




United States Department of the Interior

Office of Inspector General
Washington, D.C. 20240

September 19, 2007

Memorandum

To: Secretary Kempthorne
C. Stephen Allred
Assistant Secretary – Land and Minerals Management

From: Earl E. Devaney 
Inspector General

Subject: Transmittal of Office of Inspector General Report of Investigation – “Minerals Management Service: False Claims Allegations”

With this memorandum, I am transmitting the Office of Inspector General (OIG) Report of Investigation, “Minerals Management Service: False Claims Allegations.” This Report of Investigation chronicles a series of events that led to the filing of multiple *qui tam*, or false claims, lawsuits by employees and former employees of the Minerals Management Service (MMS). It also reports on numerous incidents of alleged retaliation against these employees and former employees.

This report tells the tale of Minerals Revenue Management (MRM), a program within MMS fraught with difficulties stemming from myriad causes: it presents examples of a systemic dilemma in MMS – that of the bureau’s conflicting roles and relationships with the energy industry. It also hints of a profound failure in the development of a critical MRM information technology (IT) system; it reveals a working environment in which poor communication, or no communication, compounded an already existing element of distrust; and it demonstrates a band-aid approach to holding together one of the Federal Government’s largest revenue producing operations. In addition, we discovered a number of other significant issues worthy of separate investigation, including ethics lapses, program mismanagement and process failures.

Our investigation revealed a complex, and sometimes confusing, array of facts. In order to minimize complexity and confusion, we report our findings by 1) the *qui tam* lawsuits and their respective bases, 2) employee reporting requirements, and 3) use of official and/or proprietary data/information. We also chronicle multiple allegations of reprisal and address these in a separate section of our report.

We found that the collective bases for the *qui tam* lawsuits were either premised on a lack of knowledge of other MMS efforts to collect royalties and interest or the relators’ (person bringing the claim) fundamental disagreement with MMS management decisions and MMS

guidance that the oil companies were following. Better communication about management's decisions may have forestalled the filing of these lawsuits.

On the other hand, in the case of interest calculations – where MRM established a policy, nearly a decade ago, that it would assume that calculation of interest was a “hardship” on the oil companies if their payment forms did not include interest – no amount of communication would likely convince the relators, or the general public, that this was a sound policy decision. Rather, even the Associate Director of MRM conceded that this was the “easy way.” Instead, MRM has manually calculated interest for the oil companies for years, while it has also spent considerable amounts of money to modify its IT system to calculate interest automatically. To date, the effort to automate interest calculations has been largely unsuccessful. The original procurement of and subsequent modifications to this system are now the subject of a separate OIG investigation.

In each of these cases, we found that the relators failed to follow either MMS or Departmental reporting requirements. Again, however, systemic communications failure exasperated the relators' fundamental distrust that their management chain would proceed appropriately. As for the propriety of auditors using information obtained in the course of their jobs to bring a *qui tam* lawsuit, the courts have opined that government employees such as these relators were not, as a class, automatically precluded from bringing claims based on facts they learned during the course of their official duties.

Our findings concerning the use of official and/or proprietary information remain inconclusive, primarily due to dated, vague policies and rules and poor overall document control. We are also given pause by certain of the relators' assertions that, in effect, by filing *qui tam* lawsuits, the records never left the custody of the government, although we reserve judgment as to the validity of this assertion.

Lastly, we considered 18 allegations of retaliation against the relators. Taken individually, the allegations of retaliation range from trivial to troubling. Although we found no conclusive evidence that MMS deliberately retaliated against the relators, we found some disconcerting behavior – among other things, management's manifest inattention to personnel matters affecting the reassigned relators when MMS management should have been paying extraordinary attention. Taken collectively, this created an environment where reprisal could certainly be perceived.

As you may know, two of the *qui tam* cases have since been dismissed – one on jurisdictional grounds, but the other on substantive grounds. The reasoning in the latter decision would suggest that the remainder of the cases might be dismissed as well.

Regardless, the findings of our investigation call for a number of improvements in the management of the MRM program, particularly in regard to document control, guidance clarification (and, in the case of the interest calculation “hardship” policy, perhaps rescission), and far greater attention to the management and treatment of the reassigned relators. For a manager to claim that “paperwork is not my forté” regarding critical personnel matters is simply inexcusable.

Finally, it should go without saying that my expectation is that none of the witnesses identified in our report, especially those who provided us with their most candid views, will suffer any sort of retaliation or retribution for their cooperation with the OIG in this investigation.

If you have any questions or concerns about this report, please do not hesitate to contact me at (202) 208-5745.



Investigative Report

Minerals Management Service False Claims Allegations

Report Date: September 7, 2007
Date Posted to Web: September 26, 2007

This report contained information that has been redacted pursuant to 5 U.S.C. §§ 552(b)(2), (b)(4), (b)(5), (b)(6) and (b)(7)(C) of the Freedom of Information Act and the Privacy Act, 5 U.S.C. § 552a. Some references indicating gender are written in the masculine form to protect the identities of individuals and to facilitate the reading of the report.

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RESULTS IN BRIEF

We initiated this investigation at the request of Secretary Dirk Kempthorne, who asked us to assess the legitimacy of claims made in a series of *qui tam* lawsuits filed by Minerals Management Service (MMS) auditors against oil companies for alleged underpayments of royalties and interest owed. The Secretary also asked us to examine whether or not the auditors had followed proper procedures for reporting their allegations, whether they had improperly used proprietary information in pursuing their claims, and, finally, whether or not they had been retaliated against by MMS for filing these lawsuits. We also received multiple requests from members of Congress to examine the same concerns.

Ultimately, we determined that the claims made in the auditors' *qui tam* lawsuits were either based on a lack of knowledge of other MMS efforts to collect royalties and interest or the auditors disagreed with both MMS management decisions and MMS guidance that the companies were following. During the course of investigating these issues, we found a number of other significant concerns, worthy of separate investigation, including program mismanagement and process failures.

We also found that the auditors did not properly report their suspicions of wrongdoing to the appropriate authorities, including the Office of Inspector General (OIG), and we determined that the auditors removed and used proprietary, sensitive, or confidential business information without authorization. While we found no evidence that MMS deliberately retaliated against the *qui tam* relators, we did observe a myriad of human resource *faux pas*, which, taken collectively, created an environment where reprisal could be perceived.

We presented our findings regarding the auditors' potential misuse of government records for their lawsuits to the Department of Justice (DOJ). DOJ declined criminal prosecution. Based on our review of MMS's document control process, we find the prospect of any sustainable administrative action problematic.

We are referring this case to the Assistant Secretary for Lands and Minerals Management for any follow-up action that he deems appropriate.

BACKGROUND

Minerals Management Service

MMS manages the nation's natural mineral resources on the Outer Continental Shelf and on some federal and Indian lands. MMS also collects, accounts for, and disburses more than \$8 billion per year in revenue from these offshore and onshore mineral leases. Two major programs comprise MMS – Offshore Minerals Management and Minerals Revenue Management (MRM). Offshore Minerals Management manages the mineral resources on the Outer Continental Shelf, and MRM is responsible for managing all revenues associated with offshore and onshore federal mineral leases. This effort is one of the federal government's greatest sources of non-tax revenues. MRM processes rents and royalties from nearly 70,000 leases each year and employs about 600 federal and 300 contractor personnel. The Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 1701, and the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, 30 U.S.C. § 1701, form the basis for MRM oversight and regulatory enforcement activities.

