

Elf (2014)

Location: Squamish Harbour, British Columbia
Case number: 120-646-C1

The Incident

On January 14, 2014, the District of Squamish reported to the Canadian Coast Guard (CCG) that the tug *Elf*, a 74-foot wooden hull tug built in 1902, sank near the government wharf in Squamish Harbour. A significant amount of oil was upwelling from the wreck. In view of the environmental sensitivities of the incident location, the CCG Environmental Response (CCG ER) personnel from the Richmond depot proceeded to the area with pollution counter-measures equipment. They then met with municipal officials, the RCMP, concerned citizens, and an individual who presented himself as the owner of the vessel but who could not provide proof of ownership. After verification with Transport Canada Ship Safety, it was found that the *Elf* was not registered; however, later, it was ascertained that the person who was operating the vessel was in fact the owner's representative. The latter was subsequently advised about the owner's responsibility to respond and his liability if he chose not to. He replied that the owner did not have insurance and was unable to contain and clean up the oil spill.

Therefore, CCG assumed the role of On-Scene Commander. Oil containment boom and sorbent materials were deployed to contain the spill and upwelling from the sunken vessel. At the same time, a local oil spill clean-up contractor was hired by the District Authority to boom off an area upstream where there are endangered species of red-legged frogs. As 90% of the Mamquam Blind Channel was covered with a rainbow of sheen and other dull coloured oil, Environment Canada was requested to provide sensitivity mapping as well as a trajectory model for the spill.

An emergency response contractor, Quantum Marine, was hired by CCG to clean up oil that had made its way in and around the marina and docks within the channel. Divers from Hydra Marina Services Inc. were also engaged to plug the vents, but this did not stop the leak of fuel oil completely. Given the level of environmental risk, CCG engaged a contractor, Vancouver Pile Driving Ltd., to raise the wreck, which operation commenced on January 16. The *Elf* was slowly brought to the surface and dewatered as much as possible. CCG then hired a marine surveyor to inspect the condition and seaworthiness of the vessel. The surveyor reported a significant wood deterioration to the hull and advised that the vessel should be raised so the hull below the waterline could be inspected. Arrangements were made to have the vessel towed from Squamish to English Bay and then transferred to another tug to tow it up the Fraser River to Shelter Island Marine, where it would be hauled out of the water.

On January 17, shortly after the *Elf* was transferred to another tug company, it started to sink. CCG returned to Squamish and continued with containment and recovery of oil pollution that lingered throughout the Mamquam Blind Channel. On January 20, the response operation was discontinued and the *Elf* was left at the bottom.

Measures taken by the Administrator

When the Administrator was informed by CCG about the incident and the eventual significant costs associated to the response, a marine technical surveyor was engaged to attend the scene of the incident during the salvage of the sunken vessel. The surveyor had discussions with the CCG

ER personnel about the measures planned for the recovery and he was also invited to the operational meetings. He reported to the Administrator that the measures taken by the contractors during the refloating operations and preparing the *Elf* for tow to the Fraser River for storage were sufficient to eliminate the threat of further oil pollution, other than light unrecoverable sheening.

The Claim

On August 12, 2014, the Administrator received a claim from CCG, on behalf of the Department of Fisheries and Oceans (DFO/CCG), made pursuant to the *Marine Liability Act*, for costs and expenses in the amount of \$82,512.70.

The Administrator determined that the claim was admissible under Part 7 of the Act.

Assessment and Offer

Investigation and assessment of the claim were carried out. Additional documentation was requested and provided without delay. On December 18, 2014, the Administrator made an offer of compensation to DFO/CCG for the established amount of \$82,512.70, plus interest, as full and final settlement. DFO/CCG accepted the offer on February 3, 2015 and, on or about August 4, 2016, a payment in the amount of \$88,702.92 including interest was made to DFO/CCG.

Recovery Action

On September 30, 2016, a demand letter was sent to the vessel owner. Having received no response, a Statement of Claim was filed with the Federal Court on October 7. The court case was later joined with another Federal Court case further to the Statement of Defence and Counterclaim filed by the vessel owner on October 26, 2016, pursuant to which the latter sued DFO/CCG for damages caused to the *Elf* and to which several third parties were involved, such as the Administrator, Squamish Marine Services Ltd. and Valley Towing Ltd.

The trial took place on December 20, 2017 and the Administrator was successful in her claim. The shipowner was ordered to pay into the Ship-source Oil Pollution Fund, plus interests and costs – a supplementary order allowed \$15,000 in costs. The Administrator agreed with the solicitor of the shipowner to take no further action to recover the judgment for 120 days. The grace period that the Administrator gave to the owner expired on May 28, 2018 without receiving any payment.

Counsel for the Administrator attempted to serve the shipowner with a Direction to Attend an examination in aid of execution, but the owner failed to appear on two appointments, and when he did appear he produced none of the documents listed in the Appointment and refused to answer any questions.

On March 19, 2019, the Judge issued an Order requiring the owner to attend at a court-supervised examination in aid of execution in April 2019.

Status

The file remains open.