

VIA REGISTERED MAIL

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

RE: *Megan C* – Port aux Basques, NL – DOI: 28 January 2019

We have completed our investigation and assessment of the claim for \$11,784.58 (“Claim”) that the Canadian Coast Guard (“CCG”) submitted for costs and expenses incurred in relation to an oil pollution incident involving the fishing vessel *Megan C* (“Vessel”). We find the Claim to be established, in part, in the amount of **\$8,170.82**. Accordingly, we hereby make an Offer of Compensation (“Offer”) in that amount, plus accrued interest of \$120.52, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (“MLA”). The amount of the Offer plus interest comes to **\$8,291.34**.

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 (“Administrator”).

Applicable Statutory Scheme

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

Overview of the Decision

We note from the outset that the Administrator appreciates the fulsome documentation CCG provided with this Claim. The completeness of the “Incident Narrative” and its supporting documentation were crucial in determining the reasonableness of many of CCG’s actions – specifically those regarding overtime hours and travel costs.

We are satisfied that CCG’s initial response on 28 January 2019 to the incident was reasonable. Since the required personnel and equipment were not available in any of the surrounding regions due to the winter season, CCG needed to deploy Emergency Response (“ER”) personnel from St. John’s. The submitted overtime hours, overnight stay in Gander, and travel costs were all reasonable to facilitate the travel from St. John’s to Port aux Basques. The Administrator

appreciates the itemized tasking in the personnel logs, as this information was helpful in assessing the deployment of the four ER personnel.

Once on scene on 29 January 2019, CCG ER personnel identified the owner of the Vessel and confirmed the presence of pollutants on board. Within their powers under section 180 of the CSA, the CCG ER took control of the response. They deployed the necessary materials to mitigate the oil pollution risk, and they removed 40L of diesel fuel and 7.5L of base oil (“Pollutants”) while the Vessel remained in the water.

We find on the evidence that the Vessel posed little or no further risk of oil pollution after CCG removed accessible Pollutants. If the Vessel was substantially saturated in oil – or if CCG believed as much – CCG personnel would probably not have pumped the water from the Vessel back into the Harbour, as they did. Accordingly, the Vessel must not have been saturated in oil to the extent that its removal, dismantling, and destruction represented reasonable pollution mitigation measures in light of the actual threat posed.

Assessment

As our reductions are limited to Schedules 2 and 13, we limit our reasons to a discussion of those Schedules.

Schedule 2 – Contract Services

CCG claimed a total of \$3,843.92 for two separately contracted services. The first service, provided by Manuel’s Construction Ltd., totalled \$3,590.92 for removal, dismantling, and disposal of the Vessel. The second service, provided by Pardy’s Waste Management and Industrial Services Ltd., totalled \$253.00 for the disposal of the oil waste, the absorbent pads, and boom stock.

Manuel’s Construction Ltd

For the reasons set out above, the evidence shows that the measures taken after CCG removed the Pollutants from the Vessel were not reasonable pollution mitigation measures. As such, the removal, dismantling, and disposal of the Vessel are not compensable. The Administrator finds none of the claimed \$3,590.92 to be established.

Pardy’s Waste Management

CCG’s disposal of the oil waste and the soiled boom materials was reasonable. The Administrator finds the amount of \$253.00 to be established in full.

Schedule 13 – Administration

CCG claimed \$126.05 in administration costs, representing a rate of 3.09% of the amount claimed for salaries, less employee benefits. The Administrator has not to date recognized a rate

higher than 2.53%. To increase this rate, the Administrator requires evidence that demonstrates the new rate is a reasonable foundation for administration costs.

Applying the previously recognized rate of 2.53%, the Administrator finds the amount of \$103.21 of the \$126.05 to be established.

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, Atlantic Region

Appendix: Summary Assessment Table

Schedule	Claimed	Established
1 – Materials and Supplies	\$120.00	\$120.00
2 – Contract Services	\$3,843.92	\$253.00
3 – Travel	\$1708.22	\$1708.22
4 – Salaries – Full Time Personnel	\$1885.50	\$1885.50
5 – Overtime – Full Time Personnel	\$2863.61	\$2863.61
11 – Pollution Counter-measures Equipment	\$416.67	\$416.67
12 – Vehicles	\$820.61	\$820.61
13 – Administration	\$126.05	\$103.21
Total in Principal	\$11,784.58	\$8170.82
Interest		\$120.52
Grand Total		\$8,291.34