MRM collects royalties from oil and gas companies through requirements established in two types of leases. Royalty in Value (RIV) leases require that the lessee pay the federal government, through MRM, a percentage of the monetary value of the oil or gas brought to the market. Royalty in Kind (RIK) leases differ in that MRM takes possession of a percentage of the product (oil or gas), at the designated delivery point, which is frequently the platform where the oil or gas is brought to the surface. MRM then arranges for transportation of the oil or gas, markets it, and sells it.

A significant change under the Royalty Simplification and Fairness Act of 1996 was that oil and gas companies (leaseholders) became required to calculate interest with their late payments or underpayments for royalties owed to MRM, unless they claimed that calculation of the interest was a hardship. If companies claimed a hardship, MRM would then calculate the interest for them. The Royalty Simplification and Fairness Act also required that MRM pay interest to leaseholders who made overpayments.

Qui Tam

Qui tam is an abbreviation for a Latin phrase meaning “he who brings a case on behalf of our lord the King, as well as for himself.” The term *qui tam* is a provision of the Civil False Claims Act, 31 U.S.C. §§ 3701 – 3733, that allows a private citizen to file a suit on behalf of the United States alleging that the defendant(s) defrauded the government. The False Claims Act provides that the person who files the *qui tam* lawsuit, called a relator, may receive between 15 and 30 percent of any money recovered. The relator's complaint is filed under seal in a federal district court. Copies of the relator's complaint and a disclosure statement of evidence are provided to DOJ.

Following receipt of the complaint and disclosure statement, DOJ conducts an investigation of the allegations with support from the appropriate law enforcement

agency, such as the Department of the Interior's (DOI) OIG. Upon completion of its investigation, DOJ will either intervene and prosecute the lawsuit, decline to intervene and allow the relator to proceed alone, or seek to dismiss the lawsuit.

The OIG supports DOJ's investigation of *qui tam* complaints that involve DOI by coordinating interviews, obtaining records, and performing other activities at the direction of DOJ attorneys who are tasked with conducting the investigation. DOJ leads the investigation and decides whether the government will participate in prosecution of the lawsuit.

Between 1998 and 2004, the OIG jointly conducted royalty *qui tam* investigations with DOJ resulting in the recovery of more than \$568 million from 25 U.S. companies operating oil, natural gas, coal, and other activities on federal and Indian lands.

The Auditors' False Claims Act Lawsuits

On June 14, 2004, MRM Manager Bobby Maxwell filed a *qui tam* lawsuit under the False Claims Act in the Federal District Court for the District of Colorado because he believed Kerr-McGee Corporation (Kerr-McGee) had failed to properly fulfill its lease obligations, thereby depriving the government of appropriate royalties.

MRM auditors Randy Little and Lanis Morris filed a *qui tam* lawsuit on November 30, 2005, in the Federal District Court for the Western District of Oklahoma. They alleged that 25 oil companies did not comply with the requirements of the Royalty Simplification and Fairness Act when they failed to calculate and pay interest, thereby depriving the government of interest owed on late royalty payments and underpayments of royalty obligations.

On February 3, 2006, Little filed another *qui tam* lawsuit in the Federal District Court for the Western District of Oklahoma alleging that ENI Petroleum Company, Inc., and AGIP Exploration Company took unallowable oil transportation deductions, thereby depriving the government of appropriate royalties owed on lease production.

On February 15 and March 14, 2006, MRM auditors Little and Joel Arnold jointly filed two *qui tam* lawsuits in the Federal District Court for the Western District of Oklahoma alleging that Royal Dutch Shell P.L.C., Shell Exploration and Productions Company, Shell Deepwater Development Systems, Inc., and Shell Offshore, Inc., (Shell) took unallowable oil transportation deductions, thereby depriving the government of appropriate royalties owed on lease production.

Upon notification that the above-mentioned lawsuits had been filed, DOJ, with assistance from the DOI Office of the Solicitor (SOL) and the DOI-OIG, initiated investigations into the merits of these lawsuits. The SOL concluded, based upon the results of the investigations conducted in 2004 and 2006, and their legal analysis, that the auditors' complaints lacked merit.

DOJ declined to intervene in Maxwell's lawsuit on January 7, 2005, and declined to intervene in the lawsuits filed by Arnold, Little, and Morris on September 8, 2006.

Employee Reporting Requirements

The MRM Audit Manual directs that in accordance with Part 355 of the Departmental Manual, Chapter 2.1(c), each employee has the duty to report known, suspected, or alleged fraud, waste, or abuse affecting departmental programs or operations to the OIG Assistant Inspector General for Investigations. Employees are directed to do so through official channels or by filing a complaint directly to the OIG if the employee feels the circumstances require a direct referral.

MMS's Internal Quality Control System, Audit and Compliance Policies and Procedures, advises employees that any actions that could be considered potentially fraudulent, abusive, or illegal should be brought immediately to the attention of the audit manager for appropriate follow-up in accordance with the MRM Audit Manual.

We found that the MRM Office of Enforcement also conducts periodic Illegal Acts Awareness training for MMS personnel. In this training, MMS employees are advised that MRM policy requires employees to report known, suspected, or alleged illegal acts to the OIG without fear of reprisal. MRM policy requires that employees also notify their supervisor and/or the MRM Office of Enforcement if they believe these acts may have occurred.

Use of Official and/or Proprietary Data/Information

Our review of the MMS Information Technology Rules of Behavior revealed that employees are advised that access to confidential or sensitive information shall be restricted to authorized individuals who need the information to conduct their jobs. Additionally, employees are advised that they should not access data outside of performing their official duties and should not give information to other potentially unauthorized employees or outside individuals.

We found that the MMS memorandum titled, "Guidance and Procedures for Handling Requests for Royalty Management Program Proprietary Data/Records," dated February 27, 1995, contains the following information:

- A definition of proprietary data.
- Examples of reports, including the MMS Form 2014, that contain proprietary data.
- Situations when employees may release proprietary data/records.
- Notification that employees are responsible for protecting proprietary information from unauthorized disclosure.
- Discussion of mandatory annual training on how to handle requests for proprietary data and records.

The MMS Audit Manual, Chapter 5.7, Safeguarding Work Papers, directs that confidential, privileged, or proprietary information received and used by MMS employees and government contractors must be protected from unauthorized disclosure.

The MMS Manual, Part 386, states that individual MMS employees are responsible for the safe-guarding and security of proprietary data/information. The MMS Manual calls for “stringent administrative action” against any MMS employee or representative who discloses proprietary data/information for any purpose other than in the performance of his/her responsibilities as an employee or representative of MMS.

A review of the DOI Departmental Manual, Part 370, Chapter 752, Discipline and Adverse Actions, Table of Offenses and Penalties, disclosed the following:

- Improper or unauthorized release of sensitive and administratively controlled information in which the release of the restricted information is deliberate may result in a 30-day suspension to removal.
- Using public office for private gain may result in a 5-day suspension to removal.
- Participating in particular matters while having a conflicting financial interest may result in a 5-day suspension to removal.
- Unauthorized use of nonpublic information may result in a written reprimand to removal.

DETAILS OF INVESTIGATION

We initiated this investigation at the request of Secretary Dirk Kempthorne, who asked us to assess the legitimacy of claims made in a series of *qui tam* lawsuits filed by Minerals Management Service (MMS) auditors against oil companies for alleged underpayments of royalties and interest owed. The Secretary also asked us to examine whether or not the auditors had followed proper procedures for reporting their allegations, whether they had improperly used proprietary information in pursuing their claims, and, finally, whether or not they had been retaliated against by MMS for filing these lawsuits. We also received multiple requests from members of Congress to examine the same concerns.

