IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

EVAN HOWINGTON,	*** CIVIL ACTION NO. _____**
	*
Plaintiff	*
	*
v.	*
	*
UNITED STATES OF AMERICA,	*
	*
	*
Defendant	*

****

PLAINTIFF EVAN HOWINGTON'S ORIGINAL COMPLAINT

1.

Plaintiff brings this claim against the United States of America pursuant to the Federal Tort Claims Act ("FTCA") 28 U.S.C. § 1346(b) and respectfully shows the Court as follows. Plaintiff has presented his claim to the appropriate Federal agency, the Department of Justice, and after six (6) months, the agency has elected not take action on the claim which the Plaintiff deems a final denial in accordance with 28 U.S.C. § 2675 and hereby brings this claim. *See* Exhibit A (Administrative Complaint).

PARTIES

2.

This Court has personal jurisdiction over the parties.

3.

Plaintiff, Evan Howington, is and at all times relevant hereto was, a resident of Brazoria County.

4.

Defendant, United States of America, by and through its agency, the Department of Justice of the Eastern District of Louisiana, which is located at 400 Poydras St., #1600, New Orleans, Orleans Parish, Louisiana 70130.

5.

Defendant, United States of America, including its attorneys, assistant attorneys, directors, officers, operators, employees, agents and staff, are hereinafter collectively referred to as the "DOJ".

6.

Whenever in this Complaint it is alleged that Defendant did or failed to do any particular act and/or omission, it is meant that Defendant, acting individually, or by and through attorneys, agents, officers, directors, servants, and employees, either did or failed to do that particular act and/or omission, in the course and scope of his or her employment, agency or contract with Defendant, and in furtherance of Defendant's business. Therefore, under the doctrine of respondeat superior, Defendant is vicariously liable for the acts and omissions of its attorneys, assistant attorneys, agents, officers, directors, servants, and employees in the course and scope of their employment, further outlined elsewhere in this complaint and incorporated by reference here fully.

FACTS

7.

On or about March 27, 2014, while working for Canyon Offshore as a Remotely-Operated Vehicle ("ROV") Technician Trainee, Plaintiff Evan Howington boarded the Dynamically Positioned Multi-Service Vessel ("DP MSV") Uncle John at the Port of Pensacola, Florida in order to begin his hitch. It was his first hitch onboard this particular vessel as well as his first working for Canyon Offshore. After traveling onboard the vessel, under its own power, westward through the Gulf of Mexico for approximately 16-18 hours, Plaintiff arrived at the worksite located in the Ewing Bank field, block 878, well number 3, just south of the coast of Louisiana. On or about March 28, 2014, Plaintiff Evan Howington happened to notice hydraulic fluid continually leaking from the ROV directly into the Gulf but no personnel onboard were taking any action to stop it. Plaintiff informed Rod Heckle, ROV Superintendent, but was told that this was a normal occurrence, and that "it's no big deal, it's just Tellus 32," an industrial hydraulic fluid. Then, on or about April 1, 2014, Plaintiff witnessed the most shocking thing he had ever witnessed in his offshore career: an intentional illegal discharge of pollutants into the Gulf of Mexico. The intentional discharge he witnessed was ordered by three supervisors working for three different oil and gas companies, namely Walter Oil & Gas Corporation ("Walter"), Cal-Dive International, Inc. ("Cal-Dive") and Helix Energy Solutions ("Helix") from onboard the Uncle John. These three supervisors then proceeded to laugh and joke about the pollutants exiting the valve and even discussed falsifying the logs in order to hide the incident from the Coast Guard—which they ultimately did. Fearing criminal prosecution for failing to report what he had seen, on or about April 9, 2014 Plaintiff retained a law firm, Fitts Zehl, LLP, now Zehl & Associates, P.C., and contacted the Environmental Protection Agency ("EPA") to report what he

had witnessed as well as furnish the evidence of the incident he had gathered in the form of audio/video, photographs and other documentation. On September 17, 2014, Plaintiff met in-person with AUSA Matthew Coman at the federal building in New Orleans, Louisiana in order to hand-deliver and thoroughly explain all of the evidence he had gathered pertaining to the intentional illegal acts he had witnessed. At the time of this meeting, on September 17th, 2014, AUSA Matthew Coman specifically asked Plaintiff questions regarding whether or not these three supervisors knew what was going to happen when they opened the valve. Plaintiff's answer to these questions was always yes, they knew for a fact that when they opened this valve pollutants were going to discharge directly into the water. Also present at this meeting were Matthew Myles of the EPA, Maureen Kennedy of the Louisiana Department of Environmental Quality ("LDEQ") and Marcus Vinson of the United States Coast Guard ("USCG"). The meeting lasted for 2-3 hours. At its conclusion, Plaintiff returned home to Houston hopeful that justice would be done.

