

Farley Mowat (2015) (Town of Shelburne)

Location: Shelburne Harbour, NS

Case number: 120-679-C1-1

The Incident

On June 24, 2015, Canadian Coast Guard (CCG) Environmental Response personnel were notified that the *Farley Mowat* was sinking at the wharf in Shelburne, Nova Scotia. The vessel was well down by the stern and was thought to be touching the bottom off the Harbour Authority dock. CCG responded to the pollution incident and engaged contractors (response measures are described in the summary related to the claim filed by CCG, 120-679-C1).

On August 5, 2015, a final inspection of the *Farley Mowat* was completed by Transport Canada Marine Safety, Environment Canada Enforcement, the Shelburne Harbour Authority, and CCG personnel. All agreed that all reasonable measures had been taken to remove contaminants from the vessel. The owner was notified that CCG was finished with its response. The *Farley Mowat* was secured alongside and personnel departed the site.

During May 2016, the owner's contractors removed the main engines from the vessel, and left the main deck open and exposed to weather. Starting in October 2016 the town had to regularly pump out a significant volume of oily water to prevent further pollution of the harbour and the sinking of the vessel. On June 7, 2017, CCG ordered the vessel's owner to produce a response plan to eliminate the threat of pollution from the *Farley Mowat* by June 12. The order included the following note: "The *MV Farley Mowat* currently secured alongside the wharf in Shelburne, Nova Scotia, threatening to release pollutants into the marine environment".

The Claim

On June 23, 2017, the Town of Shelburne filed a claim in the amount of \$47,598.78 with the Administrator for costs and expenses incurred from June 25, 2015 to June 12, 2017.

The costs and expenses covered by the claim included:

- Cost of security services required by CCG during its operation to raise the vessel;
- Loss of berthage revenue from June 25 to August 9 (a period of 42 days), during the refloating of the *Farley Mowat* by CCG;
- Removal costs of the debris left on the wharf by the owner when he started to deconstruct the vessel; and
- Costs of pumping oily water from the vessel at regular intervals to prevent further pollution.

The claim of the Town of Shelburne covered two distinct incidents: one in 2015 (the sinking of the vessel), and the other, which created a new pollution risk, in 2016 (caused by the partial deconstruction of the vessel by the owner).

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

Assessment and Offer

On July 18, 2017, after investigation and assessment of the claim, the Administrator sent an offer to the Town of Shelburne for the established amount of \$43,641.94, plus interest, in full and final settlement.

The disparity between the established amount and the claim was due to several factors, the most salient being loss of berthage revenue, which was disallowed, and minor costs related to debris removal and miscellaneous charges.

The offer was accepted, and on or about November 6, 2017 payment was made to the Town of Shelburne.

Recovery Action

The Administrator engaged a professional locator service to complete a locate and asset search of the registered owner of the vessel. No exigible assets were identified. The owner is, however, a repeat polluter whose vessels *Ryan Atlantic II*, *Hannah Atlantic* and *Farley Mowat* have generated claims against the Fund totalling over \$1 million. As a result, the Administrator commenced an action in the Federal Court. The owner filed a defence, and the case was heard on December 20, 2017.

On February 4, 2019, a favourable decision on the Administrator's motion for summary judgment in the amount of \$839,863.02 plus interest was rendered by the Federal Court.

Status

The file remains open as of March 31, 2019, with the Administrator taking steps to register the judgment.

Related files

Farley Mowat (2015) (CCG), file 120-679-C1 (same incident, different claimant)

Farley Mowat (2017), file 120-718-C1 (same incident, different claimant)

Ryan Atlantic II (2017), file 120-653-C1 (same owner)

Hannah Atlantic (2014), file 120-652-C1 (same owner)