Initially, we focused our investigation on (1) the legitimacy of the underlying claims made in any of the *qui tam* lawsuits; (2) whether the MMS auditors brought their claims to the attention of MMS, DOJ, or the OIG and what response they received; (3) the relators' use of official and/or proprietary data/information; and (4) the auditors' claims of retaliation. During the course of investigating these issues, we found a number of other significant concerns, worthy of separate investigation, including program mismanagement and process failures.

Recognizing the enormity of the investigative challenges associated with the auditors' allegations and the need for expediency, we created an investigative team composed of investigators, special agents, and support personnel from our Program Integrity Division, Computer Crimes Unit, and all but one of our four regional offices. We interviewed over 65 individuals, many on multiple occasions, during the course of this investigation and ultimately reviewed over 7,000 e-mails and hundreds of documents to determine the facts.

We organized this report into five sections. Each of the first four sections includes a specific discussion of the relators' lawsuit, the results of our investigation pertaining to that particular lawsuit, and our findings regarding whether the relators complied with requirements for reporting suspicions of fraud and for safeguarding official and proprietary documents. The two lawsuits against Shell are presented in one section (the fourth section) due to the similarity of the issues and involvement of many of the same witnesses. The fifth section of this report presents the relators' allegations of reprisal as well as the results of our investigation of those claims.

Bobby L. Maxwell v. Kerr-McGee Corporation et al

Maxwell's *Qui Tam* Complaint

On June 14, 2004, Bobby Maxwell, Senior Auditor, MRM, Lakewood, CO, filed a lawsuit under the False Claims Act against Kerr-McGee to recover monies owed to the United States arising from the defendant's obligation to pay federal oil royalties. *Note: Maxwell was a re-employed annuitant at the time of his filing and is now retired. A re-employed annuitant is an individual who is retired from federal service and has been rehired by the government.*

Maxwell, in his Complaint and Jury Demand, claimed that Kerr-McGee sold oil produced from federal lands (including offshore in the Gulf of Mexico) to Texon Corporation at a reduced price in exchange for Texon marketing the oil. He stated that Kerr-McGee was required to base its royalty payment to the government on the fair market value of the oil (but instead based it on the reduced price). According to Maxwell's complaint, the lessee is required to place the oil in marketable condition at no cost to the government and that placing the oil in marketable condition "has been held [by the courts] to include the expense of marketing the oil." Maxwell claimed that Kerr-McGee underreported the royalty value of oil from January 1999 through approximately July 2003. *Note: Maxwell submitted these allegations based upon information he derived from an official MRM audit.*

Specifically, Maxwell brought his suit on behalf of the U.S. Government for the alleged false claims made by Kerr-McGee through monthly submission of MMS Form 2014, Report of Sales and Royalty Remittance, in which Kerr-McGee certified that its royalty reporting and payments complied with applicable federal laws and regulations.

Maxwell asserted that Kerr-McGee was prohibited from (1) reducing the price and having the purchaser (Texon) market the oil and (2) accepting less than full market price as an accommodation for the purchaser's marketing expense. He said Kerr-McGee violated applicable federal royalty regulations and made false statements on its monthly submission of Form 2014.

Maxwell also asserted that during an MRM audit beginning on September 25, 2001, auditors found a 1996 memorandum authored by Kerr-McGee in which, according to Maxwell, Kerr-McGee conducted an economic analysis of the benefit of maintaining an existing contract with Texon to sell federal oil at below market price while allowing Texon to incur the expense of marketing the federal oil. Maxwell stated that the 1996 Kerr-McGee memorandum recommended renewal of the Texon contract because Kerr-McGee's cost to market, [Exemption 4], exceeded the difference between the fair market value and the price received from Texon, [Exemption 4].

Maxwell concluded that Kerr-McGee had substantially underpaid its federal oil royalties by accepting less-than-market price for the oil in exchange for Texon incurring marketing expenses. Maxwell claimed that he and other MRM auditors had conducted an economic

analysis of Kerr-McGee's deficiency for January 1, 2000, through December 31, 2000, and concluded that Kerr-McGee owed the federal government approximately \$7.6 million for the questioned period.

2004 Investigation in Response to *Qui Tam* Filing

Upon receipt of Maxwell's filed *qui tam* complaint on or about June 14, 2004, DOJ notified both the DOI-SOL and the DOI-OIG of the *qui tam* lawsuit and requested assistance in determining the merits of the claim.

An SOL Attorney-Advisor was assigned to assist DOJ. An OIG Special Agent was assigned to provide investigative assistance. Associate Solicitor James Harris also participated in the review of Maxwell's claims.

According to the Attorney-Advisor, DOJ, the SOL, and the OIG conducted an in-depth investigation into the merits of Maxwell's claims, which included multiple joint interviews, document reviews, and legal analysis.

The Attorney-Advisor reported that a full analysis of Kerr-McGee's oil/gas sales over the time period identified in the lawsuit was conducted and that no evidence was found indicating that Kerr-McGee regularly sold its products at a significantly lower rate than other companies.

According to the Attorney-Advisor, the analysis determined that during the identified time period, Kerr-McGee's sale prices were both below and above average market prices.

The Attorney-Advisor stated that, in his opinion, the actions taken and the decisions made by the MMS officials not to support Maxwell's Issue Orders were both legal and an appropriate use of discretion. **Note:** An "Issue Order" is a demand, often for additional royalties, sent after MRM concludes money is owed.

According to both Harris and the Attorney-Advisor, upon completion of their investigation, the SOL consulted with DOJ concerning the relators' lawsuit. Subsequently, DOJ filed its Notice of Election to Decline Intervention in the U.S. District Court for the District of Colorado on January 7, 2005.

Subsequently, Maxwell proceeded with his lawsuit alone, and on January 23, 2007, in the U.S. District Court for the District of Colorado, a jury found that Maxwell had proved by a preponderance of the evidence that Kerr-McGee knowingly made or used a false record or statement in order to conceal, avoid, or decrease an obligation to pay money to the U.S. Government, in violation of the False Claims Act. The jury determined the unpaid dollar amount to be \$7,555,886.

However, on March 30, 2007, U.S. District Judge Phillip Figa, for the District of Colorado, dismissed Maxwell's *qui tam* suit. Citing Tenth Circuit precedent, Judge Figa ruled that 31 U.S.C. § 3730(e)(4) required the court to reject the claim because, in

essence, Maxwell's initial disclosure to the government of the allegations could not have been "voluntarily provided" because his job duties required him to do so. Judge Figa noted that government employees such as Maxwell were not, as a class, automatically precluded from bringing claims based on facts they learned during the course of their official duties. The court, however, dismissed the case for lack of subject matter jurisdiction.

2005 [Exemptions (b)(6) and (b)(7)(C)] Complaint About Maxwell

On July 1, 2005, an MMS Employee Relations Advisor sent a memorandum to the OIG that included a complaint, [Exemptions (b)(6) & (b)(7)(C)]. The complainant alleged that two MMS managers failed to pursue underpayment of royalties by Kerr-McGee and that one of the managers may have suppressed other enforcement actions. The complaint alleged that the two managers engaged in a conflict of interest; misused government time, equipment, and information; violated the Federal Standards of Conduct for employees; obstructed official government functions; and failed to pursue enforcement actions against Kerr-McGee.