8.

On April 21, 2015, after a period of inactivity, AUSA Jon Maestri made contact with Plaintiff's counsel via email in order to introduce himself and announce that he would be replacing AUSA Matthew Coman on the case due to the fact that Mr. Coman had vacated his position with the DOJ. Upon assuming the lead role in prosecuting the claims stemming from the evidence of intentional illegal pollutant discharges that Plaintiff presented to Mr. Coman, Mr. Maestri proceeded to neglect Plaintiff's repeated offers, each communicated by the undersigned by way of either telephone or email, to sit down in-person, face-to-face, and go through the evidence in order to help him and his team fully understand exactly what happened on the dates in question. On December 22, 2015, after months without a substantive update as to what was happening with the case, Plaintiff found out by way of a Google search that the DOJ had elected to enter into a

plea deal with Walter Oil & Gas for one count of failing to report an incidental discharge—a gross mischaracterization of the evidence Plaintiff had presented of intentional illegal conduct.

9.

As a result of his negligent failure to communicate with the primary source of evidence in this case as well as his negligent failure to properly analyze the issues presented by the evidence in his possession as well as the laws that apply, Mr. Maestri negligently failed to recognize that the Uncle John, the Dynamically Positioned Multi-Service Vessel used to discharge the illegal pollutants in question, was indeed a vessel that was capable of being used as a means of transportation—making it a "ship" subject to MARPOL and the Act for the Prevention of Pollution from Ships ("APPS"). Additionally, Mr. Maestri negligently failed to pursue charges against the other two entities whose personnel were directly responsible for the intentional illegal discharges in question, namely Cal-Dive and Helix.

FIRST CAUSE OF ACTION
PROFESSIONAL NEGLIGENCE

10.

Plaintiff incorporates all other paragraphs by reference here fully.

11.

Rule 1.1(a) of the Louisiana Rules of Professional Conduct states that, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Therefore, pursuant to Rule 1.1(a) of the Louisiana Rules of Professional Conduct, AUSA Maestri failed to provide competent representation to his client, the United States of America, specifically by failing to properly analyze the case and identify the applicability of APPS to the incident(s) in question. In doing so, Mr. Maestri caused the loss to his client of an estimated twelve million

dollars (24 days of ongoing willful violations at $500,000.00 per violation = $12,000,000.00) in fines associated with the intentional illegal discharge of pollutants into the Gulf of Mexico. In accordance with APPS 33 U.S.C. § 1908(a), up to 50% of fines levied under APPS may be paid to the person giving information leading to a conviction, an estimated six million dollars ($6,000,000.00).

12.

The acts and/or omissions set forth above would constitute a claim under the law of the State of Louisiana.

13.

The Defendant is liable pursuant to 28 U.S.C. § 1346(b)(1).

14.

Plaintiff incorporates all other paragraphs by reference here fully.

CONCLUSION & PRAYER

15.

Plaintiff prays that, after due proceedings are had:

a. There be judgment rendered herein in favor of Plaintiff, for damages and for all costs of this proceeding;

b. For all such other and further relief to which Plaintiff may be entitled under law and in equity.

Respectfully submitted,

/s/ Tommy Servos

Ryan H. Zehl
Texas State Bar No. 24047166
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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

Standard Form 95 - Basis of Claim

Introduction

With this letter, I, Evan M. Howington, intend to formally notify the United States Department of Justice ("DOJ") of my claim for damages under the Federal Tort Claims Act ("FTCA") for negligence on the part of Assistant United States Attorney ("AUSA") Jon Maestri of the Eastern District of Louisiana, while he was working within the course and scope of his employment for the United States Department of Justice on behalf of his client, the federal government of the United States of America. The case is *USA v. Walter Oil & Gas Corporation*, case number 2:15-cr-00245, in the Eastern District of Louisiana. I also intend to formally notify the DOJ of the substantial financial loss suffered by the federal government of the United States of America due to the above-referenced professional negligence of AUSA Maestri.

