

Warren L. II (tug) and Marlene Wright (barge) (2015) (Municipality of Killarney)

Location: Killarney Channel, Ontario

Case number: 120-722-C1

The Incident

On December 7, 2015, the Canadian Coast Guard (CCG) was advised that a large earth-moving truck had fallen off the barge *Marlene Wright* while under tow by the tug *Warren L. II*. The incident occurred in Killarney Channel, which separates the town of Killarney and George Island on Georgian Bay, Ontario.

The truck, which contained approximately 400 litres of diesel fuel as well as unspecified amounts of lube and hydraulic oils, came to rest on its side at a depth of 18-feet. The location of the incident was in the vicinity of the water intake for the municipality of Killarney. The CCG advised the municipality of the incident the same day; the water intake was closed shortly thereafter. The next day salvage plans and equipment were already being prepared.

By December 9, 2015, containment booms and equipment had been deployed and vacuum boats and a truck were recuperating wastewater. Divers were also on scene and once underwater they plugged a leak on a diesel fuel hose among other mitigation activities.

On December 10, 2015, a salvor was appointed and by December 11, no further pollution was observed. Salvage efforts were hindered for a few days due to bad weather and then on December 17, the truck was salvaged from the channel bottom and placed onto the deck of a barge. The next day the truck was landed ashore.

The municipality's water intake was reopened on December 23, 2015.

Measures taken by the Administrator

The Administrator appointed a counsel to represent the Fund and protect its interests in the Federal Court proceedings launched by the tug and barge owners against each other. On February 26, 2018, Counsel filed a Notice of Claim for the Fund in action T-1191-17, based on section 102 of the *Marine Liability Act* - which provides for the issuance of a financial security by the shipowner or its insurer even before a claim has been paid by the Administrator.

The Claim

On August 21, 2017, the Administrator received a claim from the Municipality of Killarney for costs and expenses in the principal amount of \$208,716.21 made pursuant to section 103 of the *Marine Liability Act*. Legal fees were also added to this claim, bringing the total amount to \$270,286.31.

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

Assessment and Offer

On December 7, 2017, a draft offer was made to the Municipality of Killarney inviting comments. The deadline for comments was extended to January 16, 2018, at which date the municipality provided additional comments and submissions. The claim raises novel issues related to costs and expenses incurred by a municipality who closed its municipal water intake before it could be contaminated, and purchased fresh water for its residents.

On July 4, 2018, after investigation and assessment of the claim, the Administrator made an offer of compensation to the Municipality of Killarney for the established amount of \$209,575.43, plus interest, pursuant to section 105 of the Act. On July 13, 2018, the offer was accepted by the Municipality of Killarney. On September 11, 2018, a payment in the amount of \$225,094.77 including interest was made to the Municipality of Killarney.

Recovery Action

Mediation was held in November and December 2018. Parties reached an agreement in January 2019. On March 5, 2019, the Administrator received an amount of \$225,000.00, including interest, representing the full payment of her subrogated claims of the Canadian Coast Guard and of the Municipality of Killarney.

Status

The file was closed on March 14, 2019.

Related files

Warren L. II (tug) and *Marlene Wright* (barge) (2015) (CCG), file 120-722-C1-1 (same incident, different claimant).

Pitts Carillon (2017), file 120-740 (similar type of incident involving a barge incident in Ontario and its impact on municipal water intake).