

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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5890
August 29, 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Helis Oil & Gas Company, LLC
ATTN: Michael Schott
228 Saint Charles Ave.
New Orleans, LA 70130

RE: Claim Number: 912077-0001

Dear Mr. Schott:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 912077-0001 involving the High Island 129A #18 Well. Compensation is denied for the reasons stated in the enclosed Claim Summary/Determination Form.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number 912077-0001.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Eric Bunin
Claims Manager
U.S. Coast Guard

Encl.: Claim Summary/Determination

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912077-0001
Claimant	: Helis Oil & Gas Company, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Amount Requested	: \$151,158.44

FACTS:

On 21 February 2011, an Offshore Production Superintendent, making rounds on a platform,¹ noticed a sheen coming from the vicinity of the HI #18² well riser. After investigation it was determined that Helis Oil & Gas Company, LLC's (Helis) pipeline segment 14570 was leaking natural gas condensate.³ The pipeline flows from the well to the main platform,⁴ apparently owned/operated by Apache Corporation. The Apache employee shut in the well⁵ and pressure was bled off the flow line. Approximately 1.44 gallons of condensate discharged into the Gulf of Mexico, a navigable water of the U.S. The sheen was 50ft wide and stretched for one-quarter of a mile.⁶ The NRC was notified of the incident by O'Briens Response Management. Helis began testing and mobilizing contractors to repair the pipeline. There is no indication that the oil was cleaned up. The sheen dissipated naturally.⁷ Helis was designated the responsible party (RP) for the discharge when the CG Marine Safety Unit Texas City, TX (MSU), acting as the Federal On Scene Coordinator (FOSC), issued a Notice of Federal Interest and a Violation to Helis. Helis paid the Violation on July 20, 2011.⁸ Helis coordinated its plan for repair with the U.S. Department of Interior Bureau of Ocean Energy Management, Regulation & Enforcement (BOEMRE) after the discharge.

CLAIMANT and CLAIM:

Claimant is an oil and natural gas well and pipeline owner and operator. Claimant operates wells and pipelines in the Gulf of Mexico. Claimant seeks reimbursement of costs incurred for the testing and mobilization for repair of its pipeline located at HI 129A - #18 Well Riser in the Gulf of Mexico. Claimant alleges that its pipeline did not discharge the oil because no leaks were found during pressure testing. Claimant alleges that the RP is unknown.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as

¹ The platform is apparently owned and/or operated by Apache Corporation. The Offshore Production Superintendent is an Apache employee.

² It appears HI stands for High Island.

³ The well and pipeline carried oil, gas and water according to the Pelican Energy Consultants LLC Well Riser schematic. Natural gas condensate is a semi-liquid hydrocarbon condensate produced by condensate wells.

⁴ Witness statement of Robin Fruge, Lead Operator (Offshore Production Superintendent) for Apache

⁵ Witness statement of Robin Fruge, Lead Operator (Offshore Production Superintendent) for Apache

⁶ NRC report #968148 and August 14, 2012 email from PO Lucas

⁷ CG Enforcement Summary for oil discharge violation

⁸ August 14, 2012 email from PO Lucas

described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

A responsible party, in the case of an offshore facility (other than a pipeline) is the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under state law or the Outer Continental Shelf Lands Act for the area in which the facility is located. 33 USC § 2701(32)(C) For a pipeline the responsible party is any person owning or operating the pipeline. 33 USC § 2701(32)(E).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages.

Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident".

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC."

Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC." [Emphasis added].

A responsible party is not liable for removal costs or damages under section 2702(a) if he establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused solely by an act or

omission of a third party, other than an employee or agent of the responsible party or third party whose act or omission occurs in connection with any contractual relationship with the responsible party ... if the responsible party establishes, by a preponderance of the evidence, that the responsible party exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances and took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions. 33 U.S.C. § 2703(a)(3)(A) and (B). Section (a) does not apply with respect to the responsible party who fails or refuses to report the incident as required by law if the responsible party knows or has reason to know of the incident. 33 U.S.C. § 2703(c)(1).

“The responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, may assert a claim for removal costs and damages under section 1013 only if the responsible party demonstrates that –

- (1) the responsible party is entitled to a defense to liability under section 1003; or
- (2) the responsible party is entitled to a limitation of liability under section 1004.” 33 U.S.C. 2708

DETERMINATION:

A. Findings of Fact:

1. The CG FOSC was notified of incident, but did not direct Helis’ activity.
2. The incident involved the report of a discharge or substantial threat of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), **to navigable waters**;
3. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(2);
5. The Claimant has been identified as the responsible party and can present its claim directly to the Fund only if it demonstrates entitlement to a defense under 33 U.S.C. § 2708. 33 U.S.C. § 2713
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the incident is an OPA incident.

