



OFFER LETTER

Ottawa, 12 July 2023
SOPF File: 120-931-C1
CCG File:

VIA EMAIL

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

RE: M/V Wendy K — Mooretown, Ontario
Incident date: 2020-09-03

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a 57-foot wooden pleasure craft known as the *Wendy K*. The vessel caught fire on the US side of the St. Clair River on 3 September 2020 and drifted into Mooretown, Ontario (the “Incident”). The CCG responded, ultimately removing and disposing of the vessel.

[2] On 2 September 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 \$280,859.76¹ 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 \$254,024.16 (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 relevant portions of the submission.

¹ The CCG initially sought a total of \$280,143.90, but this was later slightly increased (see Figure 1 and note 2).

THE SUBMISSION RECEIVED

[5] The submission includes a narrative that describes events relating to the Incident. It also includes documents supporting the CCG's claimed costs.

[6] The CCG summarizes its claimed costs and expenses as follows:

Schedule #	Description	Total
1	MATERIALS AND SUPPLIES	\$ -
2	CONTRACT SERVICES	\$ 230,884.99
3	TRAVEL	\$ 363.65
4	SALARIES - FULL TIME PERSONNEL	\$ 12,272.13
5	OVERTIME - FULL TIME PERSONNEL	\$ 26,291.49
5a	OVERTIME - OTHER	\$ -
6	OTHER ALLOWANCES	\$ -
7	SALARIES - CASUAL PERSONNEL	\$ -
8	SHIPS' COSTS (EXCL. FUEL & O/T)	\$ -
9	SHIPS PROPULSION FUEL	\$ -
10	AIRCRAFT	\$ -
11	POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	\$ 5,152.74
12	VEHICLES	\$ 3,702.42
13	ADMINISTRATION	\$ 1,476.48
	TOTAL CCG COST OF INCIDENT	\$ 280,143.90

Figure 1 – CCG cost summary²

DETERMINATIONS AND FINDINGS

The claim submission is admissible

[7] 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 oil pollution from a ship.

[8] The claims submitted by the CCG are for responding to a ship-source oil pollution incident. Such claims may be eligible for compensation.

[9] Therefore, the claim is admissible, subject to determinations that the claimed costs were reasonably incurred for the purpose of mitigating oil pollution damage.

Summary of the Incident and the CCG's response thereto

[10] The paragraphs that follow summarize the relevant factual findings made with respect to the Incident and the CCG's response thereto. Those findings are based on the

² The CCG later amended its claim, changing the amount sought under Schedule 4 to \$12,987.99 to reflect the higher rates for base pay and employee benefits that were in fact in place at the time of its response.

documentation originally submitted with the claim as well as on follow-up communications with the CCG and some additional investigatory work conducted by the Fund.

[11] On 3 September 2020, the *Wendy K*, a 57-foot wooden pleasure craft, caught fire on the US side of the St. Clair River. The vessel ultimately drifted into Mooretown, Ontario, where it was secured to a local dock after the fire was extinguished with involvement from the US Coast Guard. The fire caused extensive damage to the vessel. It sank nearly to its gunnels, leaving nothing of the structure above the main deck. A continuing discharge of oils from the vessel resulted.

Figure 2 – Photograph from the CCG submission dated 3 September 2020 showing the aftermath of the fire

[12] The CCG responded to the Incident with an Environmental Response (“ER”) team from Sarnia, approximately 20 kilometres north of Mooretown by road. The ER team identified the American owner of the *Wendy K*, who reported that the vessel’s two fuel tanks contained 500 gallons of diesel before the fire. Heavier lubricant oils would also have been on board. Initially, the CCG expected to respond in a limited capacity, as the owner planned to have the vessel removed from the water. In the days that followed, the CCG took over the response operation completely as complications arose between the owner and his insurer.

[13] Strong currents and wave action complicated response efforts, and a local golf course irrigation water intake downriver heightened the risks associated with continued discharges of oil. Furthermore, it was not known how much oil remained on board the mostly sunken vessel following the fire. CCG personnel deployed and tended sorbent and containment boom around the vessel throughout the response operation.

[14] On 4 September 2020, the CCG understood that the owner and his insurer would manage the response operation. However, the owner was unresponsive to the CCG that evening. The following day, the owner summarized the quotes he had obtained from several American contractors, but the CCG raised concerns about the timeliness of the various proposed plans. Later that day, two local residents reported debris and oil sheening near their respective waterfront properties and the owner of the *Wendy K* expressed a reluctance to incur response costs upfront without a clear undertaking from his insurer.

[15] Concerned about delays, the CCG decided to approach contractors on 6 September 2020 to obtain its own vessel removal quotes. An American company quoted US \$158,000.00 (or approximately CA \$207,000.00 at then-current exchanges rates) plus any applicable taxes, and Lani Maritime (“Lani”), a Canadian company, cited CA \$204,323.00 plus HST. A third quote, from another Canadian company, was substantially higher than the others.

[16] With no response from the owner before the allotted deadline, the CCG took over the response operation on 7 September 2020, awarding a contract to Lani. A salvage operation was scheduled for 10 or 11 September, depending on weather. In the meantime,

CCG personnel continued to tend to the boom around the vessel, as well as debris washing up on local properties. Poor weather periodically complicated matters.

[17] Due to logistical complications with the contractor's equipment, the salvage operation was pushed back. On 10 September 2020, the CCG learned that Lani did not carry the insurance it usually requires of its contractors. Ultimately, it was agreed that Galcon Marine Ltd. ("Galcon"), an affiliated and sufficiently insured company, would carry out the work at the same price quoted by Lani.

[18] A planning meeting between the CCG and its contractor was held on 11 September 2020, and the removal operation itself occurred on 13 September. CCG personnel were on scene during that operation, both on land and on the water. A CCG Pollution Response Vessel, Class II ("PRV II") was used as a safety boat throughout, enforcing a temporary slowdown for boat traffic in the vicinity. The *Wendy K* and its fuel tanks were successfully removed to a barge, and approximately 2,000 litres of oily fluids were disposed of. The removal operation concluded on 14 September, the following day.

The CCG's response operation was broadly reasonable, but some reductions are required

[19] In general, the CCG's response operation was reasonable from the perspective of oil pollution mitigation. The *Wendy K* was known to contain a considerable volume of oils when the fire started. Following the fire, it was not known what portion of those oils remained on board the vessel. However, the mostly sunken wreck was observed to be a source of ongoing sheening, and the area of the Incident had some sensitivities. In light of the foregoing factors, the CCG was justified in mobilizing and mounting a removal operation when it became clear that the owner of the vessel was either unable or unwilling on that front.

[20] Some elements of the CCG's claim required closer scrutiny. Findings have been made that result in reductions to claimed amounts, as set out below.

Schedule 2: Contract Services

[21] The claimed and allowed amounts for contract services costs are detailed at Table 1, below. As noted above, the decision to use a contractor to remove the *Wendy K* from the water is considered reasonable. The contract was awarded through a competitive bidding process, and it is accepted that the winning bid represented reasonable market rates for the services rendered. In addition, the scope of the contract (i.e., the specific services provided) must be individually considered for reasonableness. That review is set out below.

[22] Initially, the CCG provided only a single-page invoice with no breakdown of the claimed \$230,884.99 in fees paid to Galcon. On request from the Fund, some additional documentation was provided by the CCG, including a rough breakdown of costs and limited descriptions of tasking for 13 September 2020, as well as a BIMCO standard form wreck removal contract between the CCG and Lani marked "WORKING COPY" and dated 8 September 2020. The supplementary documentation is of some assistance in

understanding the work that was done, but it does not sufficiently shed light on or justify all of the line items presented.

[23] Broadly, the work done by Galcon is accepted as being reasonable and necessary to remove the *Wendy K* and mitigate the oil pollution threat posed by the vessel, whose fuel tanks were ultimately found to contain a substantial volume of oils or oily water. All line items clearly associated with that aim are accepted. The paragraphs that follow explain why certain items are not accepted.

[24] First, the “dump fees” cover waste that seems to have been directed to ordinary streams, suggesting that it was not contaminated with oils. Accordingly, this item is not accepted.

[25] Second, Galcon’s “insurance and administration” costs are insufficiently explained or documented. The narrative indicates that, after its bid had been accepted, Lani was found to carry insufficient insurance. The details of the CCG requirements on this front are not clear, but it was ultimately agreed that Galcon, which was in the CCG’s view satisfactorily insured, would undertake the work at the rates originally set by Lani. The working copy contract contains extensive hold harmless and indemnify clauses protecting Lani from possible claims made by the CCG, so it is not clear—assuming these clauses survived the changeover to Galcon—how any insurance held by Galcon would have benefitted the CCG. Accordingly, the associated costs are not accepted as reasonable.

