



## OFFER LETTER

Ottawa, 11 January 2024  
*SOPF File: 120-837-C1*

### VIA EMAIL

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*Via email to DFO.CCGERCostRecoveryRSP-  
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**RE: TANKER JANA DESGAGNES — Port aux Basques, Newfoundland and  
Labrador - Incident date: 2019-03-21**

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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 tanker JANA DESGAGNES (the “Vessel”), which grounded on or about 21 March 2019, near Port aux Basques, Newfoundland and Labrador (the “Incident”).

[2] On 23 February 2023, 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 totaling \$89,286.59 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 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”).

[4] The amount of \$30,751.64 (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 CCG’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 CCG 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 narrative, on 21 March 2019, the CCG was notified that a vessel had lost steering due to the rudder failing while in ice. At that time, the vessel was located about 16 nautical miles from Port aux Basques, Newfoundland and Labrador. The vessel had cargo of 8,000 tonnes of refined crude oil, 192m<sup>2</sup> of Heavy Fuel Oil, 64.4m<sup>2</sup> of diesel fuel and 68.1m<sup>3</sup> of Lube oil on board. The CCG determined that it was a grounding risk with a threat of pollution.

[8] At 1400 hours, CCG issued a notice to the captain and owners of the vessel requesting a response plan. The owners responded. They arranged a place of refuge in Sydney, Nova Scotia and hired the private tug *Lois M* to tow the vessel.

[9] However, the *Lois M* was initially unable to reach the vessel due to the ice in the water. A CCG ship, the CCGS *Molly Kool* ("*Molly Kool*"), was tasked with going to the vessel's location and connect a tow line to the vessel.

[10] At 1700 hours, three CCG personnel were mobilized to Port aux Basques with a medium duty hauler, a 53ft trailer with Single Vessel Side Sweep boom system ("SVSS"), and two 5,000-gallon storage/decanting tanks being towed by commercial transport. They met with the owner and contractors about what could be done in the event of a release of pollutants.

[11] At 1830 hours the *Molly Kool* was instructed to proceed to the vessel's position. It arrived at 2230 hours and was instructed to tow the vessel further from the shore.

[12] On 22 March 2019, the *Molly Kool* towed the vessel until it was 13 nautical miles from the closest point of land, and then waited on standby. The *Lois M* arrived on the scene at 1922 hours. CCG personnel employed pollution countermeasures equipment at Port aux Basques if needed.

[13] On 23 March 2019, CCGS *Molly Kool* disconnected its tow line due to a changed plan that would see the *Lois M* conduct the tow while the *Molly Kool* provided an escort. The heavy ice conditions made it difficult for the *Lois M* to operate near the vessel.

[14] On 24 March 2019 at 0848 hours, the *Lois M* connected a tow line to the vessel. A crew member of the *Lois M* sustained an injury, so the *Molly Kool* was dispatched to ensure the individual received medical attention and transport the replacement crew member to the site. CCG personnel remained at Port aux Basques to monitor operations.

[15] On 25 March 2019, the *Lois M* was having difficulties with the tow due to engine and other mechanical troubles, so the *Molly Kool* towed the vessel from 0845 hours to 1540 hours. At 1730 hours the *Lois M* took over the tow while the *Molly Kool* acted as escort.

[16] On 26 March 2019, CCG personnel departed from Port aux Basques as the tow continued to Sydney, Nova Scotia. Three more CCG personnel from Canso Canal were deployed to be on site at Sydney.

[17] On 27 March 2019, the vessel was successfully secured at Sydney Harbour at 1108 hours. The three CCG personnel were on site to ensure the process was smooth. That concluded the CCG operation.

Cost summary

[18] The CCG submission summarizes the claimed costs as follows:

Schedule	Cost claimed (\$)
1. Material and supplies	15,601.25
2. Contract services	Nil
3. Travel	3,882.05
4. Salaries – Full time personnel	4,811.76
5. Overtime – Full time personnel	10,469.54
6. Other allowances	Nil
7. Salaries – Casual personnel	Nil
8. Ship costs (excluding fuel & overtime)	25,824.41
9. Ship propulsion fuel	26,306.05
10. Aircraft	Nil
11. Pollution countermeasures equipment	Nil
12. Vehicles	1,176.25
13. Administration	1,215.28
<b>Total claim</b>	<b>89,286.59</b>

Figure 1: CCG claim cost summary

## DETERMINATIONS AND FINDINGS

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

[19] 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.