Facts

Please allow me to start from the beginning and briefly recount the events that gave rise to the above-referenced case. On or about March 27, 2014, while working for Canyon Offshore as a Remotely-Operated Vehicle ("ROV") Technician Trainee, I boarded the Dynamically Positioned Multi-Service Vessel ("DP MSV") Uncle John at the Port of Pensacola, Florida in order to begin my hitch. It was my first hitch onboard this particular vessel as well as my first working for Canyon Offshore. After traveling onboard the vessel, under its own power, westward through the Gulf of

Mexico for approximately 16-18 hours, we arrived at our worksite located in the Ewing Bank field, block 878, well number 3, just south of the coast of Louisiana. On or about March 28, 2014, I happened to notice hydraulic fluid continually leaking from the ROV directly into the Gulf but no personnel onboard were taking any action to stop it. I informed Rod Heckle, ROV Superintendent, but was told that this was a normal occurrence, and that "it's no big deal, it's just Tellus 32," an industrial hydraulic fluid. Then, on or about April 1, 2014, I witnessed the most shocking thing I had ever witnessed in my offshore career: an intentional illegal discharge of pollutants into the Gulf of Mexico. The intentional discharge I witnessed was ordered by three supervisors working for three different oil and gas companies, namely Walter Oil & Gas Corporation ("Walter"), Cal-Dive International, Inc. ("Cal-Dive") and Helix Energy Solutions ("Helix") from onboard the Uncle John. These three supervisors then proceeded to laugh and joke about the pollutants exiting the valve and even discussed falsifying the logs in order to hide the incident from the Coast Guard—which they ultimately did. Fearing criminal prosecution for failing to report what I had seen, on or about April 9, 2014 I retained a law firm, Fitts Zehl, LLP, now Zehl & Associates, P.C., and contacted the Environmental Protection Agency ("EPA") to report what I had witnessed as well as furnish the evidence I had gathered in the form of audio/video, photographs and other documentation—all of which I will also produce copies of with this letter. On September 17, 2014, I and my attorney, Tommy Servos, met in-person with AUSA Matthew Coman at the federal building in New Orleans, Louisiana in order to hand-deliver and thoroughly explain all of the evidence I had gathered pertaining to the intentional illegal acts I had witnessed. At the time of this meeting, on September 17th, 2014, AUSA Matthew Coman specifically asked me questions regarding whether or not these three supervisors knew what was going to happen when they opened the valve. I remember these questions very distinctly because he kept asking the same basic

question in a variety of forms. Essentially, the question was, "Did they know these pollutants were going to come out when the valve was opened?" My answer to these questions was always that yes, they knew for a fact that when they opened this valve pollutants were going to discharge directly into the water. Also present at this meeting were Matthew Myles of the EPA, Maureen Kennedy of the Louisiana Department of Environmental Quality ("LDEQ") and Marcus Vinson of the United States Coast Guard ("USCG"). The meeting lasted for 2-3 hours. At its conclusion, I returned home to Houston hopeful that justice would be done.

On April 21, 2015, after a period of inactivity, AUSA Jon Maestri made contact with my attorney via email in order to introduce himself and announce that he would be replacing AUSA Matthew Coman on the case due to the fact that Mr. Coman had vacated his position with the DOJ. Upon assuming the lead role in prosecuting the claims stemming from the evidence of intentional illegal pollutant discharges that I presented to Mr. Coman, Mr. Maestri proceeded to ignore or turn down my repeated offers, each communicated by my attorney by way of either telephone or email, to sit down in-person, face-to-face, and go through the evidence in order to help him and his team fully understand exactly what happened on the dates in question. On December 22, 2015, after months without a substantive update as to what was happening with the case, I found out by way of a Google search that the DOJ had elected to enter into a plea deal with Walter Oil & Gas for one count of failing to report an incidental discharge—a gross mischaracterization of the evidence I had presented of intentional illegal conduct. In fact, as a part of the deal, Walter Oil & Gas would pay just $400,000.00 in exchange for freedom from prosecution for any of the acts I alleged. Of this $400,000.00 in fines, no money would be allotted to the whistleblower. Instead, it would be distributed amongst multiple government agencies. From a public policy perspective, this failure to reward those that risk their livelihood to report wrongdoing in the offshore oil and gas industry,

in my opinion, sets a dangerous precedent that could discourage future whistleblowers from doing what they know to be right.

