Ottawa, 24 May 2019
SOPF File: 120-803-C1-C
CCG File:

VIA REGISTERED MAIL

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

RE: *Hi-Rose* – Ladysmith, BC – DOI: 20 August 2017

We have completed our investigation and assessment of the claim for $17,584.55 (the "Claim") that the Canadian Coast Guard ("CCG") submitted for costs and expenses incurred in relation to an oil pollution incident involving the vessel *Hi-Rose* (the "Vessel"). We find the Claim to be established, in part, in the amount of **$16,243.83**. Accordingly, we hereby make an Offer of Compensation (the "Offer") in that amount, plus accrued interest of $966.27 pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (the "*MLA*"). The amount of the Offer plus interest comes to $17,210.10.

***

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 are satisfied on the evidence that CCG had the power under paragraph 180(1)(a) *CSA* to remove the Vessel from the marine environment. It had taken on water, discharged pollutants, and was likely to sink if left unattended. The owner, despite his efforts, was clearly unable to adequately address the situation himself. We are further satisfied on the evidence that removal was a reasonable measure with an attached reasonable cost as contemplated by subparagraph 77(1)(c)(i) *MLA*.

Our assessment of the CCG decision to deconstruct the Vessel was complicated by evidentiary shortfalls and inconsistencies. We note first that the Building Sea Marine Ltd ("BSM") survey was conducted on 23 August 2017. The survey report, however, is dated 26 September – the same date that Saltair Marine Services Ltd ("Saltair") completed its deconstruction of the Vessel. As we have no evidence that BSM communicated its findings to CCG before the decision to deconstruct was made, sometime on or before 20 September, we must conclude that the survey did not inform this decision. Given this conclusion, the survey cannot be deemed to represent a reasonable measure: at best it serves only as after-the-fact justification of the CCG decision to deconstruct.

Without the benefit of the BSM survey report, the question of central concern to the Administrator of the Ship-source Oil Pollution Fund (the "Administrator") becomes whether CCG has demonstrated that it had sufficient reason to believe that a pollution threat existed at the time the decision to deconstruct was made and continued to exist when the deconstruction began. To this end, CCG has provided little in the way of hard evidence: a substantial degree of inference on the part of the Administrator thus becomes necessary on this front.

The following line appears in the Claim Narrative, in apparent reference to the entirety of the CCG response: "Throughout this time, the vessel was deemed a [*sic*] oil pollution threat and was treated as such." Photographs taken while the Vessel was still in the water illustrate its generally very poor condition, but they fall short of indicating oil saturation. The chronology provided by Saltair Marine Services Ltd ("Saltair") with its invoice dated 16 October 2017 indicates that it was necessary to place sorbent pads under the Vessel as soon as it was removed from the water on 20 August. We have inferred that CCG was aware of the continued discharge at the time, and this establishes that the Vessel could not be returned to the marine environment without further discharge of oil. CCG has therefore demonstrated that it had the power to deconstruct under paragraph 180(1)(a) of the *CSA*.

As to the reasonableness of deconstruction as a preventive measure under the *MLA*, the assessment is necessarily more complex. We cannot determine the specific date that CCG decided to have the Vessel deconstructed, though it must have been made between 20 August and 20 September 2017, inclusive. In spite of this evidentiary failing, however, we are willing to accept that CCG acted reasonably in the circumstances whenever it made its decision. The factors that inform our inference include the fact that the Vessel was discharging oil when it was removed from the water; the Vessel's demonstrated unseaworthiness; the status of its owner; and the continued discharge of oil from the hull after the Vessel had been removed from the water. In addition, we find that given the extent of the accumulated refuse and detritus inside the Vessel, it would have been difficult to properly and safely assess oil saturation of interior spaces without first essentially deconstructing the Vessel.

We note further that although the removal and disposal of apparently uncontaminated refuse and detritus from inside the Vessel accounted for a substantial portion of the work done by Saltair, this was necessary and reasonable in order for the contractor to gain access to the engine spaces and fuel tanks. Though not itself a pollution mitigation measure, the removal of the waste was necessary in order for the pollution threat to be properly addressed.

As our reductions are limited to the amounts claimed under Schedule 2, we confine our reasons below to this Schedule as well as to a brief note on the quality of the evidence provided under Schedule 3.

Assessment

Schedule 2 – Contract Services

CCG claimed $16,767.21 for the services of two contractors. As noted, BSM conducted a survey on 23 August 2017, producing a report dated 26 September, at a total cost of $986.48. For the reasons above, we reject this portion of the Claim.

In addition to the BSM survey, CCG claimed $15,780.73 for the services of Saltair, which included removal, storage, deconstruction, and disposal of the Vessel. For the reasons enumerated above, we find the removal, deconstruction, and disposal of the Vessel to have represented reasonable measures. We find further that the costs attached to these measures were reasonable. On the question of storage, however, we find that CCG has provided no justification whatsoever on this front, and we have accordingly applied a reduction of $354.24 to represent the entirety of attached costs. We therefore find the amount of **$15,426.49** to be established under this Schedule.

Schedule 3 – Travel

CCG claimed **$94.55** for "Travel to and from Ladysmith" from Victoria for two of its personnel on 20 August 2017. We note that the supporting documentation inexplicably suggests the use of two vehicles, each for roughly half the expected mileage of a roundtrip. In spite of this incongruity, and given that the claimed amount is roughly accurate if we infer that the two personnel made a full roundtrip in the same vehicle, we find the claimed amount to be established under this Schedule.

***

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

Encl.: Appendix (1)

c.c.: Superintendent, Environmental Response, Western

Appendix: Summary Assessment Table

Schedule	Claimed	Established
2 – Contract Services	$16,767.21	$15,426.49
3 – Travel	$94.55	$94.55
5 – Overtime – Full Time Personnel	$720.40	$720.40
13 – Administration	$2.39	$2.39
Total in Principal	$17,584.55	**$16,243.83**
Interest		**$966.27**
Grand Total		**$17,210.10**