[Exemptions (b)(6) and (b)(7)(C)]

After receipt of the complaint, interviewing the complainant, and a discussion with a DOJ Trial Attorney, we decided not to open an official investigation until additional developments or information were forthcoming.

2006 OIG Investigation of Maxwell's Claims

In September 2006, the OIG initiated a new investigation into the legitimacy of Maxwell's claims and his assertion that the decision made by MMS management not to pursue collection of additional royalties was improper. In addition, we addressed Maxwell's other assertions, obtained from his response to Kerr-McGee's request for summary judgment, and whether or not Maxwell had complied with DOI/MMS policies when filing his claim.

Our repeated efforts to interview Maxwell for this investigation were unsuccessful – he would not agree to an interview with the OIG. However, his Attorney provided material that had been filed on Maxwell's behalf in opposition to a Kerr-McGee Motion for Summary Judgment, believing it would be helpful to the OIG investigation.

Included in the material was an affidavit filed by Maxwell on April 1, 2005, which asserted, in part, the following:

- The Deputy Associate Director, Offshore Compliance and Asset Management, MRM (formerly the Program Manager, Offshore Compliance and Asset Management, MRM), stated that the SOL had concerns about Maxwell's proposed Issue Orders for Kerr-McGee – requesting that Kerr-McGee pay additional royalties – and that a subsequent telephone conference with the DOI-

SOL resulted in the SOL attorneys discouraging issuance of the Orders. Maxwell alleged that the attorneys did not identify any weaknesses in the proposed Orders or the underlying regulations used to support the Orders.

- A Program Manager, Office of Enforcement, MRM, initially agreed that a case could be made to support Maxwell's proposed Orders but remained silent during discussion with the SOL attorneys. The Program Manager contacted Maxwell the day following the discussion with the SOL attorneys and told Maxwell that the now former MMS Director would be upset if he (Maxwell) issued the Orders to Kerr-McGee.
- MRM did not close its audit of Kerr-McGee because the issues identified by Maxwell appeared to be valid and because "outside sources" were looking into the issues.
- Deborah Gibbs Tschudy, Deputy Associate Director, MRM, directed the MMS Internal Quality Control Review team to delete findings from a review of the Kerr-McGee audit file concluding that an "issue for sales to Texon had not been pursued for no apparent reason."

Legitimacy of Maxwell's Claim

In his lawsuit, Maxwell claimed that during the MRM audit of Kerr-McGee in 2002, MRM conducted an economic analysis of Kerr-McGee's royalty payments for January 1, 2000, through December 31, 2000, and concluded that Kerr-McGee owed the federal government approximately \$7.6 million for the audit period.

Maxwell reported sending an Issue Letter to Kerr-McGee on November 15, 2002, requesting that Kerr-McGee pay additional royalties he believed were owed based upon the analysis noted above. *Note: "Issue Letters" advise payors that MRM is questioning an action of the payor and requests a response in which the payor concurs or disputes the matters addressed in the letter.*

Kerr-McGee responded, through its legal counsel, on January 21, 2003. In its response, Kerr-McGee claimed that the Issue Letter was inconsistent with MMS regulations, including language in 30 C.F.R. § 206.102(c)(2)(A) that states, "MMS will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length contract." *Note: MMS defines an arm's-length contract as a contract between two independent companies that are not affiliated and have opposing economic interests regarding the contract.*

Kerr-McGee also cited language in 30 C.F.R. § 206.102(c)(2)(B) that stated the following:

[T]he fact that a price received by a seller under an arm's-length contract is less than...index prices, is insufficient to establish breach of the duty to

market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease.”

Kerr-McGee, after providing additional arguments of why Maxwell’s Issue Letter was inconsistent with regulations, requested that MRM withdraw Maxwell’s Issue Letter.

Subsequently, Maxwell prepared two proposed Issue *Orders* to Report and Pay Additional Royalties for Kerr-McGee. One Order evaluated the difference between the fair market price and the actual sales price of the oil, with accommodation for a reasonable transportation allowance, and concluded that Kerr-McGee owed approximately \$9.2 million. The other Order considered the reasonable cost of marketing the oil and concluded that Kerr-McGee owed approximately \$10 million.

Maxwell asserted that when he requested authority to transmit the Orders to Kerr-McGee, he was expressly dissuaded by his superiors from pursuing any action against Kerr-McGee. He further alleged that the SOL attorneys did not identify any weaknesses in the proposed Orders or the underlying regulations used to support them.

We interviewed the Program Manager (now retired), Offshore Compliance and Asset Management, MRM, who was Maxwell’s supervisor at the time Maxwell was pursuing the collection of additional royalty payments from Kerr-McGee. When interviewed concerning Maxwell’s claims, the Program Manager stated that Maxwell was not sure what to do about the collection issue and brought the proposed Issue Orders to him for guidance. In response to Maxwell’s request for guidance, the Program Manager said he facilitated a teleconference with the SOL. According to the Program Manager, the participants of this teleconference included Lucy Querques Denett, Associate Director, MRM; Geoff Heath, Assistant Solicitor for Royalty and Offshore Minerals, Division of Mineral Resources, SOL; the SOL Attorney-Advisor; and Maxwell. *Note: When interviewed, Denett denied participating in the teleconference. Heath and the Attorney-Advisor did not recall if Denett participated. No records were found to document the actual participants of this teleconference.*

According to the Program Manager, the SOL noted that the regulations regarding arm’s-length contracts were specific and that the issue set out in Maxwell’s Orders could not be defended in court without additional evidence. He stated that the SOL essentially concluded that there was not enough evidence to issue the Orders to Kerr-McGee.

During the interview, the Program Manager provided his opinion regarding the crude oil prices that Texon paid to Kerr-McGee. He said he believed the regulations (referring to the Code of Federal Regulations) precluded a review of arm’s-length contracts unless there was some evidence of collusion or fraud, and according to the Program Manager, Maxwell and the other auditors had presented no such evidence. The Program Manager explained that the situation was similar to houses for sale in a certain neighborhood with listed prices ranging from \$120,000 to \$130,000, and one of the houses selling for \$80,000. He stated that the sale of the house for \$80,000 could not be questioned by the

IRS unless there was additional evidence indicating it was improper. He added the following information in reference to these regulations:

[Y]ou can't be in the business of sending out Orders we can't enforce just to see...who's going to salute the flag when you raise it...you have a regulation that says you need something besides that before you can issue that Order. If you issue it, then you're really not following the spirit of what the law and the regs are asking you to do, and that's what we've got to do. We didn't get to make that rule; we didn't get to make that law. We just get to try and follow them as best we can.

The Program Manager opined that issuing an Order that could not be legally defended in court was “not what we do.” He said, “That’s a violation of public trust to do that, in my mind.”