Negligence on the Part of AUSA Jon Maestri

Under Rule 1.1(a) of the Louisiana Rules of Professional Conduct, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Therefore, pursuant to Rule 1.1(a) of the Louisiana Rules of Professional Conduct, by failing to provide competent representation to his client, the federal government of the United States of America, AUSA Jon Maestri caused the loss of at least an estimated twenty-eight million dollars ($28,000,000.00) in fines associated with the intentional illegal discharging of pollutants into the Gulf of Mexico, a reasonable portion of which should have been awarded to the whistleblower for the personal and professional risks taken in bringing this evidence of illegality to light. The following pages will document and briefly explain the professional negligence of Assistant United States Attorney Jon Maestri, as well as detail the loss of property to the federal government of the United States and the whistleblower.

As a result of his negligent failure to communicate with the sole source of evidence in this case as well as his negligent failure to properly analyze the issues presented by the evidence in his possession as well as the laws that apply, Mr. Maestri then negligently failed to recognize that the Uncle John, the Dynamically Positioned Multi-Service Vessel used to discharge the illegal pollutants in question, was indeed a vessel that was capable of being used as a means of transportation—making it a "ship" subject to MARPOL and the Act for the Prevention of Pollution from Ships ("APPS"). In fact, I and numerous other crewmen sailed onboard the Uncle John, under its own power, from a port in Pensacola, Florida, to the job site so that the vessel could be used to

coordinate the very operation that resulted in the intentional illegal discharge of pollutants into the Gulf of Mexico. The remotely-operated vehicle that physically opened the valve and released the pollutants into the Gulf of Mexico on or about April 1, 2014 was operated from the very room onboard the DP MSV Uncle John featured in the audio/video I produced to Mr. Coman. Additionally, Mr. Maestri negligently failed to pursue charges against the other two entities whose personnel were directly responsible for the intentional illegal discharges in question, namely Cal-Dive and Helix.

From: Maestri, Jon (USALAE) [mailto:Jon.Maestri@usdoj.gov]
Sent: Wednesday, January 06, 2016 10:35 AM
To: Tommy Servos <tservos@zehllaw.com>
Subject: Tommy

As I was not the initial AUSA assigned to this case, I wanted to make sure that my assessment of the case was correct and received confirmation from EPA's Regional Criminal Enforcement Council that the Clean Water Act does not have provisions for whistleblower payments. Of the Federal Environmental statutes, only the Clean Air Act, APPS, and Safe Drinking Water Act have those provisions. Although there were allegations related to the vessel, they did not meet the elements of an APPS violation or for that matter the other statutes that allow for whistleblower awards/compensation.

The Clean Water Act does have the normal whistleblower protections related to his job and the prevention of retaliation, etc., civilly through Department of Labor.

I hope this answers any questions that you may have.

Thanks,
Jon

From: Maestri, Jon (USALAE) [mailto:Jon.Maestri@usdoj.gov]
Sent: Wednesday, February 03, 2016 12:05 PM
To: Tommy Servos <tservos@zehllaw.com>
Subject: Howington - 33 U.S. Code § 1908

Tommy,

I'm sorry that I didn't get back to you right away, but I wanted to make sure that my assessment was correct. Unfortunately for Mr. Howington, the Clean Water Act does not provide for any type of whistleblower payments. It only provides protection from retaliation, not monetary awards. Only the Clean Air Act, APPS, and Safe Drinking Water Act have those whistleblower/monetary provisions.

The MARPOL act , the *Kulluk* case, and Title 33 U.S.C. 1908 that you cited, only apply to incidents involving ships/vessels (APPS). Walter could not be charged with an APPS violation as the incident obviously did not involve a vessel or ship that is capable of being used as a means of transportation. The MARPOL Protocol, Annex IV was drafted to regulate sewage discharges into the sea from ships/vessels. The Annex applies to new ships brought into commerce after the enactment and ships that are engaged in international voyages of 400 gross tonnage and above or which are certified to carry more than 15 persons. It also only applies to ships that are flagged in ratifying countries, but because the United States has not ratified Annex IV, it is not mandatory that ships follow it when in U.S. waters. MARPOL 73/78 (the "International Convention for the Prevention of Pollution From Ships") is implemented through the Act to Prevent Pollution from Ships (APPS). APPS applies to all U.S.-flagged ships anywhere in the world and to all foreign-flagged vessels operating in navigable waters of the United States or while at port under U.S. jurisdiction. The regulatory mechanism established in APPS to implement MARPOL is separate and distinct from the Clean Water Act.

