

Utsler, Michael J

From: Julia.A.Hein@uscg.mil on behalf of Hein, Julia CAPT [Julia.A.Hein@uscg.mil]
Sent: Saturday, June 18, 2011 9:49 AM
To: SOJ@adem.state.al.us
Cc: Utsler, Michael J; Macias, Steve A LT; Hanson, JoAnne LCDR
Subject: RE: WPI

Steve,

I highly recommend you come to the NOLA on Monday and discuss this in person to work an appropriate plan forward and so you can understand what we are doing at this time. Understand your concern with the NEBA and that is why you were invited to do a more comprehensive one with CDR Norton as a combined team. I think you also need to see all the documents we were able to get from the County. I think it may be more clear once you see them. Interviews with some locals also indicate at one time prior to Katrina cut, there was actually gates and signs stating this island was private property.

As far as reporters, I know that is their job and I don't fault them for that. However, by law, I now have to do an assessment regardless. Even if you all go out there as the state, I'm still responsible to document the impact. Anyway, the press interviewed me as well and I advised them of the stoppage for now and that we are looking at doing the assessments on what cleaning we've done, what that has done environmentally, and what steps forward including possibly applying the same level of cleanup and care as we do the park service lands to the west of WPI. Just so you know, I'm looking at getting a geologist out there as well, not sure if you planned to do the same.

Thanks,
Captain Hein

-----Original Message-----

From: SOJ@adem.state.al.us [mailto:SOJ@adem.state.al.us]
Sent: Friday, June 17, 2011 7:12 PM
To: Hein, Julia CAPT
Cc: Mike Utsler (mike.utsler@bp.com)
Subject: RE: WPI

Captain,

The NEBA was developed without any opportunity for State input. That is why we are sending a team out there to do our own assessment and yes, we have legal right of entry. Once that is complete, I will have necessary information to engage CDR Norton. Recall that the "permit" was in the form of a variance which is required by the federal Coastal Zone Management Act and it's State counterpart in cases where a demonstration is made that a taking of property will occur without compensation contrary to the 5th Amendment of the US Constitution and the State counterpart.

Reporters are enterprising individuals. They were on the Island inquiring about your determination at 8:00 AM Thursday. Obviously, they got word from somewhere and it wasn't from the State. However, he did call me tonight and asked for our thoughts on this turn of events.

Regards,

Steven O. Jenkins, Chief

Field Operations Division

Alabama Department of Environmental Management Alabama State On-Scene Coordinator

Telephone: 334-394-4382

Fax: 334-394-4326

Cell: 334-303-4256

-----Original Message-----

From: Julia.A.Hein@uscg.mil [mailto:Julia.A.Hein@uscg.mil]

Sent: Friday, June 17, 2011 6:46 PM

To: Jenkins, Steve

Cc: Utsler, Michael J

Subject: RE: WPI

Steve,

Yes we were talking option 1 and 2 until I found the permits which told me a whole different story.

So for now, I'm following the NEBA to do the least invasive method for now, since I have to now go in and do an assessment on the damage (including biological) we may have done from the cleaning thus far, based on the permits showing that this was not an amenity beach. I have to stop work to do this plus I cannot afford to do more damage in the meantime. I also have to look at what folks did by bringing reporters to the island and if that scared away critical habitat. With that said, what I can tell, it looks as though only once section was done using the sand shark so I'm hoping we should be ok, but I need to have the experts go in to do this. I spent some time yesterday with the NPS to also evaluate some possible options on their lands that we could possibly apply to WPI.

So the CG is not cutting and running. We don't do that. We do stop and re-evaluate when we are told to pursue a course of action that is inappropriate and could have caused more damage than good. I'm surprised that folks like ADEM would have proposed such an action when utilizing a sand shark could have the potential to undermine the structure of the island not to mention destroying an ecosystem that supports critical habitat.

Again, the state has been invited to participate on the federal assessment along with the NEBA. However, CDR Norton has not received a reply from you to that invitation.

The state is not authorized at this point to pursue options under the state since this is still under the federal umbrella.

Thanks,
Captain Hein

-----Original Message-----

From: SOJ@adem.state.al.us [mailto:SOJ@adem.state.al.us]

Sent: Friday, June 17, 2011 6:34 PM

To: Hein, Julia CAPT

Cc: Utsler, Michael J

Subject: RE: WPI

Captain Hein,

This is a surprising turn of events as we were discussing option 1 vs. option 2. You stated to me that the NEBA no action alternative was not an option. This determination is inconsistent with the 2011 Shoreline Plan and its predecessor. It appears that the USCG desires to "cut and run" and abandon the prior commitment to respond until all recoverable oil is removed and ignoring the Unified Command's Shoreline Plans. The media are reporting

basketball size tar patties on the island. WPI lies wholly within the Town of Dauphin Island. We will be conducting our own assessment of the island's condition. The USCG's determination relative to WPI leaves the State no option but to pursue its options under the Oil Pollution Act of 1990, 33USC2718(a)(1)(B), the Alabama Water Pollution Control Act, Ala. Code §§22-22-1 to 22-22-14 and any other applicable statutes directly with BP.

I am copying Mike on my reply so that he has visibility of the State's direction.

Steven O. Jenkins, Chief

Field Operations Division

Alabama Department of Environmental Management

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From: Julia.A.Hein@uscg.mil [mailto:Julia.A.Hein@uscg.mil]
Sent: Wednesday, June 15, 2011 6:30 PM
To: Jenkins, Steve
Subject: WPI

Steve,

My legal gal went to Mobile County and did a search for the requisite documents. We have been able to confirm that the county did not file the appropriate documents that would render the areas delineated in the permit as an amenity beach. Hence, I will follow the advice that has been provided in the NEBA to allow for attenuation except for the eastern tip which was apparently amenity.

The landowners recourse is to put a third party claim in with BP.

I just wanted to make you aware since I just received confirmation late last night of the results. I know I've given you a heads up this might be coming however, this is the official decision.

If you have any questions, please let me know.

Thanks,
Captain Hein

Sent with Good (www.good.com)