According to the Program Manager, he directed the auditors to obtain more information from Kerr-McGee pertaining to its royalties. He said he also decided to recommend that the Kerr-McGee leases be converted to RIK. *Note: We found no evidence that Maxwell, as the manager for the auditors, or the Program Manager, as Maxwell’s supervisor, directed or encouraged auditors to seek additional information from Kerr-McGee.*

Geoff Heath, Assistant Solicitor for Royalty and Offshore Minerals, Division of Mineral Resources, SOL, said he participated in a teleconference with the former Deputy Associate Solicitor, Division of Mineral Resources, SOL; the Program Manager; and Maxwell regarding the potential issuance of two Issue Orders by MRM to Kerr-McGee. Heath stated that MRM was seeking advice from the SOL regarding the legal sufficiency of the proposed Orders. He stated that during the teleconference, he and the former Deputy Associate Solicitor advised the Program Manager and Maxwell that the SOL believed that, based upon the facts Maxwell presented, Maxwell’s concept behind the draft Orders was not supported by the applicable regulations. In reliance upon this guidance, he said MRM consequently decided not to issue the proposed Orders to Kerr-McGee. *Note: We were unable to establish whether this was the same teleconference that the Program Manager reported that the SOL Attorney-Advisor attended.*

A review of the applicable regulations in the U.S. Code of Federal Regulations, Title 30, Mineral Resources, disclosed the following:

- 30 C.F.R. § 206.102(c)(1) states that “In conducting review and audits, if MMS determines that any arm’s-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, MMS may require that you value the oil sold under that contract either under § 206.103 or at the total consideration received.”
- 30 C.F.R. § 206.102(c)(2) states that “You must value the oil under § 206.103 if MMS determines that the value under paragraph (a) of the section does not reflect the reasonable value of the production due to either (i) misconduct by or between

the parties to the arm's-length contract; or (ii) breach of your duty to market the oil for the mutual benefit of yourself and the lessor. (A) MMS will not use this provision to *simply substitute its judgment* of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract [emphasis added]. (B) The fact that the price received by the seller under an arm's length contract is less than other measures of market price, such as index prices, is insufficient to establish breach of the duty to market unless *MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease*" [emphasis added].

Our investigation revealed further discussion of MMS policy on this subject in the Federal Register, Volume 65, Number 51, dated March 15, 2000 (page 14029), which states that "MMS emphasizes that this does not imply that lessees are somehow prohibited from marketing at the lease and must market production 'downstream.' Lessees [sic] may market at the lease without breaching the duty to market."

Our investigation disclosed that there was, in fact, disagreement within MRM about how to apply the regulations to the aforementioned situation involving Kerr-McGee and Texon. For instance, we found an e-mail authored by an Auditor, Indian Compliance and Asset Management, MRM, on January 13, 2004, sent to Joel Arnold, Supervisory Auditor, Compliance and Asset Management, MRM, and Lanis Morris, Auditor, MRM. A conversation record (attached to the e-mail) documented a meeting on June 4, 2003, between the Program Manager; Maxwell; a Supervisory Auditor, MRM; and the Auditor from Indian Compliance and Asset Management regarding Maxwell's belief that Kerr-McGee was underpaying royalties. In that conversation, the group discussed the validity of Maxwell's concerns and whether Kerr-McGee's sales prices were unreasonably low for an arm's-length contract.

According to the conversation record, the Program Manager said Kerr-McGee had no obligation to "market off the lease." He said the issue of underpaid royalties was a "breach of duty to market" case with the burden of proof on the government to show that Kerr-McGee's prices were unreasonable. Other participants disagreed with the Program Manager and claimed that the "preponderance of MMS and [Interior Board of Land Appeals] decisions uphold that the duty to market is implied in the lease and is the essence of the lease." They also said that if Kerr-McGee's competitors could get a "Platts price netted back to the lease for transportation," then the same prices were available to Kerr-McGee and that Kerr-McGee was not diligent in its requirement to market for the government. *Note: Platts is a consulting organization that provides information on energy and metals. Platts provides industry standard assessments of energy prices that assist companies with short-term and long-term contracts.*

According to the conversation record, the Program Manager also said MRM could not draw the conclusion that Kerr-McGee's prices on the arm's-length contract were unacceptable without data showing an intentional undervaluation. He added that Kerr-McGee received about \$60 million less than it could have by accepting the price negotiated in the arm's-length contract. In addition, the group suspected that there was

more to the arm's-length contract to entice Kerr-McGee to accept less-than market price but they had no evidence to support their suspicions.

The Program Manager agreed with meeting attendees, according to the conversation record, that MRM could issue an Order to Kerr-McGee for the marketing costs Kerr-McGee saved by allowing Texon to market the oil, but Maxwell and the Supervisory Auditor, MRM, did not believe that approach would be fruitful.

When interviewed, the Supervisory Auditor (now retired) said he agreed that Kerr-McGee had underpaid because Kerr-McGee eliminated its crude oil marketing department and was selling all of its crude oil to Texon. He recalled participating in a conference call with Maxwell, the Auditor for Indian Compliance and Asset Management, and the Program Manager. He said he believed the Program Manager wanted impossible tasks completed relating to the verification of oil prices before issuing an Order to Kerr-McGee. The Supervisory Auditor said he did not believe the Program Manager's reasons for neglecting to pursue the matter were adequate. According to the Supervisory Auditor, Maxwell said a Program Manager, Office of Enforcement, MRM, told him Secretary Norton did not want the Order issued and would be upset if it was.

An Employee in the Office of Enforcement, MRM, opined that the issues identified in Maxwell's lawsuit had potential merit. He said Kerr-McGee had a responsibility to market oil at a value beneficial to the company and to the government. He added that his understanding of the issue was that Kerr-McGee reported lower oil values to MRM than it actually received. The Office of Enforcement Employee, who was not directly involved in the issue, said he heard that the DOI-SOL had stopped Maxwell from sending an Issue Letter to Kerr-McGee. This Employee also said he had heard that James Cason, Associate Deputy Secretary of DOI, was involved in the decision to not send the Issue Letters. The Office of Enforcement Employee identified the Program Manager, Office of Enforcement, and Deborah Gibbs Tschudy, Deputy Associate Director, MRM, as the sources for his information.

When interviewed, the Auditor for Indian Compliance and Asset Management stated that Maxwell assigned him to assist on the Kerr-McGee audit by drafting two proposed Orders to Kerr-McGee outlining the crude oil issues identified by Maxwell. He explained that Maxwell thought he was a good writer and therefore had instructed him to draft the crude oil Orders to Kerr-McGee.

Further, the Auditor said, "[A]ll I had was the [Exemption (b)(7)(C)] letter and nothing else." He identified [Exemption (b)(7)(C)] as the law firm that provided Kerr-McGee's response to Maxwell's initial Issue Letter. He stated that the proposed Orders were his best efforts to find a weakness in the [Exemption (b)(7)(C)] argument. The Auditor said he found it difficult to allege misconduct due to the lack of evidence.

The Auditor explained that when he sent the January 13, 2004 e-mail to Arnold and Morris, he wrote, "...I think this is sufficient to document the closing of the Kerr Oil Issue." The Auditor said his reference to the closing of the Kerr-McGee issue was not

intended to imply that the Kerr-McGee oil issue was resolved. He explained that the conversation record was intended to document the decision by management not to pursue the issue any further. Furthermore, the Auditor said the Program Manager, Offshore Compliance and Asset Management, never told him or other members of the team to go back to Kerr-McGee to seek additional information.

When we interviewed the Program Manager, Office of Enforcement, MRM, he recalled that Maxwell brought an oil issue to his attention pertaining to Kerr-McGee and suggested it be included in the *gas* settlement negotiations that he was working on with SOL attorneys and Kerr-McGee. The Program Manager, Office of Enforcement, said he participated in a teleconference with Geoff Heath; a former Deputy Associate Solicitor; the MMS Chief of Policy and Appeals; Maxwell; and the Program Manager, Offshore Compliance and Asset Management. He said the group discussed Maxwell's proposed Orders to Pay Additional Royalties and decided not to include Maxwell's oil issues in the gas settlement negotiations.