B. Analysis:

The Claims Manager reviewed the documentation provided by the Claimant and the FOSC in support of the uncompensated costs as claimed. The Claims Manager focused on: (1) whether an OPA-incident gave rise to the claim (i.e. whether there was a discharge or substantial threat of the discharge of oil into a navigable water of the U.S.) (2) whether the actions taken were compensable “removal actions” under OPA and its regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, (5) whether the costs were adequately documented and reasonable, and (6) whether the claimant is the responsible party who may be compensated by the Fund.

Claimant argues that it is entitled to reimbursement of costs it expended in response to the natural gas condensate sheen emanating from the area around its pipeline and well riser. Claimant states that its pipeline segment was initially suspected of being the source of the leak. It bases its argument for reimbursement on its allegation that Helis' pipeline did not leak during pressure testing after the sheen was found. Because Claimant states that it found no pressure loss or leaks during the pressure testing it concluded that the pipeline was not breached; therefore, it was not necessary to repair the pipeline. Claimant did not repair the pipeline after expending money to mobilize resources for the repair. Claimant seeks reimbursement of the expenses it incurred to test and repair the pipeline.

The NPFC finds that the claim cannot be paid for several reasons. Claimant has not demonstrated by a preponderance of evidence that it is not the RP for the incident. Even though it states that pressure testing showed no leaks, Helis provided no records of the testing, no records of an inspection of the pipeline or well riser, and no records of sample analysis of the discharged material. Helis stated that because it found no evidence of a leak, it did not hydrostatically test the pipeline.⁹

Further, Claimant and the CG MSU provided information and documentation that weighs against the Claimant's argument. The Facility Incident Report provided by Claimant states that "after investigation [sic] it was determined pipeline segment 14570 was leaking."¹⁰ The FOSC representative for the CG MSU stated that the #18 well shut in and pressure bleed off of the Helis flow line stopped the sheen.¹¹ Whether or not subsequent testing showed no further leaks, the evidence indicates that the actions taken, by shutting in the well and bleeding off pressure, stopped the leak and sheen. The fact that Helis could not duplicate the leak doesn't overcome this evidence.

Claimant states that neither it nor BOEMRE has been able to identify the source of the sheen. However, there is no confirmation from BOEMRE absolving Helis of responsibility. Helis merely provided an exchange of emails ending April 7, 2011 suggesting who Helis should contact at BOEMRE. There is no evidence that any other potential source of the discharge was investigated. And there is no evidence that overcomes the evidence that the sheen stopped when Helis' well and pipeline were shut in and the pressure bled off.

Helis was designated the RP and has not demonstrated that it is not the RP. To be eligible to recover from the Fund, it would have to prove entitlement to a defense or Limitation of Liability (LOL), but in this case, the limit of liability entitlement would be irrelevant since the liability limit has not been reached.¹²

Even if Helis could demonstrate that it was not the RP or that it is entitled to a defense to liability, the claim still could not be paid. The claimed expenses are not oil-spill removal costs. The sheen was left to naturally dissipate and was not cleaned up. Once the well and pipeline were shut in, no further sheen appeared. The expenses were incurred after the incident was over.

⁹ Summary of 4 inch Flowline Repair, submitted by Helis

¹⁰ Facility Incident Report dated 2/21/2011

¹¹ August 14, 2012 email from PO Lucas, CG MSU Texas City

¹² Limit = the total of all removal costs plus \$75,000,000.

Repair mobilization and testing did not begin until March 29, 2011, meaning Claimant incurred the claimed expenses over a month after the discharge to determine the location of the breach in the pipeline and to repair it. The costs were not incurred to mitigate the discharge. The costs were not due to removal activities directed by the FOSC. The FOSC did not direct any activities. The costs were incurred to prevent future discharges. Precautionary measures to prevent future discharges are not compensable removal costs under OPA. Shut in and pressure bleed down mitigated the discharge and, once the sheen dissipated, the incident was over.

Conclusion

The Claimant has been identified as the RP and has not demonstrated that it is not the RP, the Claimant also has not demonstrated that it is entitled to a defense to liability, and the costs it submitted for reimbursement were not removal costs payable under OPA. Therefore, the claim is not compensable and must be denied

Claim Supervisor:

Date of Supervisor's review: 8/29/12

Supervisor Action: *Denial approved*

Supervisor's Comments: