



OFFER LETTER

Ottawa, 24 April 2024
SOPF File: 120-937-C1

BY EMAIL

Manager, Operational Support
Compliance and Enforcement
Canadian Coast Guard
200 Kent Street
Ottawa, Ontario K1A 0E6

*Via email to [DFO.CCGERCostRecoveryRSP-
RecouvrementdescoutsIESIPGCC.MPO@dfo-mpo.gc.ca](mailto:DFO.CCGERCostRecoveryRSP-RecouvrementdescoutsIESIPGCC.MPO@dfo-mpo.gc.ca)*

RE: M/V SCOTCH CAP — Port Edward, British Columbia
Incident date: 2021-09-02

SUMMARY AND OFFER

- [1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the motorized vessel SCOTCH CAP (the “Vessel”), which grounded on or about 2 September 2021, near Port Edward, British Columbia (the “Incident”).
- [2] On 31 October 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 totaling \$229,645.64 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 \$102,834.20 (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.
- [6] The issuance of this offer was delayed in anticipation of a claim by another claimant for damages arising from the same incident. That further claim ultimately was never received by the Administrator.

THE SUBMISSION RECEIVED

- [7] 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

- [8] According to the narrative, on 2 September 2021, the CCG received notification that the Vessel broke free of its moorings and grounded near Port Edward, BC. Oil pollution was discharged as a result of the grounding. CCG personnel assessed the Vessel and concluded that the Vessel posed a small threat to the marine environment and transferred the Vessel to the Vessels of Concern (VOC) program.
- [9] The CCG had a history with the Vessel. The CCG had assessed the Vessel numerous times in the past because it posed a pollution threat and was deemed as posing a hazard under the *Wrecked, Abandoned and Hazardous Vessels Act* (WAHVA). In November 2020, the CCG removed almost all accessible pollutants from the Vessel and then passed it to the VOC program. The Vessel was known to be derelict with an absentee owner. The Prince Rupert Port Authority (the “PRPA”) had a history of attempting to deal with the vessel and its owner.
- [10] On 9 September 2021, the CCG ER team took over the response because the initial assessment was incorrect. The CCG sent two ER personnel to the incident site.

[11] On 10 September 2021, the CCG sent three more personnel to the site. The CCG also entered into an emergency contract with Wainwright Marine (“Wainwright”) to refloat and salvage the Vessel. An overflight assessment revealed minor sheening surrounding the Vessel.

[12] On 11 September 2021, the five ER personnel returned to the site. They removed all accessible fuel and other pollutants from the Vessel. Containment boom was deployed around the Vessel by the Prince Rupert Port Authority’s contractor. The Vessel was successfully refloated and moved up along the beach.

[13] On 12 September 2021, the Vessel was refloated again and moved up further along the beach. Sheening was observed within the containment boom. CCG contracted Nucor Environmental to lighter the Vessel of hydrocarbons, as there were known ammonia tanks and other harmful pollutants onboard.

[14] On 13 September 2021, Nucor removed the ammonia tanks and began lightering operations. This lasted for six days, ending on 18 September 2021. They removed approximately 30,000 litres of diesel and oily water as well as 4,000 litres of lube oil and hydraulic oils. Sheening was present throughout the operations.

[15] On 24 September 2021, the CCG turned the file over to the Prince Rupert Port Authority. The Vessel was eventually deconstructed. That concluded the CCG operation.

Cost summary

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

Schedule	Claim \$
1 – Materials and supplies	Nil
2 -- Contract services	171,349.19
3 -- Travel	14,545.58
4 -- Salaries – CFT personnel	11,188.13
5 -- Overtime – CFT personnel	22,940.69
6 -- Other allowances	Nil
7 -- Salaries casual personnel	Nil
8 -- Ships costs (excluding fuel and overtime)	Nil
9 -- Ships propulsion fuel	Nil
10 -- Aircraft	Nil
11 -- Pollution countermeasures equipment	7,310.82

Schedule	Claim \$
12 -- Vehicles	1,573.68
13 -- Administration	737.55
TOTAL	229,645.64

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

[17]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.

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

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

[20]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.

[21] 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

[22]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

[23]The Prince Rupert Port Authority contracted 3GA Marine Services to conduct an Inventory of Hazardous Materials aboard Vessel in January 2020, which revealed

hundreds of litres of pollutants onboard. This included 50 litres of contaminated water in the bilge. There was an incident in September 2020 in which the Vessel grounded and discharged oil pollution, but no more evidence was provided of that incident. In November 2020, the Vessel was significantly dewatered and pollutants were removed.

[24]When the Vessel grounded on 2 September 2021, it was deemed a low threat to pollute, and was transferred to the VOC program. In addition, the Personnel and Equipment Daily logs from September 9-19 do not mention any observed oil pollution. In contrast, the narrative does mention sheening occasionally around the Vessel, but nothing else in the claim supports those assertions. Thus, it is concluded that the Vessel posed a low pollution threat.

CLAIM AND OFFER DETAILS

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

[26]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 2 – Contract Services Claimed: \$171,349.19

[27]These costs arise from three invoices for services provided by three different companies: Wainwright, in the amount of \$79,561.08; Nucor, for \$87,494.48; and Kristoff Trucking, for \$4,293.63. The invoice from Wainwright is for the initial response and salvaging the Vessel. The Nucor invoice is for lightering the Vessel. The Kristoff Trucking is for delivering cement blocks to Port Edward.