In the above emails sent by Mr. Maestri to my attorney on January 6, 2016 and February 3, 2016, Mr. Maestri acknowledged the presence and involvement of a vessel in the illegal discharge that occurred on or about April 1, 2014, as documented in the audio/video recording I gave to Mr. Coman during our initial face-to-face meeting, but claims that the incident did not meet the elements of a violation under APPS. Specifically, Mr. Maestri claims that the DP MSV Uncle John was not "capable of being used as a means of transportation." This is patently incorrect as the DP MSV Uncle John is a self-propelled semi-submersible diving support vessel that is fully capable of being used as a means of transportation for the substantial crew it is certified to carry at any given time—well over the 15-person minimum. In fact, the Uncle John is equipped with no less than 102 sleeping berths and transported its entire crew under its own power from Pensacola, Florida to the work site where the illegal discharge took place. Additionally, it is a foreign-flagged

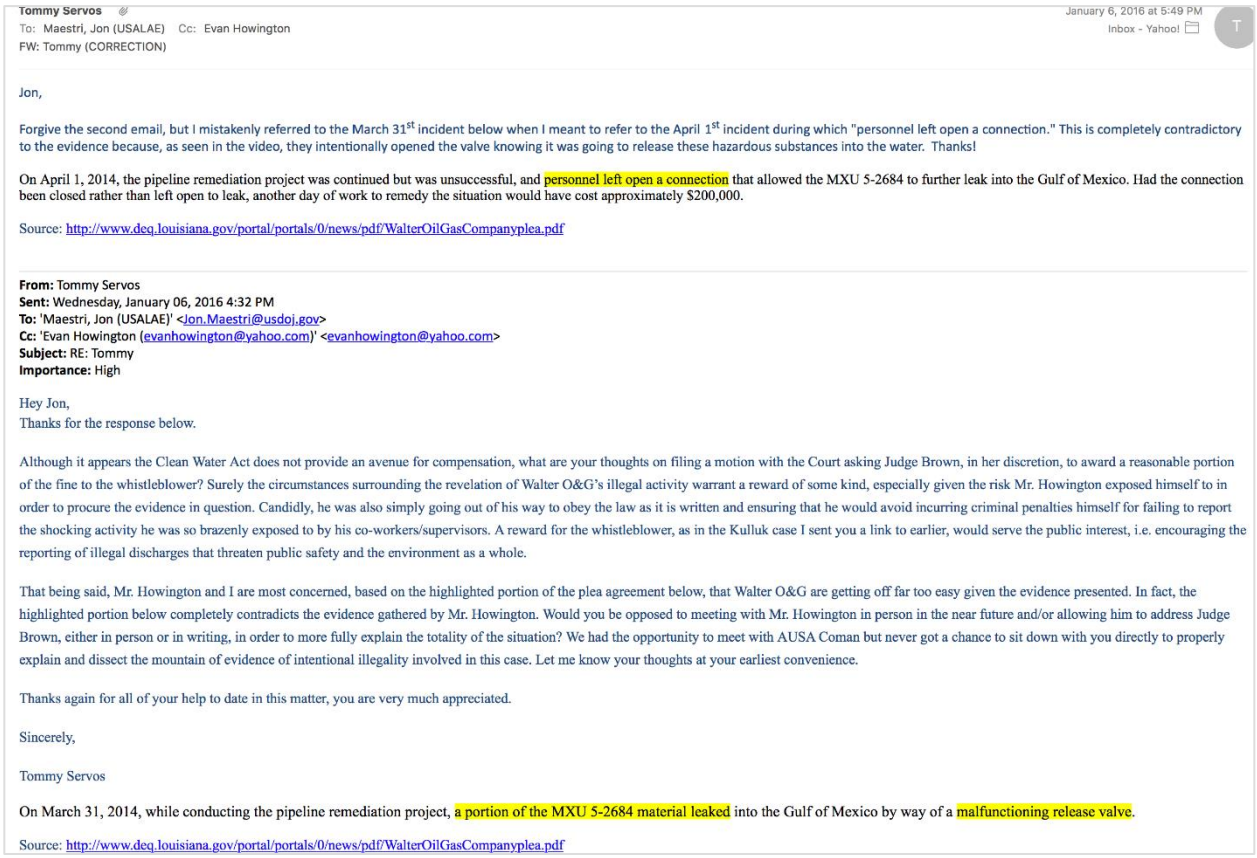
vessel flying the flag of the Bahamas and was operating in navigable waters of the United States at the time of the illegal discharges. Without question, APPS applies to the Uncle John.