[26] Finally, in the absence of any explanation, the “safety and spill response” costs are not accepted. They are poorly documented but appear to be duplicative of CCG efforts. The on-scene presence on 13 September 2020 of multiple CCG personnel, a PRV II that was expressly engaged in a safety and monitoring capacity, as well as two response trailers containing spill response materials makes it difficult to understand what value Galcon’s services were providing on this front. Whereas Galcon’s pollution boom costs, which are accepted, are clearly attributable to reasonable work that was done by the contractor to boom off the sunken vessel as a precaution during the salvage operation, the evidence does not establish what additional services the spill response line item actually covered. This item is therefore rejected.

Work Description	Claimed	Allowed
Site inspection	\$3,800.00	\$3,800.00
Oil recovery (1,800 litres of diesel documented)	\$16,500.00	\$16,500.00
Oil disposal (2,500 litres oily water documented)	\$1,870.00	\$1,870.00
Crane service	\$12,450.00	\$12,450.00
Dump fees (batteries and 12.5 cubic yards of “non-regulated goods / waste”)	\$2,500.00	\$0.00
Dump bins for waste stream handling	\$4,200.00	\$4,200.00
Workboat rental	\$28,000.00	\$28,000.00
Workboat mobilization	\$10,800.00	\$10,800.00
Barge rental	\$18,000.00	\$18,000.00
Barge mobilization	\$22,300.00	\$22,300.00
Divers	\$35,000.00	\$35,000.00
Excavator	\$10,000.00	\$10,000.00
Excavator mobilization	\$7,300.00	\$7,300.00

Work Description	Claimed	Allowed
Project management	\$15,000.00	\$15,000.00
Insurance and administration	\$7,500.00	\$0.00
Safety and spill response	\$3,500.00	\$0.00
Consumables	\$2,800.00	\$2,800.00
Pollution boom	\$2,803.00	\$2,803.00
HST	\$26,561.99	\$24,806.99
Totals	\$230,884.99	\$215,629.99

Table 1 – Claimed and allowed contract services costs

Schedules 3, 4, and 5: Travel, Salaries, and Overtime

[27] In total, nine different CCG personnel took part in the response operation over 12 days. Claimed regular salary costs include a 27% markup on base rates, representing employee benefits. Overtime was paid at either a multiple of 1.5 or 2.0 times each employee’s base rate (less benefits). The claimed rates are considered reasonable.

