



**Ship and Rail
Compensation Canada**
Ship Fund

**Indemnisation
Navire et Rail Canada**
Fonds Navire

OFFER LETTER

Ottawa, 15 January 2025
SOPF File: 120-1008-C1

VIA EMAIL

Manager, Operational Support
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Via email to [DFO.CCGERCostRecoveryRSP-
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RE: *Handcuff* – Pointe-au-Pic, La Malbaie, Québec
Incident date: 2022-07-24

SUMMARY AND OFFER

- [1] This letter responds to a submission from the Canadian Coast Guard (“CCG”) for an incident involving a 53-tonne barge, known as the *Handcuff* (“Vessel”). The Vessel had a 40-tonne mechanical excavator and equipment on board. When the Vessel capsized, that equipment released an unknown quantity of fuel in Pointe-au-Pic, La Malbaie, Québec, on 24 July 2022 (“Incident”).
- [2] On 19 July 2024, the Ship Fund of Ship and Rail Compensation Canada received, on behalf of the Administrator of the Ship-source Oil Pollution Fund, the claim submission from the CCG on behalf of the Minister of Fisheries and Oceans. The submission advanced a claim pursuant to sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (“MLA”), seeking compensation for costs and expenses arising from measures taken in response to the Incident, totaling \$16,598.59.
- [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 \$16,598.59, 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 CCG's submission.

THE SUBMISSION RECEIVED

- [6] The submission includes a narrative that describes events relating to the Incident. It includes a summary of the costs and expenses for which the CCG seeks reimbursement. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

Narrative Summary

- [7] According to the narrative, on 24 July 2022, the Alert and Warning Network ("AWN") notified the CCG that the Vessel had capsized. The Vessel had an excavator and equipment on board. The vessel capsized because of the failure of pile moorings, that then dragged the barge, the excavator, and the equipment into the water. An oil pollution threat arose because of the unknown quantity of oil and fuel.
- [8] The CCG identified the owner of the excavator and equipment. The owner was on-site to assess the incident.
- [9] The CCG identified and contacted the owner of the vessel. The owner told the CCG they planned to send a team the next morning to salvage the excavator and refloat the barge. The owner deployed booms and secured the barge.
- [10] On 25 July, the CCG created an Incident Command System (ICS). Two CCG response officers went to the incident site to coordinate and monitor efforts to prevent pollution damage. A foreman of the owner of the vessel indicated that the hydrocarbons on the water surface were organic hydraulic oil. The field team instructed the owner of the vessel to rectify the boom placement to effectively contain the pollution.
- [11] Two operations officers noticed that the booms installed at the incident site under the crosswalk were sediment booms. Sediment booms are not designed for retention at sea. The CCG's Marine Environmental and Hazards Response (MEHR) team and the Incident Commander (IC) decided that two operations officers would remain at the incident site until the installation of the new compliant booms.
- [12] A hydraulic oil release occurred because the barge became unbalanced during pumping activities. The IC instructed the field team to cut the vessel's anchor piles to improve stability.
- [13] The CCG's IC sent a refloating guide to the barge owner's foreman to help guide the owner develop their refloating plan.
- [14] On 26 July 2022, the field team inspected the incident site. Pollution was visible on the water surface in the form of hydraulic oil and diesel. Installation of the new booms began.

- [15] Meetings occurred between the CCG and the owner of the barge.
- [16] The first surveillance team returned to the Quebec City base.
- [17] On 27 July 2022, the field team arrived at the incident site. The barge was removed from the water. There was no pollution. The field team remained at the incident site throughout the day to monitor.
- [18] On 28 July 2022, the field team returned to the incident site. The equipment and excavator were removed from the water. Clean-up operations were completed. The field team returned to the Quebec City base.
- [19] On 29 July 2022, the owner of the barge informed the CCG's MEHR team via e-mail that a small amount of spillage was observed despite the excavator's diesel tank being almost full. The owner planned to put the barge back in the water on 29 July 2022 to tow it to Isle-aux-Coudres shipyard. That concluded the CCG operation.