Further, the DP MSV Uncle John is the same type of ship as the Kulluk, a vessel that was found to meet the elements of both The International Convention for the Prevention of Pollution from Ships ("MARPOL") and APPS. The Kulluk is classified as a Drill Ship which must be towed, while the DP MSV Uncle John is classified as a self-propelled saturation diving support vessel which can, and does, move under its own power. Below are images of the two ships for comparison.

Uncle John

Kulluk

Below you will find a screen shot of the response my attorney sent to AUSA Jon Maestri attempting to again explain the evidence provided of the intentional acts committed onboard the Uncle John.



Tommy Servos January 6, 2016 at 5:49 PM
To: Maestri, Jon (USALAE) Cc: Evan Howington Inbox - Yahoo!
FW: Tommy (CORRECTION)

Jon,

Forgive the second email, but I mistakenly referred to the March 31st incident below when I meant to refer to the April 1st incident during which "personnel left open a connection." This is completely contradictory to the evidence because, as seen in the video, they intentionally opened the valve knowing it was going to release these hazardous substances into the water. Thanks!

On April 1, 2014, the pipeline remediation project was continued but was unsuccessful, and personnel left open a connection that allowed the MXU 5-2684 to further leak into the Gulf of Mexico. Had the connection been closed rather than left open to leak, another day of work to remedy the situation would have cost approximately $200,000.

Source: http://www.deq.louisiana.gov/portal/portals/0/news/pdf/WalterOilGasCompanyplea.pdf

From: Tommy Servos
Sent: Wednesday, January 06, 2016 4:32 PM
To: 'Maestri, Jon (USALAE)' <Jon.Maestri@usdoj.gov>
Cc: 'Evan Howington (evanhowington@yahoo.com)' <evanhowington@yahoo.com>
Subject: RE: Tommy
Importance: High

Hey Jon,
Thanks for the response below.

Although it appears the Clean Water Act does not provide an avenue for compensation, what are your thoughts on filing a motion with the Court asking Judge Brown, in her discretion, to award a reasonable portion of the fine to the whistleblower? Surely the circumstances surrounding the revelation of Walter O&G's illegal activity warrant a reward of some kind, especially given the risk Mr. Howington exposed himself to in order to procure the evidence in question. Candidly, he was also simply going out of his way to obey the law as it is written and ensuring that he would avoid incurring criminal penalties himself for failing to report the shocking activity he was so brazenly exposed to by his co-workers/supervisors. A reward for the whistleblower, as in the Kulluk case I sent you a link to earlier, would serve the public interest, i.e. encouraging the reporting of illegal discharges that threaten public safety and the environment as a whole.

That being said, Mr. Howington and I are most concerned, based on the highlighted portion of the plea agreement below, that Walter O&G are getting off far too easy given the evidence presented. In fact, the highlighted portion below completely contradicts the evidence gathered by Mr. Howington. Would you be opposed to meeting with Mr. Howington in person in the near future and/or allowing him to address Judge Brown, either in person or in writing, in order to more fully explain the totality of the situation? We had the opportunity to meet with AUSA Coman but never got a chance to sit down with you directly to properly explain and dissect the mountain of evidence of intentional illegality involved in this case. Let me know your thoughts at your earliest convenience.

Thanks again for all of your help to date in this matter, you are very much appreciated.

Sincerely,

Tommy Servos

On March 31, 2014, while conducting the pipeline remediation project, a portion of the MXU 5-2684 material leaked into the Gulf of Mexico by way of a malfunctioning release valve.

