

Viki Lyne II (2012)

Location: Ladysmith, B.C.

Case number: 120-619-C1

The Incident

On June 21, 2012, the Canadian Coast Guard (CCG) informed the Administrator that an old steel-hulled fishing vessel, *Viki Lyne II*, 224 GT, was abandoned in Ladysmith Harbour, British Columbia, and was likely to discharge a pollutant. The CCG conducted an initial assessment and found the vessel in a deteriorated condition with substantial amounts of oil aboard. In consequence, the CCG contracted McAllister Marine Survey & Design Ltd. to have a technical surveyor examine the vessel and provide an opinion as to whether an imminent threat of pollution existed.

On August 31, 2012, McAllister Marine Survey and Design Ltd. presented its technical survey report. The surveyor concluded that due to the overall condition of the *Viki Lyne II*, it posed a significant, imminent and ever-increasing threat to the environment. The report recommended that the only certain way of removing the oils aboard contained in piping and machinery was to disassemble and scrap the vessel as soon as possible.

The CCG later advised that it was working with Public Works and Government Services Canada (PWGSC) to develop contract specification for the process of tendering. On July 9, 2013, counsel for the Administrator was informed by CCG that an environmental response employee had attended the vessel in late June, and there was no evidence that the owner had removed any oil, or other pollutants. Therefore, the CCG was assessing available options and would welcome an opportunity to discuss with the Administrator the reasonableness of each option.

On July 30, 2013, counsel replied and reminded CCG of the earlier opinion of the independent technical surveyor appointed by the Administrator – notably, that the removal of the pollutants could be done at a lesser cost than deconstruction of the vessel. The surveyor had also recommended that quotations be obtained for both alternatives. Counsel confirmed to CCG that the Administrator cannot prejudge the measures taken prior to the submission of the claim.

On March 31, 2014, CCG reported in its year-end claims status report that the vessel had been identified as a potential hazard and that preventive measures would soon be taken, following which a claim would be submitted to the SOPF.

On March 17, 2016, the CCG informed the Administrator that a contractor was hired in 2014 to remove approximately 23,000 litres of oil and oily water from the vessel. Furthermore, CCG advised that a survey completed in February 2016, indicated that there were approximately 18,000 litres of oil/oily pollutants remaining in the vessel. CCG was now planning to remove the remaining oil and oily pollutants in early 2016.

On July 26, 2016, the Fund was advised by CCG that they had published a Request for Proposals for the deconstruction of the vessel.

Measures taken by the Administrator

When notified about the incident in 2012, the Administrator retained external counsel and instructed him to engage a marine surveyor to represent the Administrator and to arrange with CCG to have the surveyor attend the inspection of the vessel on behalf of the Administrator. The technical surveyor engaged on behalf of the Administrator confirmed that McAllister's report accurately reflected the condition of the fishing vessel, and the amount of hydrocarbons on board. However, the surveyor had offered an opinion that the removal and cleaning of hydrocarbons from the *Viki Lyne II*, rather than demolition would have been a reasonable option to minimize the threat of hydrocarbon pollution. CCG was informed of this independent opinion.

In March of 2017, in anticipation to the upcoming claim, the Administrator engaged a locator service to trace the location of the registered owner and identify assets that may be available for recovery purposes.

The Claim

On June 15, 2017, the Administrator received a claim from the CCG on behalf of the Department of Fisheries & Oceans (DFO/CCG) for costs and expenses in the amount of \$1,267,926.71 made pursuant to the *Marine Liability Act*.

The Administrator determined that the claim was admissible under Part 7 of the Act. Since no spill had occurred, the non-convention incident five-year limitation period applied.

Assessment and Offer

The investigation gave rise to requests to CCG for additional information. On October 30, 2017, the Administrator sent a letter to CCG requesting additional submissions on the issue of wreck removal in this file. On December 20, 2017, the Administrator sent CCG a draft offer of compensation for additional comments and submissions. On January 9, 2018, the CCG requested an extension for providing comments, following which the comment period on this draft offer was extended to March 16, 2018. CCG's comments and further submissions were received on March 15, 2018.

The Administrator carried out her investigation and assessment of the claim. The Administrator disallowed a large proportion of the claim that she found was related to wreck removal, rather than to "preventive measures" within the meaning of ss. 71 or 77 MLA. Further, the Administrator disallowed costs of some of the Contract Services engaged by CCG.

On May 2, 2018, the Administrator made an offer for the established amount of \$100,373.14, plus interest, as full and final settlement to DFO/CCG. The offer was accepted on June 25, 2018 and, on June 27, 2018, a payment in the amount of \$109,867.92 including interest was made to DFO/CCG.

Recovery Action

On May 14, 2018, counsel for the Administrator sent a demand letter to the shipowner advising him that she had received a claim from CCG and that she would commence proceedings against him in case he did not admit liability for all of the proven costs and expenses of CCG.

In June 20, 2018, Statement of Claim was filed against the shipowner. The owner was granted an extension until October 30, 2018 to file his Statement of Defence. The Statement of Defence was received on October 18, 2018. A Case Management Order was issued on January 14, 2019.

In February 8, 2019, the Administrator accepted a settlement agreement of \$20,000 proposed by the Solicitor of the owner provided the owner produce sufficient supporting documentation.

As agreed, the owner provided the requested documents and the payment of \$20,000 was received on March 14, 2019, and in exchange, the Administrator sent the owner a Release.

Status

The file was closed on March 28, 2019.