were deployed to the scene to monitor the lightering operations for the coming days.
- (18) On 21 December, approximately 90 metric tons of IFO 80 fuel were removed from the Vessel. An additional 61 metric tons were removed the following day. To date, 180 metric tons of IFO 80 and 20 metric tons of marine diesel oil had been removed.
- (19) On 23 December, the CCG reported that the Vessel still contained approximately 80 metric tons of IFO 80 and 35 metric tons of marine diesel oil. It was determined to keep these onboard the Vessel during the winter to maintain its generators. The CCG then concluded that all potential risks from the Vessel's fuel tanks had been mitigated. Operations ceased on 24 December, with the Vessel in a layup status.

#### Cost summary

- (20) On 26 January 2022, the office of the Administrator requested additional documentation from the CCG, which the CCG provided. This documentation included an updated Cost Summary sheet which bears the same date of preparation as the original (14 December 2021) but a new claimed total of \$8,335.85.
- (21) While it appears that the decrease in claimed salary (Schedule 4) costs is attributed to an overlooked salary amount when calculating the total, the other updated costs could not be rationalized. In the Administrator's assessment of this claim, the higher original total of \$9,752.43 was used.

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

| COST SUMMARY                                |                           |            |
|---|---------------------------|------------|
| POLLUTION INCIDENT                          |                           |            |
| INCIDENT: MV Tecumesh Engine Room Fire      | PROJECT CODE: FYBS4       |            |
| INCIDENT DATE: December 15th, 2019          | DATE PREPARED: 2021-12-14 |            |
| DEPARTMENT: CANADIAN COAST GUARD            | PREPARED BY: [REDACTED]   |            |
|   |                           | <u>SCH</u> |
| MATERIALS AND SUPPLIES                      | -                         | 1          |
| CONTRACT SERVICES                           | -                         | 2          |
| TRAVEL                                      | 1,653.22                  | 3          |
| SALARIES - FULL TIME PERSONNEL              | 2,356.66                  | 4          |
| OVERTIME - FULL TIME PERSONNEL              | 4,885.35                  | 5          |
| OTHER ALLOWANCES                            | -                         | 6          |
| SALARIES - CASUAL PERSONNEL                 | -                         | 7          |
| SHIPS' COSTS (EXCL. FUEL & O/T)             | -                         | 8          |
| SHIPS PROPULSION FUEL                       | -                         | 9          |
| AIRCRAFT                                    | -                         | 10         |
| POLLUTION COUNTER-MEASURES EQUIPMENT (PCME) | -                         | 11         |
| VEHICLES                                    | 785.19                    | 12         |
| ADMINISTRATION                              | 72.01                     | 13         |
|   | <u>\$ 9,752.43</u>        |            |

Figure 1: Screen capture of the CCG cost summary (original submission)

CCG internal documentation

- (23) The original CCG submission contains spreadsheets listing the claimed costs and expenses in each Schedule, documents identifying the safety hazards of canola grain, a winter layup plan for the Vessel, and information on the oils removed from the Vessel.
- (24) The updated submission contains materials including a hotel receipt for one night, an Expense Report Statement for one CCG officer, a screen capture of overtime details for one officer, an internal incident form identifying officers who worked on 23 December 2019, toll receipts, and two Travel Request forms for one officer.
- (25) As the updated submission did not contain additional costing spreadsheets, the costs claimed in the original submission were used in the assessment of the claim. The updated submission materials, while inconsistent and in some cases leading to

different claimed amounts, were used to cross-reference the costs claimed in the original submission, where possible.

## **DETERMINATIONS AND FINDINGS**

### The CCG submission presents potentially eligible claims

- (26) The Incident resulted in the threat of oil pollution 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.
- (27) The CCG is an eligible claimant for the purposes of section 103 of the MLA.
- (28) The evidence suggests that a discharge of oil was anticipated, and the submission arrived prior to the limitation period set out under paragraph 103(2)(b) of the MLA, which applies where oil pollution damage is anticipated.
- (29) 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, or under the International Convention on Civil Liability for Bunker Oil Pollution Damage, and are therefore potentially eligible for compensation.
- (30) Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.

### Identification and description of the *Tecumseh*

- (31) Built in 1972, the *Tecumseh* is a 615-foot steel-hull bulk cargo carrier with a gross register tonnage of 18,049. It has six cargo holds and two 6,000-horsepower engines which drive a single propeller.
- (32) The *Tecumseh* is owned by Lower Lakes Towing Ltd., a Canadian subsidiary of Rand Logistics – ASC Holdings, LLC, an American corporation. It is registered in Canada under the Official Number 836045.