[28] CCG personnel deployment and costs are summarized in the below table.³

Name, Group, Level, Role	Rates	Hours Claimed by Date (September 2020)												Total Hours	Cost
		03 T	04 F	05 S	06 S	07 M	08 T	09 W	10 T	11 F	12 S	13 S	14 M		
AG GT-07 Command	Reg: \$59.74	1.0	7.5	–	–	–	6.0	4.0	5.0	3.0	–	–	7.5	34.0	\$2,031.22
	1.5x:\$70.56	6.5	3.0	7.5	–	–	5.0	2.0	–	1.0	5.0	–	–	30.0	\$2,116.85
	2.0x:\$94.08	–	–	4.5	12.0	12.5	–	–	–	–	–	13.5	–	42.5	\$3,998.45
EC GT-05 Command	Reg: \$45.57	–	–	–	–	–	1.0	2.5	2.0	3.0	–	–	–	8.5	\$387.38
	1.5x:\$53.84	–	–	–	–	1.0	–	0.5	–	–	3.0	–	–	4.5	\$242.23
	2.0x:\$71.77	–	–	–	–	–	–	–	–	–	–	3.0	–	3.0	\$215.31
PK GT-05 Liaison	Reg: \$45.57	0.5	7.5	–	–	–	7.5	7.5	7.5	7.5	–	–	–	38.0	\$1,731.82
	1.5x:\$53.84	7.0	1.5	7.5	–	–	–	–	–	–	5.0	–	–	21.0	\$1,130.52
	2.0x: 71.77	–	–	2.0	11.0	3.0	–	–	–	–	–	12.0	–	28.0	\$2,009.44
JZ GT-04 Logistics	Reg: \$40.60	–	–	–	–	–	7.5	7.5	–	7.5	–	–	–	22.5	\$913.59
	1.5x:\$47.96	6.0	–	–	–	–	–	–	–	–	7.5	–	–	13.5	\$647.47
	2.0x:\$63.94	–	–	–	–	–	–	–	–	–	0.5	11.0	–	11.5	\$735.31
GS GT-05 Operations	Reg: \$48.37	–	4.5	–	–	–	7.5	7.5	7.5	7.5	–	–	–	34.5	\$1,668.89
	1.5x:\$57.14	4.0	3.0	7.5	–	–	1.0	1.0	1.0	1.0	7.5	–	–	26.0	\$1,485.55
	2.0x:\$76.18	–	–	5.5	9.0	11.0	–	–	–	–	1.5	13.0	–	40.0	\$3,047.11
BM GT-05 Operations	Reg: \$48.37	–	7.5	–	–	–	7.5	7.5	7.5	7.5	–	–	–	37.5	\$1,814.01
	1.5x:\$57.14	6.0	2.0	6.0	–	–	1.0	1.0	1.0	1.0	8.0	–	–	26.0	\$1,485.55
	2.0x:\$76.18	–	–	–	9.0	9.5	–	–	–	–	1.0	12.0	–	31.5	\$2,399.58
NB GT-04 Operations	Reg: \$43.12	5.0	7.5	–	–	–	7.5	7.5	7.5	–	–	–	–	35.0	\$1,509.34
	1.5x:\$50.94	8.0	4.0	7.5	–	6.0	–	–	–	–	–	–	–	25.5	\$1,298.90
	2.0x:\$67.91	–	–	5.5	5.5	–	–	–	–	–	–	–	–	11.0	\$746.94
JD GT-04 Operations	Reg: \$43.12	2.0	3.5	–	–	–	7.5	7.5	7.5	7.5	–	–	–	35.5	\$1,530.90
	1.5x:\$50.94	–	–	7.5	–	5.5	–	–	–	–	7.5	–	–	20.5	\$1,044.23
	2.0x:\$67.91	–	–	3.0	5.5	–	–	–	–	–	–	12.5	–	21.0	\$1,426.05
JK GT-04 Operations	Reg: \$40.60	–	5.0	–	–	–	7.5	7.5	7.5	7.0	–	–	–	34.5	\$1,400.84
	1.5x:\$47.96	0.5	1.0	7.5	–	6.0	–	–	–	–	7.5	–	–	22.5	\$1,079.10
	2.0x:\$63.94	–	–	–	5.5	–	–	–	–	–	2.0	11.0	–	18.5	\$1,182.90
Totals													676.5	\$39,279.49	

Table 2 – Claimed salary and overtime by date (full names of CCG personnel replaced with initials, and rejected hours are indicated with red text)

³ Rounding accounts for some minor discrepancies.

[29] In the absence of documentation detailing specific personnel tasking—which the CCG declined to provide despite a request from the Fund—it is considered that the documentation provided fails in some instances to justify the scope of CCG deployment. Where reasonable tasking cannot be inferred from the narrative, markdowns are required.

[30] The first two days of claimed salary and overtime costs are accepted in their entirety. The CCG’s scope of deployment on those days was reasonable for the initial assessment and stabilization of the Incident, which involved several players, from the US Coast Guard to the owner of the vessel and affected local residents.

[31] In addition, claimed costs for command and liaison personnel, the latter of whom worked with affected property owners, are accepted in their entirety, throughout the response. In the absence of an explanation of tasking and noting that minimal CCG equipment was deployed throughout the response operation, the logistics officer costs for 5 through 12 September 2020 are rejected.

[32] With the situation stabilized as of the end of 4 September 2020, and the vessel boomed off, it is unclear why the continued deployment of five ER personnel to the scene on most days was required. Accordingly, only the hours associated two on-scene operations personal are accepted for 5 through 12 September. An exception is allowed for 6 September, on which date the narrative indicates that weather complicated operations. On that day, costs associated with two additional operations officers are accepted.

[33] Finally, given the significant contractor activity at the scene of the Incident on 13 September 2020, and taking into account that a crew was necessary for the PRV II, all salary and overtime costs associated with that day are accepted.

[34] Ultimately, regular salary costs in the amount of \$8,612.48 are accepted, along with overtime costs in the amount of \$22,516.87.

[35] The CCG base at Sarnia is approximately 25 minutes by car from the location of the Incident. Accordingly, the rationale behind claimed travel costs of \$363.65, which purportedly cover meals, accommodations, and private vehicle costs for the CCG’s incident commander, are difficult to understand without explanation. That no other CCG personnel incurred travel costs only raises further questions about this portion of the claim. Accordingly, all claimed travel costs are rejected.

Schedules 11 and 12: Pollution Counter-measures Equipment and Vehicles

[36] Under Schedule 11, the CCG seeks a total of \$5,152.74. This amount comprises \$921.61 for the use of a rigid hull inflatable boat (“RHIB”) on 6 September 2020; \$1,194.23 for the use of a PRV II on 13 September; \$1,588.50 for the use of 150 feet of containment boom; and \$1,448.40 for the use of 680 feet of sorbent boom.

