



## OFFER LETTER

Ottawa, 7 March 2024  
SOPF File: 120-968-C1

### BY EMAIL

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**RE: Mystery Spill (Port of Québec) — Québec**  
**Incident date: 2021-08-26**

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### SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a mystery spill which occurred between buoys Q-6 and Q-11 at the Port of Québec (the “Vessel), which caught fire on or about 26 August 2021, (the “Incident”).

[2] On 23 August 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 \$4,720.60 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 \$4,720.60 (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 August 26, 2021, the CCG alert network received a report about apparent oil pollution in the water between buoys Q-6 and Q-11 of the Port of Québec.

[8] The CCG mobilized field officers to assess the situation and identify the source of pollution.

[9] The source of the pollution could not be identified, but CCG officers confirmed a smell of hydrocarbons near buoy Q-6. This observation was confirmed by two further anonymous reports of an oil slick proximate to the nearby Pierre-Laporte bridge.

[10] The CCG mobilized an 11-person team to respond to the incident, including the use of an overflight to attempt to identify the source of the pollution.

[11] Over the two-day investigation, the source of the pollution was never identified. Marine based efforts to locate the source were eventually cancelled because of strong winds.

[12] The narrative acknowledges the possibility that the spill was not from a ship, but rather from road work taking place on the Pierre-Laporte bridge.

#### Cost summary

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

Description	Total	Schedule #
MATERIALS AND SUPPLIES	-	<u>1</u>
CONTRACT SERVICES	-	<u>2</u>
TRAVEL	-	<u>3</u>
SALARIES - FULL TIME PERSONNEL	2,460.30	<u>4</u>
OVERTIME - FULL TIME PERSONNEL	55.83	<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	1,949.26	<u>10</u>
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	-	<u>11</u>
VEHICLES	135.12	<u>12</u>
ADMINISTRATION	120.09	<u>13</u>
<b>TOTAL CCG COST OF INCIDENT</b>	<b>\$4,720.60</b>	

*Figure 1: Screen capture of the claim cost summary*

### **DETERMINATIONS AND FINDINGS**

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

[14] 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.

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

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

[17] 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.

[18] 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*

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

##### *Date discrepancies*

[20] The cover letter for this claim indicates that it took place on 26 August 2018. If that were the case, given that this claim concerns the discharge of oil into water, then the claim would be time barred as having been submitted more than three years after the discharge.

[21] By contrast, the narrative indicates that the incident occurred on 26 August 2021.

[22] The supporting documentation generally support that the incident took place in August of 2021. The salary expenses track hours for 26 and 27 August 2021. The narrative includes a number of photographs attributed to an overflight taken on 26 August 2021. The invoice for the overflight (issued in 2023) indicates it was for a flight on 26 August 2021.

[23] Based on the available evidence, it is concluded that the incident took place on 26 August 2021, and not 26 August 2018. For that reason, the claim is not dismissed as time barred.

##### *The spill may not have come from a ship*

[24] At the time the incident was reported, there was roadwork ongoing on the Pierre-Laporte bridge. That roadwork is a plausible source of the oily contamination observed.

[25] However, to disallow a claim the Administrator must be satisfied that the evidence shows that the pollution at issue did not originate from a ship. The evidence does not allow such a finding.

[26] The Port of Québec has significant ship traffic. One of the many ships in the area that day could plausibly be the source of the discharge.

[27] While the roadwork on the Pierre-Laporte bridge is also a plausible source of the pollution, there is no evidence that it was the source. The possibility was investigated, but the investigation was hampered by weather conditions. The oil slick dissipated without its source being identified.

[28] As a result, determining any source for this spill is impossible. The legal consequence of that impossibility is that the claim must be admitted, subject to the reasonableness of the costs and expenses claimed.

### **CLAIM AND OFFER DETAILS**

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

[30] The biggest expense incurred was for the use of an aircraft. The use of an aircraft was entirely sensible given the circumstance, a spill whose origin was not known. The cost was modest, \$1,949.26. This expense is allowed without deduction.

[31] The other expenses are very modest for an operation involving 11 persons. Salary and overtime expenses total to just over \$2,500, which is reasonable for a limited response in circumstances where the source of pollution was not readily identified. It is noted that the initial response was scaled down for the second day of the operation, which was appropriate. No deduction from the salary or overtime costs is appropriate.

[32] The need for vehicles to transfer personnel to the Port to make observations is straightforward. The administrative costs are reasonable.

[33] In the result, all costs and expenses are accepted as reasonable.

### **OFFER SUMMARY AND CLOSING**

[34] Costs and expenses in the amount of \$4,720.60 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[35] 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.

[36] 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.

[37] 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.

[38] 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