He said that under the requirements of the arm's-length regulations, Kerr-McGee's decision could have been just a good business decision. He explained that without further information, there was not enough evidence to support Maxwell's claim. The Program Manager, Office of Enforcement, said there was no evidence of kick-backs or collusion, which would have been a different issue.

The Program Manager, Office of Enforcement, opined that Maxwell needed to do "more work" before they could present Kerr-McGee with an Order. He said he believed Kerr-McGee had somehow reduced its proceeds but did not agree with the amount Maxwell presented (i.e., the difference in the price that Kerr-McGee received at sale from the third party, Texon, and the price the third party received at resale, less transportation costs).

When asked about the former Supervisory Auditor's allegation that he told Maxwell that Secretary of the Interior Gale Norton did not want Maxwell to send an Order to Pay to Kerr-McGee, the Program Manager, Office of Enforcement, denied the allegation. He said he was not aware of any involvement by Norton in the discussions and decisions surrounding the issues Maxwell raised about Kerr-McGee.

The Chief, Policy and Appeals, MMS, told the OIG that he served as an attorney for the SOL from [Exemptions (b)(6) and (b)(7)(C)]. He said he had no recollection of participating in a meeting or discussion about Maxwell's proposed Issue Orders to Kerr-McGee. He recalled participating in nationwide crude oil settlements when he was the lead counsel for such actions but reiterated that he had no recollection of the issues raised by Maxwell or related discussions.

The Chief explained that it would have been normal for multiple SOL attorneys to discuss a crude oil issue with MMS managers because they maintained a close relationship with their clients. He commented that many of the regulations pertaining to royalty issues were "fuzzy" and explained that reading the regulations often resulted in different interpretations, causing many of the disputes between MMS and the oil industry.

We interviewed Lucy Querques Denett, Associate Director, MRM, who recalled being apprised by the Program Manager, Offshore Compliance and Asset Management, about the issue raised by Maxwell. She said the Program Manager intended to consult the SOL about it. She recalled the following:

... I think they got together and they discussed [Maxwell's proposed Issue Orders to Kerr-McGee] and the Solicitor's Office was really clear that there is no obligation to market downstream. There is nothing in the law or the regs to say you have to do that. And we can't go to benchmark ... in a non-arm's-length situation, unless we can show that it is a non-arm's-length situation. And they didn't have that. And so, [the Program Manager, Offshore Compliance and Asset Management,] may not have ... he didn't disagree with the Solicitors because he certainly didn't come to me and say, 'I disagree with what the Solicitor's Office is saying.' He basically had to concur because there was nothing in the record or anything that Bobby Maxwell showed him.

[The Program Manager] didn't like the fact that the price was lower than some of the other[s] [sic], but somebody makes a stupid business decision; it's a stupid business decision, not just for us but for them. And that's why we have the opportunity when we take it in-kind that ... if we think we can do better So the decision, they backed off of sending an Order.

Denett stated that the Program Manager, Offshore Compliance and Asset Management, believed MRM would fare better by taking the Kerr-McGee oil in kind and selling it. She noted that the MMS RIK Program was subsequently asked to convert the Kerr-McGee leases to in kind.

We interviewed the Coordinator, Internal Quality Control Review, MRM, regarding his knowledge of Maxwell's proposed Issue Orders. He said Maxwell visited him for about 5 minutes as Maxwell was leaving the building on his last day of work with MMS (February 25, 2005). According to the Coordinator, Maxwell told him that the Program Manager, Offshore Compliance and Asset Management, and others he did not name were listening during a telephone conversation when Maxwell was told to drop his case against Kerr-McGee. Maxwell claimed he had a conversation record regarding the discussion. According to the Coordinator, Maxwell also said the direction came from someone in Washington, D.C., and mentioned that a man named "Cason" was involved. He further said Maxwell claimed "Cason" was a former Kerr-McGee executive. *Note: James Cason was appointed as Associate Deputy Secretary of the Interior in August 2001. Our investigation disclosed no evidence that Cason has ever been employed by Kerr-McGee.*

When we interviewed the Program Manager, Offshore Compliance and Asset Management, regarding the Coordinator's disclosure, he acknowledged having had past conversations with James Cason but said they did not relate to the Kerr-McGee matter.

In addition, he stated that he did not participate in any conversations with both Cason and Maxwell together.

We questioned Geoff Heath, the SOL Attorney-Advisor, and the Program Manager, Office of Enforcement, regarding Cason's alleged involvement in directing Maxwell to drop his efforts against Kerr-McGee. None had knowledge of Cason being involved in discussions or decisions pertaining to Maxwell's proposed Issue Orders to Kerr-McGee.

In addition, the Program Director, Compliance and Asset Management, MRM, and Deborah Gibbs Tschudy, Deputy Associate Director, MRM, said they had no knowledge of Cason's involvement in decisions pertaining to the Kerr-McGee issues raised by Maxwell.

When interviewed, Cason said he had heard of the Maxwell *qui tam* lawsuit but did not know much about it. He said he believed Maxwell was an MMS employee who was conducting audit work and, in doing so, concluded that additional royalties were owed by a company. Cason said he thought MMS management disagreed with Maxwell's conclusion, which eventually resulted in Maxwell filing a *qui tam* lawsuit as an individual.

When asked if he had any conversations with Maxwell, Cason said, "Not that I recall." Cason explained that he worked at DOI from 1982 to 1989 and, most recently, from August 2001 to the present. Cason stated that he talked to many people about "lots of things" and said it was possible that he talked to Maxwell at some point but added, "[I]t doesn't strike any chord with me."

Cason denied the allegation that he had worked for Kerr-McGee. When asked, he also denied ever working for the Anadarko Petroleum Corporation, which purchased Kerr-McGee. Cason also denied that he had served on the Board of Directors of Kerr-McGee or Anadarko. He said he formerly worked for the Carborundum Corporation, a manufacturer of silica-based products. He said the Kennecott Copper Corporation purchased Carborundum, and Standard Oil of Ohio later purchased Kennecott. He said British Petroleum eventually purchased Standard Oil. Cason explained that although oil companies owned Carborundum, it was involved in a "side market" that was unrelated to the oil and gas industry.

Maxwell's Other Assertions

In response to Maxwell's allegation that the Program Manager, Office of Enforcement, had told him that MMS Director R.M. "Johnnie" Burton (now retired) would be upset if he issued the Orders to Kerr-McGee, the Program Manager, Office of Enforcement, confirmed making the statement but explained that Burton had previously directed all Orders to be "clear, concise, stand on their own, and be legally defensible" before being issued. He said he had this guidance in mind when he told Maxwell he would be in trouble if he issued the Orders – because the Program Manager did not believe Maxwell's Orders to Kerr-McGee met those conditions.

As previously mentioned, Maxwell alleged in court documents that MMS had not closed the Kerr-McGee audit because the issues he identified appeared valid and “outside sources” were looking into them. Maxwell’s Attorney provided the OIG with a copy of an MMS audit report, Audit of Offshore Oil and Gas Royalties Paid by Kerr-McGee Oil and Gas Corporation, January 1, 2000, through December 31, 2000, Case Control No. 01-80016, December 2004.

The report stated under the Summary of Audit Findings that “[t]he seventh issue, a crude oil issue based on Kerr McGee’s acceptance of less than the market price of its crude oil in exchange for the purchaser assuming part of Kerr-McGee’s administrative and marketing responsibilities will remain open.” The report, under Views of Responsible Officials, stated that “Kerr-McGee contested the seventh issue and it is currently under review by MMS.”