[28]Wainwright's work on the Vessel spanned from 10 to 13 September 2021. Wainwright agreed to the Statement of Work signed on 11 September 2021, which tasked them with

refloating and securing the Vessel along the beach. A significant part of the claim is for moving the necessary equipment to the incident site. However, there is no evidence in the claim to indicate that the Vessel was any more than a low risk to pollute. As the vessel was part of the CCG VOC program, this is problematic. In addition, these efforts were steps towards eventually moving the wreck onto the hard, which better resembles wreck removal rather than mitigating oil pollution risk. The Wainwright invoice is not accepted.

[29]Nucor assisted the CCG with the removal of pollutants and other materials from the Vessel from 12 to 18 September. The CCG submitted supporting documentation covering what Nucor did and what their subcontractors did. According to the documentation, some of the substances removed were listed on the Inventory taken in 2020. Two items on the invoice are accepted as directly related to pollutant removal: the Spruce City Sanitary Invoice for \$28,856.63 for its removal of wastewater, and the Terrapure Invoice for \$11,387.46 for receipt and disposal of the oily water and sludge removed from the Vessel. That is a combined \$40,244.09 which is reasonable and therefore accepted. The remainder of the costs submitted by Nucor were not connected to oil pollution mitigation and are therefore not accepted.

[30]Kristoff Trucking sold and delivered cement blocks to the CCG, which were used as anchoring points for the Vessel. This is evidenced by the invoice in the claim. The placement of the blocks was necessary to stabilize the Vessel, and the costs were reasonable. Therefore, this expense (\$4,293.63) is accepted.

The contract services portion of the submission is accepted in part in the amount of \$44,537.28.

Schedule 3 – Travel

Claimed: \$14,545.58

[31]The submitted costs are for six CCG personnel that travelled to the incident site. Documentation in this Schedule takes the form of Expense Reports Statements for each employee. It was necessary for the CCG to send personnel from outside the Prince Rupert area because of staff shortages. Similarly, it was necessary for CCG personnel

to be physically present at the incident site. Costs to transport personnel and equipment to the incident site are significant, but understandable given the remoteness of the location. The on-site efforts focused on the removal of pollutants, which is reasonable. These costs are accepted.

The travel portion of this submission is accepted in its entirety.

Schedule 4 – Salaries – Full Time Personnel Claimed: \$11,188.13

[32]These costs are for the regular hours worked by the eight CCG employees, including EBP. The claim provided includes Personnel & Equipment Daily Logs, which indicate the number of hours worked each day from 9 to 19 September 2021.

[33]The salary costs for this claim are accepted as reasonable in their entirety. The Logs break down what the employees did each day. The CCG employees were in attendance every day, monitoring and assisting with the efforts of the contractors. These efforts were reasonable and contributed to the objective of preventing oil pollution.

The salaries portion of the submission is allowed in its entirety.

Schedule 5 – Overtime – Full Time Personnel Claimed: \$22,940.69

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

[35]For the same reasons as in Schedule 4, overtime costs were necessary to be incurred for this response. Thus, the overtime costs are also accepted as reasonable.

The overtime portion of the submission is allowed in its entirety.

Schedule 11 – Pollution Counter-Measures Equipment (PCME) Claimed: \$7,310.82

[36]These costs are for the equipment deployed by the CCG in its response to the incident. The Personnel & Equipment Daily Logs indicated the equipment used and the costs. This includes a PRV, Skiff, drone, generators, pumps, and an air monitor.

[37]The usage of these materials for the response was necessary, and the rates are reasonable. Thus, the costs for pollution counter-measures equipment are accepted.

The pollution counter-measures equipment portion of the submission is accepted in its entirety.

Schedule 12 – Vehicles

Claimed: \$1,573.68

[38]These costs are for the vehicles used by the CCG in its response to the incident. The Personnel & Equipment Daily Logs indicated the vehicles used and the costs. The daily charge-out rate of \$65.57 per vehicle per day is accepted, and neither a fuel rate nor a kilometre rate was charged.

[39]The usage of these vehicles for the response was necessary, and the rates are reasonable. Thus, the costs for vehicles are accepted.

The vehicles portion of the submission is accepted in its entirety.

Schedule 13 – Administration

Claimed: \$737.55

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

[41]The 3.09% rate is generally accepted as reasonable as applied to salary, travel and material expenses. When calculating the administrative costs for these claims, the sum of the recommended costs (Schedule 3 = \$14,545.58, Schedule 4 [less EBP] = \$9,323.43) becomes \$23,869.01. Applying the 3.09% administrative rate to this amount equals \$737.55.

The administration portion of the submission is allowed in its entirety.

OFFER SUMMARY AND CLOSING

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

Schedule	Claim \$	Offer \$
1 – Materials and supplies	Nil	Nil
2 -- Contract services	171,349.19	44,537.28
3 -- Travel	14,545.58	14,545.58
4 -- Salaries – CFT personnel	11,188.13	11,188.13
5 -- Overtime – CFT personnel	22,940.69	22,940.69
6 -- Other allowances	Nil	Nil
7 -- Salaries casual personnel	Nil	Nil
8 -- Ships costs (excluding fuel and overtime)	Nil	Nil
9 -- Ships propulsion fuel	Nil	Nil
10 -- Aircraft	Nil	Nil
11 -- Pollution countermeasures equipment	7,310.82	7,310.82
12 -- Vehicles	1,573.68	1,573.68
13 -- Administration	737.55	737.55
TOTAL	229,645.64	102,834.20

Table 1 – Summary of amounts claimed and allowed.

[43]Costs and expenses in the amount of \$102,834.20 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[44]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.

[45]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.

[46]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.

[47] 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,

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