

Ottawa, 11 April 2019
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CCG File: ER-2016-290

VIA REGISTERED MAIL

Director, Operational Business
Canadian Coast Guard
200 Kent Street (5N177)
Ottawa, Ontario K1A 0E6

RE: *Salerosa* – Oak Bay, BC – DOI: 6 February 2017

We have completed our investigation and assessment of the claim for \$62,673.20 (the “Claim”) that the Canadian Coast Guard (“CCG”) submitted for costs and expenses incurred in relation to an oil pollution incident involving the sailboat *Salerosa* (the “Vessel”). We find the Claim to be established, in part, in the amount of **\$8,254.51**. Accordingly, we hereby make an Offer of Compensation (the “Offer”) in the amount of \$8,254.51, plus accrued interest of \$619.95, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (the “MLA”). The amount of the Offer plus interest comes to \$8,874.46.

The following reasons are provided to explain the disparity between the amount claimed and the amount offered by the Administrator of the Ship-source Oil Pollution Fund (the “Administrator”).

Applicable Statutory Scheme

This Claim is subject to the substantive provisions of the *Canada Shipping Act, 2001* (the “CSA”) and the *MLA* as they were at the time of the incident. All references to these statutes refer to them as they were before the changes introduced in Bill C-86 came into force.

Overview of the Decision

We note that on 19 February 2019, just over two weeks after receipt of the Claim, the Office of the Administrator requested specific documentation or clarification from CCG on three points. CCG failed to respond at all by the deadline of 5 March 2019, and has not responded to date. As a result, the Administrator has concluded her assessment based solely on the evidence originally submitted with the Claim, which is at times contradictory. To the extent of inconsistencies, we have favoured records that appear to have been made contemporaneously with the incident.

At the time of the initial CCG response on 6 February 2017, diesel fuel was observed welling up from the sunken Vessel. Over the subsequent days, however, the evidence of a pollution threat

becomes less clear. The Building Sea Marine Ltd (“BSM”) survey report, for example, indicates that CCG considered the sunken Vessel an *immediate risk to navigation* as well as the environment. In the circumstances, and throughout the response, the navigational risk was unchanged, while any pollution threat was contained and waning. The source of the pollution was boomed off from the first day of the response, when CCG determined that *the Vessel posed no risk to people, property, or the environment* (see Duty Officer’s Report of 6 February, p 5). Furthermore, the quantity of potential pollutants on board was unknown throughout the response – indeed, the Claim documentation provides only scant detail on pollutants even after the 11 February raising operation. Finally, according to a CCG Pollution Report dated 7 February, it appears that diesel had ceased upwelling within the boomed area on or about this date.

In light of all the foregoing, the Administrator is not persuaded that proceeding after a six-day delay with a removal operation planned on the first day of the CCG response was reasonable as a pollution mitigation measure given the evolving circumstances. At a minimum, the delay presented CCG with an opportunity to reassess the apparently waning pollution threat *vis-à-vis* the navigational hazard posed by the sunken Vessel. There is, however, no evidence that CCG undertook or even contemplated such a reassessment before proceeding with its original plan.

Assessment

Schedule 2 – Contract Services

CCG engaged three separate contractors during its response, totalling \$55,211.39 in claimed services. C-Tow Marine Assistance Ltd. (“C-Tow”) deployed and monitored booms around the sunken Vessel at a cost of \$1,638.00. Heavy Metal Marine Ltd. (“Heavy Metal”) was paid \$51,248.69 to raise, remove, and dispose of the Vessel. Finally, BSM conducted a survey of the Vessel on 20 February at a cost of \$2,324.70.

On the evidence, the nature of the apparent contractual relationship between CCG and C-Tow is unclear, particularly given that the Vessel owner’s son appears to have hired same on 6 February 2017. However, we are satisfied on the evidence that CCG paid C-Tow for its services, which were necessary reasonable in the circumstances. To this end, we find the costs associated with the C-Tow services to be established in full, at **\$1,638.00**.