We interviewed a Supervisory Auditor, Offshore Compliance and Asset Management, MRM, Oklahoma City, OK. He said he requested that the Kerr-McGee oil valuation remain open because he believed it was his professional responsibility not to close that part of the audit since an Issue Letter had been sent and the issues, to his knowledge, had not been resolved. The Supervisory Auditor added that he felt his decision to leave the issue open was the responsible decision to make for MMS; otherwise, by closing it, he would have been saying “everything was okay.” He did not recall any reference to consultation with the SOL being included in the Kerr-McGee audit file.

The Supervisory Auditor said he was unsure why management elected not to include the Kerr-McGee oil valuation issue as part of the following year’s audit work plan because he believed there was some merit to Maxwell’s concerns that Kerr-McGee was not paying the appropriate royalties on its oil. He explained that Kerr-McGee was an experienced, knowledgeable payor and was paying less than others, which, in his opinion, raised questions.

We also interviewed an MMS Auditor about why the audit remained open. He said by leaving the Kerr-McGee oil issue in an open status in the final audit report, MRM avoided indicating that the issue was resolved. He opined that if MRM had indicated all matters were resolved and closed, Kerr-McGee could have destroyed records.

During our investigation, we discovered an unsigned, undated document in the MMS Kerr-McGee audit file in Oklahoma City, OK. The document is titled, “Review of the Kerr-McGee Oil & Gas Corporation and Texon L.P. Oil Sales Contract.” The document states the following:

Based on the above, it appears Kerr-McGee underpaid royalties on crude oil produced from Federal offshore leases and sold to Texon. The primary reason for the apparent underpayment was Kerr-McGee accepting a reduced price for its oil in exchange for Texon performing Kerr-McGee’s administrative and marketing functions and thereby breached its duty to

market its oil to the mutual benefit of both itself and the Federal government.

This issue was subsequently dropped and the case closed on the basis that (1) absent other data regarding Kerr's intentional undervaluation of oil for royalty purposes, the MMS cannot draw a conclusion that Kerr's oil prices are not acceptable as arm's-length prices because after all, Kerr themselves did not receive \$60 million by accepting the prices received from Texon and (2) we do not have the 'forensic' audit training to adequately investigate why Kerr would take less than a market price for its crude.

Lanis Morris, Auditor, MRM, Oklahoma City, OK, stated that during an MMS Internal Quality Control Review at Oklahoma City, OK, he told the Coordinator, Internal Quality Control Review, MRM, that the Program Manager, Offshore Compliance and Asset Management, had stopped the Kerr-McGee audit. According to Morris, the Coordinator responded that the Internal Quality Control Review was investigating allegations that the Program Manager, Offshore Compliance and Asset Management, was stopping audits. Morris also stated that the Coordinator told him Deborah Gibbs Tschudy, Deputy Associate Director, MRM, told the Coordinator to remove all references to the Program Manager from the final audit report.

When interviewed, the Coordinator recalled that in 2004, he conducted a review of audit files at the MRM office in Oklahoma City, OK. He said the draft Internal Quality Control Review report contained the following language under Other Items regarding the Internal Quality Control Review of the Kerr-McGee audit file:

The sole audit issue developed in this case was closed based on guidance from a senior level MRM official. However, that guidance did not contain documentation to support the management decision. While the guidance may have been based upon conversations with the MRM's Office of Enforcement, legal counsel or case law known to the MRM Manager, no such support was included with the conversation record.

In the future, request that Senior MRM Management issue and sign policy documents to support such determinations prior to closing an audit case.

The Coordinator opined that this section was not included in the final Internal Quality Control Review report because it addressed information that was not standard to these reviews. He explained that Internal Quality Control Reviews concentrated on technical aspects of an audit and did not involve a review of the audit's subject matter. He indicated that the decision not to include the observation was likely made by a Program Analysis Officer, Internal Quality Control Review, MRM. The Coordinator denied that he told Morris that the Internal Quality Control Review was investigating the Program Manager, Offshore Compliance and Asset Management, or that Tschudy ordered the review to remove references to the Program Manager in their report.

A second Coordinator, Internal Quality Control Review, MRM, said the draft observation was not included in the final report because it addressed a management decision, which was an issue outside the scope of the Internal Quality Control Review.

During his interview, the Program Analysis Officer, MRM, said he reviewed the draft report with the second Coordinator and decided not to include the observation from the draft report. He said the omitted language related to the substance of the audit, a matter not within the scope of the Internal Quality Control Review. He also said the Indian Compliance and Asset Management Auditor's conversation record provided a sufficient basis for omitting the language in the report because it included discussion points between the Program Manager, Offshore Compliance and Asset Management, and the auditors. He added that the Internal Quality Control Review's mission did not include reviewing management decisions.

When interviewed, Tschudy denied that she ever asked for a review of the Program Manager, Offshore Compliance and Asset Management, or a review of the Kerr-McGee audit by the Internal Quality Control Review. Tschudy also denied that she ever removed language from the Internal Quality Control Review report or told anyone to do so.

Tschudy provided a chronology, created by the Program Analysis Officer for the Internal Quality Control Review of the Oklahoma City, OK, Offshore Compliance and Asset Management office, conducted from July 12, 2004, through July 15, 2004. The chronology showed that the draft report was sent to Maxwell for review and that since Maxwell concurred with the report, there was no requirement to consult with Tschudy prior to publishing the final report.

Reporting and Safeguarding Requirements

Our investigation found that Maxwell's MMS training records for calendar years 2003 and 2004 show that Maxwell attended the MRM Office of Enforcement Illegal Acts Awareness training on September 14, 2004. Additionally, the records disclosed that Maxwell completed the following courses: DOI Annual Ethics Training, Federal Information Systems Security Awareness, and Government Auditing Standards – 2003 Revision.

A review of the MMS Information Technology Rules of Behavior database for 2004 through 2006, used to record employee acknowledgement of the rules, including discussion of safeguarding and use of official and proprietary information, disclosed no record identifiable with Maxwell from 2004 to 2006.

A class list for the MMS Safeguarding Proprietary Data course obtained from the MRM Office of Enforcement disclosed that Maxwell attended the training on August 31, 2004.

In an affidavit filed on April 1, 2005, in the Federal District Court for the District of Colorado (Court), Maxwell chronicled the events and actions that eventually led him to

file the *qui tam* lawsuit. Maxwell did not include any indication that he reported his suspicions about Kerr-McGee to the OIG or any other investigative agency prior to filing his lawsuit. He did not indicate whether he removed official documents or data from MRM offices or systems.

When interviewed, an Employee from the Office of Enforcement, MRM, said he did not recall Maxwell ever contacting the Office of Enforcement to complain about misconduct or improper actions by MMS managers or employees. He said there was no record in the Office of Enforcement files of Maxwell filing a complaint. He also did not recall Maxwell complaining to the Office of Enforcement about the issues identified in his lawsuit. He said the first time he learned about Maxwell's lawsuit was when he was contacted by the OIG.

In a supplemental Court affidavit, dated January 9, 2006, Maxwell related the following:

The preparation and filing of this suit did not occur substantially with the time and space limits of my work when I was employed by the MMS. I met with my attorneys on my own time and to the extent any work was required of me, such work was performed when I was off work.