Source: http://www.deq.louisiana.gov/portal/portals/0/news/pdf/WalterOilGasCompanyplea.pdf

It is important to note that my attorney told AUSA Maestri that these crimes were intentional and that we would like to meet with him to discuss all of this evidence, because AUSA Maestri later claims in a letter to Judge Nannette Brown that we never once told him that these illegal discharges were intentional. Mr. Maestri was one of several individuals I and my attorney spoke to regarding our allegations of intentional wrongdoing. As a matter of fact, we also informed Assistant United States Attorney Matthew Coman, EPA investigators Matthew Myles and Richard

Moschilli, LDEQ Investigator Maureen Kennedy as well as Coast Guard investigators Marcus Vinson and Anthony Reynolds.

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 33 - PREVENTION OF POLLUTION FROM SHIPS

§ 1901. Definitions

(a) Unless the context indicates otherwise, as used in this chapter—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "Antarctica" means the area south of 60 degrees south latitude;

(3) "Antarctic Protocol" means the Protocol on Environmental Protection to the Antarctic Treaty, signed October 4, 1991, in Madrid, and all annexes thereto, and includes any future amendments thereto which have entered into force;

(4) "MARPOL Protocol" means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, and includes the Convention;

(5) "Convention" means the International Convention for the Prevention of Pollution from Ships, 1973, including Protocols I and II and Annexes I, II, V, and VI thereto, including any modification or amendments to the Convention, Protocols, or Annexes which have entered into force for the United States;

(6) "discharge", "emission", "garbage", "harmful substance", and "incident" shall have the meanings provided in the Convention;

(7) "navigable waters" includes the territorial sea of the United States (as defined in Presidential Proclamation 5928 of December 27, 1988) and the internal waters of the United States;

(8) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a ship or terminal, but does not include a person who, without participating in the management or operation of a ship or terminal, holds indicia of ownership primarily to protect a security interest in the ship or terminal;

(9) "operator" means—

(a) in the case of a ship, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(b) in the case of a terminal, any person, except the owner, responsible for the operation of the terminal by agreement with the owner;

(10) "person" means an individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body;

(11) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(12) "ship" means a vessel of any type whatsoever, including hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating platforms;

(13) "submersible" means a submarine, or any other vessel designed to operate under water; and

(14) "terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

(b) For purposes of this chapter, the requirements of Annex V shall apply to the navigable waters of the United States, as well as to all other waters and vessels over which the United States has jurisdiction.

(c) For the purposes of this chapter, the requirements of Annex IV to the Antarctic Protocol shall apply in Antarctica to all vessels over which the United States has jurisdiction.

According to 33 U.S.C. 1901 – Definitions, the Uncle John is clearly a "ship" as defined by APPS as it is "a vessel of any type whatsoever. That being so, my attorney and I were stunned

to receive an email from AUSA Jon Maestri in which he states, "Walter could not be charged with an APPS violation as the incident obviously did not involve a ship that is capable of being used as a means of transportation." APPS applies to ships of all kinds, even fixed platforms. With that being said the Uncle John, a semi-submersible platform type ship (floating platform defined under APPS), was and is capable of being used as a means of transportation and APPS clearly applies.

From: Maestri, Jon (USALAE) [mailto:Jon.Maestri@usdoj.gov]
Sent: Wednesday, February 03, 2016 12:05 PM
To: Tommy Servos <tservos@zehllaw.com>
Subject: Howington - 33 U.S. Code § 1908

Tommy,

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The MARPOL act , the *Kulluk* case, and Title 33 U.S.C. 1908 that you cited, only apply to incidents involving ships/vessels (APPS). Walter could not be charged with an APPS violation as the incident obviously did not involve a vessel or ship that is capable of being used as a means of transportation. The MARPOL Protocol, Annex IV was drafted to regulate sewage discharges into the sea from ships/vessels. The Annex applies to new ships brought into commerce after the enactment and ships that are engaged in international voyages of 400 gross tonnage and above or which are certified to carry more than 15 persons. It also only applies to ships that are flagged in ratifying countries, but because the United States has not ratified Annex IV, it is not mandatory that ships follow it when in U.S. waters. MARPOL 73/78 (the "International Convention for the Prevention of Pollution From Ships") is implemented through the Act to Prevent Pollution from Ships (APPS). APPS applies to all U.S.-flagged ships anywhere in the world and to all foreign-flagged vessels operating in navigable waters of the United States or while at port under U.S. jurisdiction. The regulatory mechanism established in APPS to implement MARPOL is separate and distinct from the Clean Water Act.