[20] The CCG is an eligible claimant for the purposes of section 103 of the MLA.

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

[22] 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.

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

### Findings on the evidence submitted by the CCG

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

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

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

[25] The vessel contained 8,000 tonnes of refined crude oil, 192m<sup>2</sup> of Heavy Fuel Oil, 64.4m<sup>2</sup> of diesel fuel and 68.1m<sup>3</sup> of Lube oil on board. There was never any evidence of oil pollution caused by the ship. Nevertheless, it is accepted that there was a risk of oil pollution meriting at least an initial response as a result of the amount of oil on board coupled with the conditions present at the time the incident was reported.

[26] Ice is an important factor because it travels with the wind, thus a ship stuck in the ice is bound to drift with the wind and current as the ice does.

[27] In this case, the vessel lost steering capabilities and was initially drifting towards the shore. The CCG, reasonably, determined there was a pollution threat as the vessel might ground. The measure attempted by the CCG, to send the *Molly Kool* to tow the vessel, was reasonably taken. However, before the *Molly Kool* arrived, the direction of the drift of the vessel changed as a result of shifting environmental conditions. This change materially

reduced the risk posed. By the time the tow occurred, there was no imminent risk of a discharge of oil.

[28] The shift in the vessel's drift is known as a result of hindsight. The reasonableness of the response measures taken must be measured at the time they were taken. Under that framing, it was reasonable for the CCG to send the *Molly Kool* and attend the vessel while it awaited the arrival of a commercial tug. It is not accepted that the *Molly Kool's* involvement after the arrival of the commercial tug was a measure reasonably taken in response to the threat of oil pollution.

[29] By contrast, no part of the cost associated with having a CCG team on shore to monitor the response is accepted as a reasonable measure. The equipment deployed with the team would not have worked in icy conditions which were prevalent. The benefit which was hoped to be achieved by deploying the shore team is not established in the evidence. For that reason, all costs associated with this measure are rejected.

### **CLAIM AND OFFER DETAILS**

[30] The CCG presented its claimed costs and expenses to the Fund across eight schedules, each of which is outlined below.

[31] 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 CCG's claim have been allowed while others have been decreased.

#### Schedule 1 – Materials and Supplies

Claimed: \$15,601.25

[32] These costs arise from invoices for services provided by two different transport companies, Holden Transport in the amount of \$11,011.25, and C & C Enterprise for \$4,590.00. The invoice from Holden Transport is for the loading and transportation of the CCG storage/decanting tanks, SVSS, and a small container to Port aux Basques, as well as the offloading of the tanks for the return trip. The invoice from C & C Enterprise are for the costs of returning the CCG equipment from Port aux Basques to St. John's, NL.

[33] The CCG used the SVSS as a contingency in case there was a pollutant release and there was an open pocket of water for system deployment. However, due to the icy conditions, the SVSS was unlikely to have been effective at recovering pollutants. The *Molly Kool* was already in the area to assist, and was the ideal mitigation measure to prevent the vessel from grounding given the icy conditions. The deployment, and de-deployment of this equipment is not accepted as a reasonable measure.

**The materials and supplies portion of this claim is rejected in its entirety.**

Schedule 3 – Travel

Claimed: \$3,882.05

[34] The submitted costs are for the three CCG personnel that travelled from St. John’s to Port aux Basques. The claim includes travel breakdowns summaries by employee and date. The expenses are in line with the National Joint Council (NJC) directive rates for the period in effect.

[35] The costs for all three CCG personnel are rejected. The equipment sent with the team was not suitable for use in ice. The team’s presence at the scene was superfluous because they were in no position to adequately respond if oil pollution did occur, and the *Molly Kool* was at the incident site and was capable of responding to reduce the threat of pollution without the need of CCG personnel on shore.

**The travel portion of this claim is rejected in its entirety.**

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$4,811.76

[36] These costs are for the regular hours worked by the CCG personnel at various levels and hourly rates, including 20% EBP. The claim provided includes Personnel & Equipment Daily Logs, which indicate the number of hours worked per employee each day.

[37] The hours worked by the On-site commander (“OSC”), who was responsible for coordinating the CCG response and communicating with the vessel and the management company, are accepted for March 21 and 22. His salary for those two days amounts to \$709.92. His salary for the rest of the days is not accepted as the risk of grounding was over after 22 March.

