

VIA REGISTERED MAIL & EMAIL

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

RE: *Eylander* – Witless Bay, NL – DOI: 25 August 2017

We have completed our investigation and assessment of the claim for \$12,812.93 (the “Claim”) that the Canadian Coast Guard (“CCG”) submitted for costs and expenses incurred in relation to an oil pollution incident (the “Incident”) involving the steel-hulled fishing vessel *Eylander* (the “Vessel”). We find the Claim to be established, in part, in the amount of **\$10,272.68**. Accordingly, we hereby make an offer of compensation (the “Offer”) in that amount, plus accrued interest of \$820.13, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (the “MLA”). The amount of the Offer plus interest comes to \$11,092.81.

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 herein refer to them as they were before the changes introduced in Bill C-86 came into force.

Overview of the Facts

On 25 August 2017, CCG became aware that the Vessel had run aground on the southern end of Green Island, Witless Bay, NL, an Ecological Reserve. The Vessel had an estimated 5,000 to 6,000 gallons of diesel on board. The owner of the Vessel was engaged throughout the Incident response.

The Vessel’s agent notified CCG that the Vessel had successfully been towed from the rocks on Green Island on the morning of 25 August 2017. However, a fuel line was damaged during the recovery operations. Approximately 400 gallons of diesel fuel accumulated in the bilge and a discharge of an estimated 10 to 15 gallons occurred.

The Vessel was secured at a Witless Bay wharf on the morning of 25 August 2017. That day, CCG provided a verbal notice (the “Notice”) to the Vessel’s management representative under section 180 of the *CSA*. As the day progressed, CCG also sent a digital copy of the Notice to the

Vessel's representative. The Notice served as a reminder of the Vessel owner's responsibilities and liability. In addition, the Notice informed that failure to provide information relating to the measures intended to be taken would result in CCG taking action at the owner's expense, through its authority under section 180 of the CSA.

On 25 August 2017, an Environmental Response (ER) specialist conducted an assessment of the Vessel at the dock at Witless Bay. Additional CCG personnel continued to monitor the situation, coordinate and provide support relating to on-water operations. CCG conducted a site assessment where sheen was observed within the vicinity of the Incident. Consequently, sorbents were deployed. Nonetheless, a large sheen was later observed between Green Island and Mobile Bay, which CCG deemed related to the Incident. Although the Vessel showed some signs of damage, no visible holes or ingress of water were observed during a hull survey.

On 26 August 2017, a wildlife survey of the Ecological Reserve was conducted. On 27 August 2017, CCG monitored the Vessel owner's response, while coordinating and providing updates. On 28 August 2017, a second wildlife survey was conducted, where the impact of the Incident on bird colonies within the Ecological Reserve was assessed.

In response to this Incident, CCG was active from 25 August 2017 through 28 August 2017. The ER case was closed on 28 August 2017.

Assessment

As we find the amounts claimed under Schedules 1, 4, 5 and 12 to be established in full, we limit our reasons below to a discussion of Schedules 3, 11 and 13, which have attracted reductions.

Schedule 3 – Travel

CCG claimed \$496.81 for travel for five personnel. We accept the amount of \$374.15, for allowances as per the National Joint Council rates, to be established under this Schedule. However, the remaining claimed amounts of \$113.78 and \$8.88, stemming from the use of privately-owned vehicles driven on authorized government business travel, are not supported in the documentation provided by CCG. Consequently, the unsupported amounts stemming from the use of privately-owned vehicles are disallowed.

Schedule 11 – Pollution counter-measures equipment

CCG claimed \$5,564.80 under this Schedule, including three days of use of a Pollution Response Vessel (PRV) II. However, only one day's use of a PRV II is documented in the Personnel and Equipment Daily Logs provided by CCG. The unsupported amount for two days' use of a PRV II, totalling \$2,388.46, cannot be compensated. Consequently, we accept the amount of \$3,176.34 as established under this Schedule, including one day's use of a PRV II, two days' use of a Rosborough Safety Boat, and one day's use of a Response Trailer, as supported in the documentation provided by CCG.

Schedule 13 – Administration

CCG claimed \$115.93 in administration costs, at a rate of 3.09% of the total amounts claimed for materials and supplies, travel, and salaries (including the employee benefits plan). The Administrator had previously accepted a rate of 2.53% as reasonable, and she is currently awaiting additional CCG submissions on this new, higher rate. The existing rate of 2.53% remains in effect at this time.

Taking into account the reductions made under Schedule 3, the application of the 2.53% administration rate yields an established amount of \$86.80 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 becomes subrogated to your legal rights in relation to the subject Incident, to the extent of the payment made to you.

Yours sincerely,

Mark AM Gauthier, BA, LLB
Deputy Administrator, Ship-source Oil Pollution Fund

Encl: Appendix (1)
c.c.: Superintendent, Environmental Response

Appendix: Summary Assessment Table

Schedule	Claimed	Established
1 – Materials & Supplies	\$700.00	\$700.00
3 – Travel	\$496.81	\$374.15
4 – Salaries – Full Time Personnel	\$2,356.78	\$2,356.78
5 – Overtime – Full Time Personnel	\$3,194.56	\$3,194.56
11 – Pollution counter-measures equipment	\$5,564.80	\$3,176.34
12 – Vehicles	\$384.05	\$384.05
13 – Administration	\$115.93	\$86.80
Total in Principal	\$12,812.93	\$10,272.68
Interest		\$820.13
Grand Total		\$11,092.81