He also states MARPOL does not apply, however Regulation 39 states that fixed or floating platforms shall comply with the requirements of MARPOL ANNEX 1 as they pertain to ships of 400 gross tonnage or more. The Uncle John has a gross tonnage of 6947. Clearly, both MARPOL and APPS apply.

Additional Illegal Pollutant Discharges I Witnessed Onboard the Uncle John

In addition to the April 1, 2014 incident, I witnessed the discharge of hydraulic waste oil into the Gulf of Mexico for a period of 24 days straight. The waste oil was clearly over 15 parts per million, the limit imposed by Regulation 39 posted below. Again, AUSA Maestri failed to give us an opportunity to fully explain the allegations we had documented and, as a result, his client, the federal government of the United States of America, lost millions of dollars in fines that could have and should have been levied for these intentional illegal discharges.

Annex I- Regulations for the Prevention of Pollution by Oil

Chapter 7 - Special requirements for fixed or floating platforms

Regulation 39 - Special requirements for fixed or floating platforms

SEE INTERPRETATIONS 56.1 AND 56.2

1 This regulation applies to fixed or floating platforms including drilling rigs, floating production, storage and offloading facilities (FPSOs) used for the offshore production and storage of oil, and floating storage units (FSUs) used for the offshore storage of produced oil.

2 Fixed or floating platforms when engaged in the exploration, exploitation and associated offshore processing of sea-bed mineral resources and other platforms shall comply with the requirements of this Annex applicable to ships of 400 gross tonnage and above other than oil tankers, except that:

.1 they shall be equipped as far as practicable with the installations required in regulations 12 and 14 of this Annex;

.2 they shall keep a record of all operations involving oil or oily mixture discharges, in a form approved by the Administration; and

.3 subject to the provisions of regulation 4 of this Annex, the discharge into the sea of oil or oily mixture shall be prohibited except when the oil content of the discharge without dilution does not exceed 15 parts per million.

3 In verifying compliance with this Annex in relation to platforms configured as FPSOs or FSUs, in addition to the requirements of paragraph 2, Administrations should take account of the Guidelines developed by the Organization.*

Letter to Judge Nanette Brown

As the sentencing phase of the case was fast approaching and AUSA Jon Maestri was unwilling to meet with me to address my concerns, I, having no standing to bring a claim on my own for the intentional illegal acts I witnessed, was left with no choice but to write a letter to the Judge presiding over the case, Judge Nannette Brown of the Eastern District of Louisiana, detailing my concerns. Upon reading the letter, the Court asked both parties for consent to admit the document into the official record. In response, AUSA Jon Maestri, wrote "we would ask that the letter not be placed in the record." He also claimed, in his letter to Judge Brown, that I only now, at this late hour, began raising allegations of "negligent/intentional" discharges, excerpt below. This is patently false.

contained within the factual basis as well as the fine Walter Oil & Gas Corporation is going to pay. Had Walter C & Gas Corporation been charged with a different statute than failing to report (namely either the negligent/intentional discharge that Mr. Howington now wants) the maximum fine would have been only $50,000 under 33 USC 1319(1) and (2) and 33 USC 1321(b)(3). The felony offense that Walter Oil & Gas

Conclusion

In conclusion, this letter is not intended to be an exhaustive account of what happened. It is only intended as a brief summary of the events that occurred during my hitch onboard the Uncle John and subsequently. AUSA Jon Maestri's negligence cost his client, the federal government of the United States of America, at least an estimated $28,000,000 dollars in fines. Just as I have been willing to cooperate since the very beginning, I remain committed to doing whatever I can to make sure that justice is done. While the DOJ should have all of the evidence I and my attorney provided during our in-person meeting with AUSA Matthew Coman in New Orleans on September 17, 2014, I have gone ahead and included a thumb drive complete with all of the evidence supporting my allegations regarding the estimated twenty-eight million dollar ($28,000,000.00) property loss to

the United States federal government, a reasonable portion of which should have gone to the whistleblower for public policy purposes.

Evan Howington