



OFFER LETTER

Ottawa, 5 February 2025
SOPF File: 120-1016-C1

BY EMAIL

Manager, Operational Support
Compliance and Enforcement
Canadian Coast Guard
200 Kent Street
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*Via email to **DFO.CCGERCostRecoveryRSP-
RecouvrementdescoutsIESIPGCC.MPO@dfo-mpo.gc.ca***

RE: Dale M II – Tickle Wharf, Canso, Nova Scotia
Incident date: 2022-11-25

SUMMARY AND OFFER

- [1] This letter responds to a submission from the Canadian Coast Guard (“CCG”) for an incident involving a fishing vessel, the *Dale M II* (“Vessel”). The Vessel partially sank at the Tickle Wharf in Canso, Nova Scotia, on 25 November 2022 (“Incident”).
- [2] On 23 September 2024, the Ship Fund of Ship and Rail Compensation Canada (“Fund”) received a submission from the Canadian Coast Guard (“CCG”). 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 \$19,441.09.
- [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 \$19,111.31, plus statutory interest calculated at the time the Offer is paid, in accordance with section 116 of the MLA (“Offer”), is offered with respect to this claim. The reasons for the Offer are set forth below, along with a description of the submission.

THE SUBMISSION RECEIVED

- [5] The claim 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.

Narrative Summary

- [6] According to the narrative, on 25 November 2022, the CCG was notified that the vessel had partially sunk at Tickle Wharf in Canso, Nova Scotia.
- [7] On 26 November, two Marine Environmental & Hazards Response (“MEHR”) crew members from the Canso Canal Depot in Port Hastings attended the incident site with a response trailer to conduct an initial assessment. The MEHR crew observed that only the vessel's wheelhouse was out of the water. The hull rested on the bottom. The crew saw a rainbow sheen around the vessel. The MEHR crew used rope and gaffs to set 120 feet of sorbent boom around the vessel to prevent further oil pollution.
- [8] A MEHR duty officer contacted the owner of the vessel.
- [9] On 28 November, two CCG personnel traveled from Port Hastings to the incident site. The vessel remained in the same position. There was no information about how much oil pollution was in the vessel because the vessel had already sunk during the CCG’s initial assessment. The MEHR crew conducted a site clean-up of debris that they assumed floated off the vessel.
- [10] On 29 November, a caller informed the CCG that the boom had let go. Oil pollution was leaking with a slick extending from the vessel, approximately 100 to 200 feet. Two CCG personnel traveled from Port Hastings to Tickle Wharf. The crew used a response trailer to transport a small aluminum boat. The crew deployed 150 feet of an 18-inch containment boom.
- [11] The CCG awarded a contract to RMI Marine on 1 December to refloat the vessel and facilitate the removal of oil pollution.
- [12] On 2 and 5 December, two CCG personnel traveled from Port Hastings to Tickle Wharf to monitor the incident. The vessel remained in the same position. The containment boom was effective.
- [13] On 14 December, three CCG personnel met the RMI dive crew at the incident site. The CCG operated pumps and equipment to help recover oil pollutants from the vessel.
- [14] Once the vessel was dewatered, the MEHR team removed 200 liters of engine oil, hydraulic oil, and contaminated fuel oil.
- [15] On 15 December, three CCG personnel traveled from Port Hastings to Tickle Wharf with a Pollution Response Vessel (“PRV-1”). The crew collected the containment boom. The vessel was afloat but had taken on a small amount of water. The crew pumped out the vessel. The crew placed ten sorbent pads in the bilge to collect residual pollution. The crew used the PRV-1 to collect the boom and remove the boom anchors. The crew used a pick-up truck to transfer the boom to the Canso Canal in Port Hastings.

- [16] The CCG transferred responsibility for the vessel to the Vessels of Concern program. That concluded the CCG operation.

Cost Summary

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

Schedule	Cost Claimed
2 – Contract Services	\$11,367.75
3 – Travel	\$262.00
4 – Salaries – Full time personnel	\$3,075.06
5 – Overtime – Full time personnel	\$1,695.10
11 – Pollution Counter-Measures Equipment (PCME)	\$2,013.37
12 – Vehicles	\$924.70
13 – Administration	\$103.12
TOTAL	\$19,441.09

Table 1: Summary of amounts claimed.