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

- (33) The CCG incident 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, save for some evidentiary shortcomings that are detailed below.

*The Vessel posed an oil pollution threat at the time of the Incident*

(34) It is accepted that the Vessel posed a pollution threat. Had the efforts to control the fire failed, or had the Vessel grounded or damaged surrounding infrastructure, the consequences could have been severe. The evidence establishes that the Vessel contained approximately 269 tons of oil products; therefore, a discharge of oil could have affected the millions of people who obtain drinking water from the western Lake Erie Basin. Accordingly, it was reasonable for the CCG to take steps to respond to the Incident and address the pollution threat that the Vessel posed.

*On-site CCG presence was not required after 19 December 2019*

(35) It is recognized that the location of the Vessel in the Detroit River necessitated cross-border coordination with American authorities such as the USCG and Detroit firefighters. This additional layer of complexity required the presence of CCG officers at the scene for at least the initial oil pollution response and search and rescue operations.

(36) However, the CCG narrative establishes that the corporate owner of the Vessel was effectively marshalling resources to control the situation. The description of the events leading up to the CCG ending its involvement on 24 December 2019 make it clear that the CCG's on-site presence could have been scaled back sooner.

(37) Once the fire was extinguished, the Vessel's pollutants were removed and it was secured at the marine terminal in Windsor. At this point, the pollution threat that the Vessel posed had been satisfactorily mitigated, and the role of the CCG in operations such as cargo lightering became superfluous. Such operations were primarily the purview of the Transport Canada marine safety inspectors who were involved in the response operations.

(38) On this basis, it is determined that by the end of the work day on 19 December 2019, the CCG's presence at the scene was no longer necessary. At that point, the CCG had confirmed that the Vessel was structurally sound and seen the owner remove waste oil from its bilges and install electrical panels. Additionally, Transport Canada inspectors were on-site, the Transportation Safety Board had started to investigate the cause of the fire, and stakeholders had been sufficiently briefed. Any further monitoring by the CCG could have been conducted remotely.

(39) As a result, the majority of the claimed costs and expenses incurred after 19 December 2019 are disallowed.

**CLAIM AND OFFER DETAILS**

(40) The CCG presented its costs and expenses across five schedules, each of which is outlined below. 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.

Schedule 3 – Travel

Claimed: \$1,642.22

- (41) The claimed travel costs are attributed to accommodation, meal, incidental, and transportation expenses for five CCG officers, only two of which incurred travel expenses prior to 19 December 2019. Specifically, the narrative suggests that two officers travelled to the marine terminal in Windsor on 16 December. While the remaining documents are difficult to reconcile, they provide sufficient information to corroborate this travel.
- (42) Sending two officers to the terminal to monitor the initial response operation was a reasonable measure. The daily \$91.75 meal allowance and \$142.20 hotel rate for each officer are accepted as reasonable amounts, as is the \$25.25 in toll fees that they paid en route. Finally, the daily incidental allowances are accepted as reasonable for both officers who traveled.
- (43) A slight subtraction was made to account for the fact that the claimed meals and incidental allowances surpass the daily limit of \$108.80 established by the National Joint Council of the Public Service of Canada by \$.25. This subtraction yields an accepted total of \$544.30.
- (44) The remaining travel costs, attributed to three officers who travelled from Parry Sound, ON, to Windsor after 19 December, are disallowed for the reasons previously stated.

**The travel portion of the submission is allowed in the amount of \$544.30.**

Schedule 4 – Salaries – Full-Time Personnel

Claimed: \$2,356.66

- (45) The submitted evidence for the claimed salary and overtime costs is inconsistent, and the updated costs submitted in response to inquiries from the office of the Administrator are difficult to reconcile with the originally claimed costs. In the assessment of the claim, only the officers whose salaries and work hours could reliably be cross-referenced between the two claimed salary sheets and who could be established to have worked between 15 and 19 December 2019 were considered.
- (46) These criteria leave salary hours for three of the seven involved CCG officers potentially eligible for compensation from the Fund. The hours worked by these three officers are accepted on the assumption that, given the cross-border aspect of the Incident, the initial CCG response would have been particularly busy, with two officers traveling to Windsor and one coordinating the work remotely.
- (47) However, the additional salary documentation provided by the CCG was inconsistent and missing relevant information. In other places, irrelevant information, such as

overtime data from the wrong year and incorrect salary rates, was included. Finally, because the claim includes no Personnel & Equipment Daily Log sheets, it was impossible to determine each officer's daily distribution of salary and overtime hours with precision.