[37] There are no clear references to the use of the RHIB in the CCG’s documentation other than in costing summaries. Logbooks were requested by the Fund, but none were provided by the CCG. While it appears based on context that the RHIB was used to assist in deploying and/or tending to boom on 6 September 2020, it is clear that boom was deployed and tended to both before and after that date without the assistance of a CCG

vessel. In fact, 200 feet of boom were deployed on 5 September, without the assistance of a CCG vessel, whereas only 50 feet were deployed on 6 September, when the RHIB was deployed. Without sufficient support for their underlying rationale, the RHIB costs are rejected.

[38] Similarly, the use of the PRV II on 13 September 2020 is not sufficiently documented as to allow acceptance without inference. No logbooks were provided, though they were expressly requested by the Fund. That said, the narrative indicates that the PRV II was used broadly as a safety vessel and also to slow vessel traffic area. Given repeated references throughout the narrative to complications caused by even light winds throughout the response operation, it is accepted that there was value in minimizing wakes from passing vessel traffic. It is also accepted that the CCG, as a federal authority, was perhaps better placed than a contractor to enforce slowdowns, and Galcon deployed only one workboat during its time on scene. Accordingly, the costs associated with the PRV II are accepted as reasonable.

[39] Daily CCG boom usage is documented and accepted as reasonable in light of the demonstrated oil pollution threat. Accordingly, the CCG's claimed boom costs are accepted in full.

[40] Under Schedule 12, the CCG seeks \$3,702.42 for the use of vehicles. This includes \$1,959.24 for vehicle-days at a daily rate of \$67.56, for regular CCG trucks. It also includes \$1,555.54 for the seven-day deployment (7 through 13 September 2020) of a pollution response trailer ("PRT") and \$187.64 for the deployment of a first response unit ("FRU") trailer on 13 September. Both assets are stocked with response equipment and a PRT can serve as improvised command centre and/or weather shelter.

[41] Costs for the PRT are accepted as reasonable. Its presence at the site of the Incident likely improved efficiency throughout the response operation, and it served as a reasonable precaution should a larger-than-expected spill have occurred. Similarly, the addition of the FRU on 13 September 2020 is accepted given the salvage activities undertaken that day, which would have heightened the risk of larger discharges of oils.

[42] The costs pertaining to CCG truck usage, which appear excessive as claimed given the number of personnel on scene at any given time, require reductions taking into account the reductions applied to the scope of personnel deployment. For days on which just one or two on-scene personnel have been accepted, one vehicle has been allowed. For each of the other days of the response, two vehicles are allowed. Accordingly, 16 vehicle-days are accepted, with allowed costs totalling \$1,080.96. This scope of deployment is considered to have been sufficient for transporting the number of personnel whose involvement has been accepted as reasonable.

Schedule 13: Administration

[43] The CCG seeks \$1,476.48 in compensation for administrative costs. It calculates these costs by applying a rate of 3.09%, applied against its costs for travel, regular salaries (less employee benefits costs), overtime, pollution counter-measures equipment, and vehicles.

[44] Historically, the CCG has not sought administrative costs with respect to overtime, pollution counter-measures equipment, or vehicles. Whereas administrative costs applied against travel (none of which costs are accepted in this case) and salaries have generally been considered reasonable, the same finding cannot be made with respect to novel applications without explanation. Here, no explanation for the novel claims is provided.

[45] Applying the 3.09% administrative rate to allowed salary costs, less employee benefits, the amount of \$209.55 is accepted under Schedule 13.

OFFER SUMMARY AND CLOSING

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

Schedule	Claimed	Allowed
2 – Contract Services	\$230,884.99	\$215,629.99
3 – Travel	\$363.65	\$0.00
4 – Salaries – Full Time Personnel	\$12,987.99	\$8,612.48
5 – Overtime – Full Time Personnel	\$26,291.49	\$22,516.87
11 – Pollution Counter-measures Equipment	\$5,152.74	\$4,231.13
12 – Vehicles	\$3,702.42	\$2,824.14
13 – Administration	\$1,476.48	\$209.55
Totals	\$280,859.76	\$254,024.16

Table 3 – Summary of amounts claimed and allowed

[47] Costs and expenses in the amount of \$254,024.16 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[49] 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.

[50] 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.

[51] 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.

[52] 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