Cost Summary

- [20] The CCG submits the amount of \$16,598.59 in claimed costs, summarized as follows:

Schedule	Cost Claimed
3 – Travel	\$2,694.73
4 – Salaries – Full time personnel	\$8,736.01
5 – Overtime – Full time personnel	\$3,854.92
11 – Pollution Counter-Measures Equipment (PCME)	\$416.67
12 – Vehicles	\$600.44
13 – Administration	\$295.82
TOTAL	\$16,598.59

Figure 1 – Screen capture of the claim cost summary

DETERMINATIONS AND FINDINGS

The CCG submission is admissible

- [21] The Incident resulted in oil pollution damage within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to address that oil pollution damage and mitigate further damage. As a result, claims arising from the Incident are potentially eligible for compensation.
- [22] The CCG is an eligible claimant under section 103 of the MLA.

[23] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.

[24] 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. Alternatively, those costs and expenses arise from “preventive measures”, as contemplated under the *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*. In either case, some of the claimed costs and expenses are potentially eligible for compensation.

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

[26] The extent to which the measures taken were reasonable must be evaluated.

Findings on the evidence submitted by the CCG

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

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

[28] The incident described necessitated a CCG response, and the response implemented by the CCG was reasonable.

CLAIM AND OFFER DETAILS

[29] The CCG presented its claimed costs and expenses to the Ship Fund across six schedules, each outlined below.

[30] The costs incurred for travel arise from four CCG personnel. The travel expenses are documented in the expense report for each employee. CCG personnel needed to be physically present at the incident site to monitor response measures taken by the vessel’s owner. The presence of CCG personnel was reasonable, and the costs are accepted.

[31] The costs for salaries (full-time personnel) were reasonable. These costs are for eleven CCG personnel who attended the incident site between 25 to 28 July 2022. The claim provides the total hours worked for each individual and the respective hourly rates. The salary costs for this claim are accepted as reasonable in their entirety.

- [32] The costs for overtime (full-time personnel) were also reasonable. These costs are for seven CCG personnel at various levels and hours of pay. Overtime costs were necessary to be incurred for this response.
- [33] The use of pollution counter-measures was sensible. The CCG claimed \$416.67 for the use of a one-foot trailer boom for three days at a daily fee of \$138.89 per foot. The usage of the trailer-boom is accepted as a reasonable measure taken at a reasonable cost given the pollution from the vessel.
- [34] The costs for the vehicles are accepted. The daily rate of \$67.56 per vehicle per day is accepted. The CCG used two vehicles for a total of 5 days. The usage of these vehicles for the response was necessary, and the rates are reasonable.
- [35] The CCG submission advances a claim for administration costs at a rate of 3.09% as applied to travel and salaries. The 3.09% rate is generally accepted as reasonable as applied to travel and salary expenses. When calculating the administrative costs for these claims, the sum of the costs becomes \$9,573.48. Applying the 3.09% administrative rate to this amount equals \$295.82. The administration portion of the submission is allowed in its entirety.

OFFER SUMMARY AND CLOSING

- [36] The following table summarizes the claimed and offered expenses.

Schedule	Cost Claimed	Offered
3 – Travel	\$2,694.73	\$2,694.73
4 – Salaries – Full time personnel	\$8,736.01	\$8,736.01
5 – Overtime – Full time personnel	\$3,854.92	\$3,854.92
11 – Pollution Counter-Measures Equipment (PCME)	\$416.67	\$416.67
12 – Vehicles	\$600.44	\$600.44
13 – Administration	\$295.82	\$295.82
TOTAL	\$16,598.59	\$16,598.59

Table 1 – Total claimed versus offered costs.

- [37] Costs and expenses in the amount of **\$16,598.59** are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

- [39] 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.
- [40] 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 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.
- [41] 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.
- [42] 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 Ship Fund in its subrogation efforts.

Yours sincerely,

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