DETERMINATIONS AND FINDINGS

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

- [18] The Incident resulted in oil pollution damage within the territorial seas or internal waters of Canada and 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.
- [19] The CCG is an eligible claimant under section 103 of the MLA.
- [20] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.
- [21] 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. In either case, some of the claimed costs and expenses are potentially eligible for compensation.
- [22] 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

- [23] The 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

- [24] The CCG's response was generally reasonable. The Vessel was partially submerged and merited some response measures.
- [25] The Vessel was actively leaking pollutants during the response. CCG personnel observed a rainbow sheen around the vessel on 26 November. When the Vessel was dewatered, 200 liters of engine oil, hydraulic oil, and contaminated fuel oil were removed.
- [26] The evidence establishes that the Vessel posed an oil pollution threat.

CLAIM AND OFFER DETAILS

- [27] The CCG presented its claimed costs and expenses to the Fund across seven schedules, each outlined below.
- [28] Under Part 7 of the MLA, the measures taken to respond to an oil pollution incident and the resulting costs must be reasonable and established in the evidence in order to be compensable by the Fund. To the extent that reasons are not already set out in this letter, the sections below elaborate.

Schedule 2 – Contract Services

Claimed: \$11,367.75

- [29] The claimed contract services in Schedule 2 total \$11,367.75. Contract service costs arise from one invoice from RMI Marine Ltd.
- [30] The costs incurred for contract services were sensible. The invoice from RMI Marine Ltd. is for the refloating of the vessel. This measure is reasonable for pollution prevention.
- [31] The contract services portion of the submission is accepted in its entirety.

Schedule 3 – Travel

Claimed: \$262.00

- [32] Four ER members traveled to the incident site. The submitted travel costs of \$262.00 all relate to meal expenses for only one of those members. The submission indicated that the travel allowances were not submitted for the other three employees and therefore are not claimed.
- [33] The available evidence calls into question the travel expenses claimed. Taking the evidence as a whole, it is considered appropriate to disallow the travel expense in its entirety.
- [34] On 26 November, a lunch expense is claimed for one employee. According to the Personnel and Equipment Daily Log, two employees left the CCG depot at 0700, arrived at the scene at 0900, worked until 1130. They then departed and arrived back at the depot at 1300. The same number of salary hours is claimed for both employees (six), which matches the time spent away from the facility. It is also not clear when the lunch expense would have been incurred, or why it would be appropriate when the employees had returned to the facility by 1300.
- [35] On 28 November 2022, two CCG employees left the depot at 1200 and arrived at Canso at 1400. By 1730 they had returned to the depot. A claim is made for 3.5 hours of salary time

and 2 hours of overtime for both employees. Again, the number of hours of work claimed for both employees appears to match the time spent away from the facility, rendering questionable the claim for meal expenses. Moreover, as the crew left at 1200 and returned by 1730, it is not apparent that either a lunch or dinner expense would be appropriate, let alone both.

- [36] On 29 November 2022, CCG personnel left the depot at 1100 and returned at 1600. The number of hours of work claimed for both employees matches the number of hours spent away from the facility (7).
- [37] On 5 December 2022, CCG personnel left the depot at 1200 and returned by 1500. The number of hours of work claimed for both employees matches the hours away from the facility (3). And additionally, the appropriateness of claiming a meal expense for a three-hour trip is doubtful.
- [38] The appropriateness of many of the meal expenses is doubtful in light of the trips undertaken. More importantly, in all cases, there is a fundamental problem of when the meal expense is to have been incurred. All time away from the CCG facility has been claimed as either salary or overtime hours. Meaning the claim effectively seeks compensation both for an employee's meal expenses and to pay that employee while they ate. It is not reasonable for both expenses to have been incurred. The salary and overtime claims have been allowed, and therefore the travel expense is disallowed.
- [39] The travel portion of the submission is rejected in its entirety.