We find that CCG has not demonstrated that the remaining two contracts it entered into were sufficiently linked with the mitigation of oil pollution, or the threat thereof, to be deemed reasonable measures. As noted above, the reasonableness of the Heavy Metal operation to raise the Vessel on 11 February 2017 is not supported on the evidence. Accordingly, the subsequent and accessory removal and deconstruction cannot be deemed reasonable.

The BSM survey was also conducted subsequent to the raising and removal operation, notably on the same day that Heavy Metal received an invoice for disposal of the Vessel from a third party contractor. No explanation for this apparent incongruity in the timeline was put forward. The findings of the BSM survey were limited due to the angle at which the Vessel was resting on the Heavy Metal barge. Furthermore, the survey report is inconclusive as to pollution threat and does not support the CCG assertion that the Vessel was itself an “oil pollution waste”,

particularly given that it was of ferro-cement construction, lacking the absorbent qualities of wood. Finally, we note that the documentation of the response from the raising operation onward, with the exception of the BSM survey, is minimal. Despite the substantial costs incurred during this period, and despite the aforementioned request from the Office of the Administrator, CCG has declined the opportunity to complete the record.

Schedule 3 – Travel

CCG claimed \$16.47 for the lunch of an employee on 20 February 2017, the day of the BSM survey. As this expense was accessory to an unestablished measure, it cannot be deemed reasonable.

Schedule 4 – Salaries – Full Time Personnel

CCG claimed **\$940.44** for the salaries of two environmental response personnel who monitored the sunken Vessel from 7 through 10 February 2017. We find this amount to be reasonable and established in full.

Schedule 5 – Overtime – Full Time Personnel

CCG claimed \$745.39 for 13 hours of overtime worked by two employees on 11 February 2017. As this allocation of resources was for monitoring the raising and removal of what the evidence suggests was primarily a wreck or hazard to navigation, the amount claimed is not established.

Schedule 11 – Pollution Counter-measures Equipment

CCG claimed **\$5,407.16** for the use of a PRV II for four days (though we note that the PRV was in fact used for five days), as well as for sorbent materials deployed around the Vessel. We find these measures to be reasonable and established in full.

Schedule 12 – Vehicles

CCG claimed 332.12 for the use of a vehicle for four days during its response. As one of these days was 11 February 2017, the day of the raising and removal operation, we have reduced this amount by 25%. We therefore find this portion of the claim to be established in the amount of **\$249.09**.

Schedule 13 – Administration Costs

CCG claimed \$20.24, representing 2.53% of the amounts in Schedules 2 and 4, for administrative costs. We have reduced this amount to **\$19.82** to reflect our assessment in Schedule 4.

We look forward to receiving notification of your acceptance so that payment can be made without delay. In considering this Offer, kindly note that you have 60 days upon receipt to notify the undersigned whether you accept it. Alternatively, you have 60 days upon receiving this Offer

to appeal its adequacy in the Federal Court. The *MLA* provides that if no notification is received at the end of the 60-day period, you will be deemed to have refused the Offer.

If you accept this Offer, the *MLA* provides that the Administrator benefits from a statutory release and subrogation to the extent of the payment made to you in relation to the subject incident.

Yours sincerely,

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

c.c.: Acting Superintendent, Environmental Response, Western

Appendix: Summary Assessment Table

Schedule	Claimed	Established
2 – Contract Services	\$55,211.39	\$1,638.00
3 – Travel	\$16.47	\$0.00
4 – Salaries – Full Time Personnel	\$940.44	\$940.44
5 – Overtime – Full Time Personnel	\$745.39	\$0.00
11 – Pollution Counter-measures Equipment	\$5,407.16	\$5,407.16
12 – Vehicles	\$332.12	\$249.09
13 – Administration	\$20.24	\$19.82
Total in Principal	\$62,673.20	\$8,254.51
Interest		\$619.95
Grand Total		\$8,874.46