[38] The hours worked by all other CCG personnel included in the claim are rejected. The *Molly Kool* was already tasked with responding to the vessel and had the capacity to tow the vessel further from shore to prevent oil pollution, which it was eventually tasked to do. The equipment sent with the CCG personnel was unsuitable for the icy conditions, whereas the *Molly Kool* had the icebreaking capabilities necessary to respond. In addition, the crew was stationed in Port aux Basques, at least 10 nautical miles away from the vessel throughout the duration of the response, which is too far from the vessel to be able to effectively monitor it. The CCG personnel’s role on shore was superfluous at best, considering the *Molly Kool* was already acting to prevent the vessel from grounding and potentially causing an oil spill, and the crew was not in a position to assist in the response. Additionally, the hours worked by the three CCG personnel sent to Sydney to monitor the

docking of the vessel are not accepted because the evidence does not establish a benefit for them to be there while the vessel was under tow.

**The salaries portion of the submission is allowed in part in the amount of \$709.92.**

Schedule 5 – Overtime – Full Time Personnel Claimed: \$10,469.54

[39] These costs are for the CCG personnel at various levels and hourly rates. The Personnel & Equipment Daily Logs indicated the number of hours worked per employee each day.

[40] The overtime hours accepted and rejected are the same as the salary hours for the same reasons [see paras 37-38]. The overtime hours worked by the OSC are accepted for March 21 and 22, which amounted to \$1,441.51, and all other overtime hours worked are rejected.

**The overtime portion of the submission is allowed in part in the amount of \$1,144.51.**

Schedule 8 – Ship’s Costs Claimed: \$25,824.41

[41] In accordance with the CCG ER Cost Recovery Manual, all operational ship costs related to pollution response are calculated using fleet costing principles and are all in line with the National Fleet Costing Model (NFCM).

[42] These expenses arise from the total daily cost for the use of the *Molly Kool* on March 22 and 23, including salary, operation, and maintenance, but excludes fuel and overtime. These costs amount to two days at \$12,912.21 each. The rationale regarding why this was the case was not included in the submission. The costs are based on the *Molly Kool* being multi-tasked with Icebreaking Operations.

[43] From 2010 hours on 21 March to 1922 hours on 22 March, the *Molly Kool* was in transit to reach the vessel, tow the vessel to the safer position, and then monitor the vessel and the area until the tug arrived. These are all reasonable actions to mitigate the threat of pollution.

[44] Once the tug arrived, the response was no longer a mitigation of the threat of pollution because the vessel was not at risk of grounding. The vessel was drifting away from the shore on 21 March prior to the *Molly Kool* tow anyways, and it continued to drift away from the shore after the initial tow. Thus, the threat of oil pollution was not high.

[45] After the initial tow, little was done to tow or escort the vessel for various reasons, mostly because of issues with the tug *Lois M*. There was sufficient time for the contract services and the CCG to re-evaluate their plans and gather sufficient assets for the tow. In addition, the use of the *Molly Kool* from this point forward was only because of its unique icebreaker design and the inadequacy of the tug *Lois M* and other equipment to deal with the icy conditions. Thus, the costs associated with the use of the *Molly Kool* beyond 22 March are more appropriately categorized as ice operations than oil pollution response due to the lack of preparedness of the CCG and contractors for the conditions. Therefore, these costs are not reasonable.

[46] By using the same calculations as the CCG, the costs for the use of the *Molly Kool* from 2010 hours on 21 March to 1922 hours on 22 March (23.2 hours) is equal to \$12,481.80.

**The ship's costs portion of the submission is allowed in part in the amount of \$12,481.80.**

Schedule 9 – Ship Propulsion Fuel

Claimed: \$26,306.05

[47] In accordance with the CCG ER Cost Recovery Manual, the fuel charges are to be for the standing offer price for location of the incident at the requisite time. That information was not provided by the CCG to the Fund, and it was not accessible, so the CCG provided a receipt.

[48] The CCG claim indicated two figures for Schedule 9: the costs summary page indicates \$26,306.05 while the detailed Schedule 9 states \$78,724.00. This letter proceeds with the former amount because it covers March 22 and 23, while the latter covers March 22 to 27. From March 22 to 23, the *Molly Kool* used 54,200 litres of fuel.