- (48) Rather than disallowing all claimed salary and overtime costs on the grounds that the submitted evidence is inconsistent and contradictory, an approximation of the number of hours worked by each officer per day from 15 to 19 December was extracted from the evidence and used as the basis for this section of the Offer. Additionally, as the claimed salary rates for the three officers whose salaries were assessed, two of whom are paid at the GT-04 level and one of whom is paid at the GT-07 level, were inconsistent with the published Treasury Board Secretariat rates, the latter were substituted.
- (49) This approach yields a total of 55 hours distributed among the three officers from 15 to 19 December, with one officer working 28.5 hours, one working 11 hours, and one working 15.5 hours. The first is paid at the GT-07 level (\$57.80 hourly) and the latter two are paid at the GT-04 level (one at the fifth step of the GT-04 level for a total of \$46.16 hourly and the other at the first step for a total of \$41.86 hourly).
- (50) This formula yields a total accepted salary amount of \$2,803.89. Hours above the standard 7.5-hour workday were assessed as overtime costs (Schedule 5), resulting in the allowed salary costs being higher than the claimed amount. Finally, on the same grounds detailed in previous Schedules, hours worked after 19 December are disallowed.

**The salaries portion of the submission is allowed in the amount of \$2,803.89.**

Schedule 5 – Overtime– Full-Time Personnel

Claimed: \$4,885.35

- (51) The same formula detailed above for salary costs was also applied to the claimed overtime costs. For certain CCG officers, less than 7.5 hours' worth of salary costs are claimed for one day, with the rest of the day's work being attributed to overtime. As no justification was provided for this and considering the inconsistencies in the evidence, priority was given to maximizing regular salary hours that could be cross-referenced between the CCG's original and updated submissions.
- (52) The formula yields a total of 27.25 overtime hours, all of which are attributed to one of the CCG officers who travelled to the marine terminal in Windsor. The evidence suggests that this officer worked seven overtime hours at the double pay rate on 15 December and 7.5 hours at the 1.5 pay rate on 16 December. Applying this officer's hourly overtime rate of \$45.51, excluding the 27% contribution to employee benefit plan programs, yields an accepted total of \$1,240.14.

**The overtime portion of the submission is allowed in the amount of \$1,240.14.**



Schedule 12 – Vehicles

Claimed: \$785.19

- (53) This portion of the claim is supported by three spreadsheets, two of which were included in the original submission and one of which was received as part of the CCG's updated submission. Again, the information in these spreadsheets conflicts and cannot easily be reconciled.
- (54) On the same grounds described above, vehicle costs incurred after 19 December 2019 are disallowed. This leaves a total of \$135.12 that is potentially compensable from the Fund. These costs are attributed to the use of a truck on 16 and 17 December 2019 and are charged at the CCG Charge-out Manual's listed daily vehicle rate.
- (55) Based on the narrative, it is reasonable to conclude that the CCG officers who travelled to Windsor would have used a truck on both days. However, the claimed fuel costs are unsubstantiated, and no mileage was recorded in the spreadsheets. These costs are therefore disallowed.

**The vehicles portion of the submission is allowed in the amount of \$135.12.**

Schedule 13 – Administration

Claimed: \$72.01

- (56) This portion of the claim represents 3.09% of the claimed travel and salary costs, excluding the markup associated with employee benefit plan contributions. This method of calculating administration costs has been generally accepted in past CCG claims and is accepted here.
- (57) The reductions made under this Schedule correspond to the portion of travel and salary costs that have been disallowed. Excluding employee benefit plan contributions and applying the 3.09% rate to the accepted travel and salary costs yields a total of \$80.07.

**The administration portion of the submission is allowed in the amount of \$80.07.**

**OFFER SUMMARY AND CLOSING**

- (58) The following table summarizes the claimed and allowed expenses in the *Tecumseh* matter:

| <b>Schedule</b>                    | <b>Claimed</b> | <b>Allowed</b> |
|------------------------------------|----------------|----------------|
| 3 – Travel                         | \$1,653.22     | \$544.30       |
| 4 – Salaries – Full Time Personnel | \$2,356.66     | \$2,803.89     |
| 5 – Overtime – Full Time Personnel | \$4,885.35     | \$1,240.14     |

| Schedule            | Claimed           | Allowed           |
|---------------------|-------------------|-------------------|
| 12 – Vehicles       | \$785.19          | \$135.12          |
| 13 – Administration | \$72.01           | \$80.07           |
| <b>Totals</b>       | <b>\$9,752.43</b> | <b>\$4,803.52</b> |

*Table 1: Summary of amounts claimed and allowed*

(59) Costs and expenses in the amount of \$4,803.52 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

(61) 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.

(62) 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.

(63) 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.

(64) 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