



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

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21 June 2005

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Dear Gene and Tim:

RE: Athos 1 Spill; Invitation to Participate in NRDA

Thank you for your letter of May 24, 2005 describing the conditions under which the Athos 1 Responsible Party (RP) would be willing to participate in a cooperative Natural Resource Damage Assessment (NRDA). In that letter, you stated that you believe the RP is entitled to a limitation of liability pursuant to Section 1004(a)(1)(A) of the Oil Pollution Act (OPA), 33 U.S.C. § 2704(a)(1)(A) and possible exoneration pursuant to Section 1003(a)(3) of OPA, 33 U.S.C. § 2703(a)(3). Accordingly, you have conditioned your participation in a cooperative NRDA. As the Coast Guard investigation into this matter is ongoing, we reserve comment on your entitlement to limitation of liability and possible exoneration.

The Natural Resource Trustees take this opportunity to respond to your proposed conditions and reiterate our interest in maintaining the NRD as a cooperative assessment with the following provisions:

1. **RP Participation.** The Trustees will continue to encourage the RP and its contractors to attend Athos NRDA and Technical Working Group (TWG) meetings. However, on occasion, the Trustees reserve the right to meet amongst themselves without participation by the RP. Furthermore, given that the RP will not be paying for NRDA costs incurred by the Trustees beyond the initial \$100,000 you have already provided, the Trustees do not think it is appropriate to convene a Joint Assessment Team (JAT) whereby the RP has a formal vote. The RP will have the opportunity to articulate its position, but generally, the Trustees will make NRDA decisions through the Trustee Council.
2. **Cooperative Studies.** The Trustees appreciate the offer by the RP to pay the cost of "in-scope Cooperative Studies performed by its consultants or third party contractors

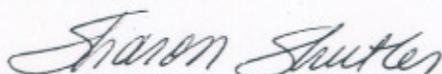


specifically retained by it." In light of the circumstances described above, the Trustees view Cooperative Studies as those approved by consensus and funded by the RP. This would apply to the study objective, scope of work, and budget. To the extent that the RP and Trustees agree upon such studies and the RP agrees to hire contractors to undertake those studies per Trustee approval, the Trustees will avail themselves of that option. The Trustees also appreciate the RP's commitment to permit the Trustees to use the RP's experts in performing or participating in Cooperative Studies. Whether or not the RP may use the Trustees' contractors or experts in a testifying role will have to be determined on a case by case basis.

3. Administrative Record. The RP will be given a reasonable opportunity to review and comment on all studies to be included in the Administrative Record, including those determined to be Cooperative Studies.

Please feel free to call me if you have any further questions.

Sincerely,



Sharon K. Shutler
NOAA Office of General Counsel
for Natural Resources

cc: Rachel Jacobson
Robert Kuehl
Marcia Gittes
Joan Steiner-Olawski-Stiener
Stan Sneath