[49] The submission indicated a price of \$0.485351 per litre for fuel, but another receipt indicates a price of \$0.9245 per litre. The latter is more realistic, but the CCG used the former in its calculation of fuel costs so it will be used here. 54,200 litres used multiplied by \$0.485351 per liter reaches \$26,306.02, so the claim is likely rounded up by 3 cents.

[50] The hours of use acceptable for the *Molly Kool* [see paragraph 43] are the accepted hours here as well. The claim uses Newfoundland Daylight Savings Time (NDST) in the logbooks submitted for this schedule, so in using that time, the *Molly Kool* started at 2050 on 21 March and ended at 1952 on 22 March, being 3.33 hours on 21 March and 19.87 hours on 22 March.

[51] The submission indicates that 49.9 tonnes of fuel were consumed on 21 March and 32.1 tonnes of fuel were consumed on 22 March. Thus, the calculation for day 1 is  $3.33/24 \times 49.9 = 6.92$  tonnes, and for day 2 it is  $19.87/24 \times 32.1 = 26.58$  tonnes. Adding those



values together nets 33.5 tonnes, or 33,500 litres of fuel used by the *Molly Kool* in mitigating oil pollution. Multiplying that by \$0.485351 brings the final accepted cost amount to \$16,259.26.

**The ship propulsion fuel portion of the submission is allowed in part in the amount of \$16,259.26.**

Schedule 12 – Vehicles

Claimed: \$1,176.25

[52] The CCG claimed \$0.22 per kilometre plus the \$67.56 daily rate for use of two vehicles over six days, a Medium Duty Hauler and a Response Vehicle, to carry CCG personnel to the incident site and back. Vehicle and fuel logs were submitted. The table showing the amounts claimed is below.

Submitted vehicle costs						
Vehicle	Mileage (km)	Mileage Rate (\$)	Time (Days)	Daily rate (\$)	Fuel (\$)	Cost
Medium Duty Hauler	2,485	N/A	6	67.56		405.36
					604.33	604.33
Response Vehicle	450	0.22	1	67.56		166.56
					Nil	
<b>Total</b>						<b>1,176.25</b>

[53] The equipment sent to Port aux Basques was insufficient for the response and the team sent was excessive and redundant for the role of monitoring the response from the shore. The CCG team sent to Sydney was also excessive given the nature of the response. Therefore, these costs are not accepted.

**The vehicles portion of the submission is rejected in its entirety.**

Schedule 13 – Administration

Claimed: \$1,215.28

[54] The CCG submission advances a claim for administration costs at a rate of 3.09%, applied against claimed salaries, travel, and aircraft expenses.

[55] The 3.09% rate is generally accepted as reasonable. In this case, there are four items that qualify for administrative costs: materials and supplies, travel, salaries, and ship costs. When recalculating the administrative costs for the readjustments to the salary and travel claims, the sum of the recommended costs (Schedule 1 - \$0, Schedule 3 - \$0, Schedule 4

[less EBP] = \$567.24, Schedule 8 – \$4,486.07) becomes \$5,053.31. Applying the 3.09% administrative rate to this amount equals \$156.15.

**The administration portion of the submission is allowed in part in the amount of \$156.15.**

**OFFER SUMMARY AND CLOSING**

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

Schedule	Claim \$	Offer \$
1 – Materials and supplies	15,601.25	0.00
2 -- Contract services	Nil	Nil
3 -- Travel	3,882.05	0.00
4 -- Salaries – FT personnel	4,811.76	709.92
5 -- Overtime – FT personnel	10,469.54	1,144.51
6 -- Other allowances	Nil	Nil
7 -- Salaries casual personnel	Nil	Nil
8 -- Ships costs (excluding fuel and overtime)	25,824.41	12,481.80
9 -- Ships propulsion fuel	26,306.05	16,259.26
10 -- Aircraft	Nil	Nil
11 -- Pollution countermeasures equipment	Nil	Nil
12 -- Vehicles	1,176.25	0.00
13 -- Administration	1,215.28	156.15
<b>TOTAL</b>	<b>89,286.59</b>	<b>30,751.64</b>

*Table 1 – Summary of amounts claimed and allowed.*

[57] Costs and expenses in the amount of \$30,751.64 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[58] 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.

[59] 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.

[60] 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.

[61] 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,

Chiamaka Mogo, MPPGA  
Deputy Administrator, Ship-source Oil Pollution Fund