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$3,075.06

- [40] The costs for salaries (full-time personnel) are for regular hours worked by four CCG personnel at various levels and hours of pay, including the Employee Benefit Plan (the "EBP").
- [41] The submission included Personnel & Equipment Daily Logs, which indicated the number of hours worked each day for seven days from 26 November to 15 December.
- [42] On 28 November, two ER personnel left Port Hastings at 12:00 for the incident site. The two ER personnel returned to Port Hastings by 17:30. Each incurred two hours of overtime. The reasons why overtime was appropriate are not evidence. The two hours of overtime are rejected because the evidence does not explain the reason for the late departure from Port Hastings. This requires a corresponding adjustment to salary. The regular hours worked on 28 November is increased from 3.5 hours to 5.5 hours each. For 28 November, the accepted salary costs increase from \$326.37 to \$502.85.
- [43] The salaries portion of the submission is allowed in the amount of \$3,251.54.

Schedule 5 – Overtime – Full-Time Personnel

Claimed: \$1,695.10

- [44] The costs for overtime (full-time personnel) are partially sensible. The costs are for overtime hours worked by three CCG personnel at various levels and hours of pay.

- [45] On 26 November, 29 November, and 14 December, overtime costs were necessary to be incurred for this response. The two hours of overtime costs incurred by two CCG personnel on 28 November are rejected. The submitted overtime cost is reduced by \$220.27.
- [46] The overtime portion of the submission is allowed in part in the amount of \$1,474.84.

Schedule 11 – Pollution Counter-measures Equipment

Claimed: \$2,013.37

- [47] The use of pollution counter-measures was reasonable.
- [48] These costs are for the equipment deployed by the CCG in their response to the incident. The CCG claimed \$2,013.37 for the use of a sorbent boom, 18-inch inshore boom, sorbent pads, five-day-use of a response trailer, and two-day use of the CCG's PRV I vessel at \$53.21 per day.
- [49] The usage of these materials for the response was necessary, and the rates were reasonable.
- [50] The pollution counter-measure equipment portion of the submission is allowed in its entirety.

Schedule 12 – Vehicles

Claimed: \$924.70

- [51] The CCG used two vehicles, a Ram 2500 and a Ford 350, over seven days to transport ER personnel from Port Hastings to the Tickle Wharf.
- [52] The CCG claimed \$0.22 per kilometer plus the \$67.56 daily rate for both vehicles. A gas receipt of \$298.00 was included in the claim. The use of transportation was necessary, and the costs were reasonable.
- [53] The vehicles portion of the submission is allowed in its entirety.

Schedule 13 – Administration

Claimed: \$103.12

- [54] The CCG submission advances a claim for administration costs at a rate of 3.09% as applied to travel and full-time salaries, excluding the 27% EBP. The 3.09% rate is generally accepted as reasonable as applied to travel and full-time salary expenses. When calculating the administrative costs for these claims, the sum of the accepted travel costs is \$0 and the accepted salary costs are \$2,560.27. Applying the 3.09% administrative rate to \$2,560.27, the amount equals \$79.11.
- [55] The administration portion of the submission is allowed in part in the amount of \$79.11.

OFFER SUMMARY AND CLOSING

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

Schedule	Cost Claimed	Offered
2 – Contract Services	\$11,367.75	\$11,367.75

Schedule	Cost Claimed	Offered
3 - Travel	\$262.00	\$0
4 – Salaries – Full time personnel	\$3,075.06	\$3,251.54
5 – Overtime – Full time personnel	\$1,695.10	\$1,474.84
11 – Pollution Counter-Measures Equipment (PCME)	\$2,013.37	\$2,013.37
12 - Vehicles	\$924.70	\$924.70
13 – Administration	\$103.12	\$79.11
TOTAL	\$19,441.09	\$19,111.31

Table 2: Summary of amounts claimed and accepted.

- [57] Costs and expenses in the amount of **\$19,111.31** 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, when 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 Ship Fund in its subrogation efforts.

Yours sincerely,

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