Our investigation revealed that Maxwell sent a disclosure letter to the U.S. Attorney's Office, Denver, CO, on June 2, 2004, and, through his attorneys, stated the following:

Out of an abundance of caution, to avoid any appearance of impropriety, Mr. Maxwell has not removed the pertinent MMS files, and does not attach same hereto. The Government may locate the applicable file, CTS [Exemption 2], at the MMS office located at 4013 N.W. Expressway, Suite 210, Oklahoma City, OK 73116; [Exemption 2]. It is believed this file contains key documents, letters and analysis.

Kerr-McGee, in its Motion for Brief in Support of Summary Judgment for Lack of Subject Matter Jurisdiction on December 2, 2005, asserted the following:

- Paragraph 38 – “Maxwell removed approximately 90 pages of documents from the MMS Audit file (‘MMS Documents’) used to pursue this action.”
- Paragraph 39 – “Maxwell removed the MMS Documents without informing or seeking or obtaining permission from the MMS.”
- Page 9 – “Maxwell’s [False Claims Act] claim is premised upon this information, which Maxwell removed from the MMS’ Audit files – without permission or authorization – while he was still employed at MMS”
- Page 10 – Maxwell “... used his position to gain access to Kerr-McGee information, removed it from the MMS without notice or approval, and then used the information to file his [False Claims Act] claim.”

In a Brief in Opposition to the Defendants' Motion for Summary Judgment for Lack of Subject Matter Jurisdiction on January 10, 2006, Maxwell stated that "[t]he Relator admits the accuracy of ¶¶ 38 -39" in reference to the Kerr-McGee motion.

A Senior Auditor for Compliance and Asset Management, MRM, who worked directly for Maxwell prior to termination of his employment, believed Maxwell was out to make as much money as he possibly could. He opined that Maxwell saw how much money was made by the relators in other *qui tam* lawsuits and thought he could do the same thing.

We showed a Freedom of Information Act (FOIA) Staff Member, MMS, four exhibits from Maxwell's affidavit filed in the U.S. District Court for the District of Colorado on April 24, 2006. We asked him to ascertain whether the exhibits contained proprietary or other data not releasable under the FOIA.

The FOIA Staff Member identified Exhibits 1-C, 1-E, and 1-D as containing proprietary business information. He said the information in Exhibits 1-C, 1-E, and 1-D would, nonetheless, be releasable in response to a FOIA request.

He stated that some of the information contained in Exhibit 1-B was business proprietary and business confidential information that would be redacted before release of the document in response to a FOIA request. He added that other information in Exhibit 1-B would be redacted because it included discussion about internal government decisions that was protected under an exemption to the FOIA.

An MMS FOIA/Privacy Act Officer reported that he found no record that Maxwell, his attorneys, or their law firm had made any FOIA requests to MMS.

MRM Safeguarding Responsibilities and Actions

As reported earlier, MRM provides information and training to its employees regarding the protection and safeguarding of proprietary and sensitive data or records.

An MMS Records Officer stated that prior to his arrival at MMS in [Exemption (b)(6) and (b)(7)(C)], the records officer position was vacant for 2 years. He said the former MMS Physical Security Officer was performing the duties of MMS's proprietary information officer until December 2006. In a January 2007 teleconference, the Records Officer was designated as the new MMS proprietary information officer.

The Records Officer stated that in a June 2005 conference, MMS discussed the need to update Part 386 of the MMS Manual regarding MMS's Safeguarding of Records and Information. He stated that he did not believe any other MMS employee other than himself had been designated as a proprietary information officer. He said MMS has other records officers but did not know whether they handled proprietary information issues.

The Records Officer stated that he did not know of any formal training provided by MMS to its employees regarding the safeguarding and protection of proprietary information. He said he believed the 1995 memorandum, “Guidance and Procedures for Handling *Requests* for Royalty Management Program Proprietary Data/Records [emphasis added]” only applied to MRM and was not bureau-wide. The memorandum established mandatory annual training regarding the need to protect such information when it was requested through the FOIA; it did not mandate training for MMS employees with respect to the day-to-day safeguarding and protection of proprietary information.

According to the Records Officer, “[E]veryone is fully aware what is going on,” yet he stated that he was not aware of any “tools put in place” to control the release of proprietary information by employees. He said he had not participated in any meetings in which the safeguarding and protection of proprietary information was the subject and he was unaware of any such meetings scheduled for the future. He said the records office was dealing with many other issues and he was simply “scrambling to keep his head above water.”

During our interview of another Records Officer, MMS, he stated that according to regulations, MMS was supposed to appoint proprietary officers for each section but had never done so. When asked about the Document Control Program at MMS, he described MMS’s record of information control as “poor” and added that “MMS doesn’t give a shit about document control.”

We found that the MMS Manual, Part 386.1.7A(4), requires that applicable officials are responsible for the following:

Designating and reporting the designation of a Proprietary Officer to the Security Officer and the Records Manager. It is recommended that the appropriate Records Officer be designated as the Proprietary Officer. If there is no Records Officer on site or proprietary data/information is maintained by individual offices, it is recommended that the office supervisor be designated as the Proprietary Officer.

In response to questions regarding the safeguarding of proprietary information, Deborah Gibbs Tschudy, Deputy Associate Director, MRM, said MMS was a small agency and had assigned two proprietary officers. She said proprietary officers were not assigned to each section, but employees knew to go to the proprietary officers if they had questions.

Tschudy stated that the MRM Internal Quality Control System advised employees that audit documentation should be adequately safeguarded. She also noted that the MMS Audit Manual (Chapter 5.7, Safeguarding Work Papers) required that confidential, privileged, or proprietary information received and used by MMS employees and government contractors had to be protected from unauthorized disclosure.

Tschudy added that the Internal Quality Control System section of the MRM Audit Manual included an acknowledgement form that auditors were supposed to sign when

they received their Audit Manual. Tschudy noted that MMS employees were not required to sign a Proprietary Information Acknowledgement Form.

Our efforts to locate Maxwell's Internal Quality Control System acknowledgement form were unsuccessful because the MRM Audit Manual formerly assigned to Maxwell could not be located. *Note: Maxwell's employment at MRM was terminated on February 25, 2005.*

Declination of Prosecution

On September 15, 2006, the U.S. Attorney's Office, Denver, CO, verbally declined criminal prosecution of Maxwell for alleged removal and use of official government documents in order to pursue his False Claims Act lawsuits against Kerr-McGee, suggesting that a civil or administrative remedy might be more appropriate.

Little and Morris v. ENI Petroleum Company, Inc., et al

Little and Morris's Complaint

On November 30, 2005, MMS auditors Randy Little and Lanis Morris filed a False Claims Act lawsuit against ENI Petroleum Company, Inc., and 24 other oil and gas companies for allegedly filing false monthly MMS Form 2014s, Report of Sales and Royalty Remittance, submitted to MMS. Little and Morris asserted in their complaint that the companies made false claims when they certified that their reporting of interest payments on royalties (and actual payments made) to the federal government complied with federal laws and regulations.

In their complaint, Little and Morris also asserted that the companies only calculated and reported royalty payments on oil and gas production for the given monthly reporting period on the Form 2014s, and, in violation of 31 U.S.C. § 3729(a)(7), did not calculate the interest on previous underpayments and late payments.

In the "Statement of Reasons for the United States Department of Justice to Take On the Qui Tam Litigation Case" for their lawsuit, Little and Morris asserted that when they discovered that oil and gas companies were failing to pay interest, they informed their MMS supervisors, who failed to take action. According to Little and Morris, instead of sending out Issue Orders to Pay Late Payment Charge, MRM team leaders decided not to pursue collection of interest.

Little and Morris further alleged that they had conversations with the companies about the interest payments, and the companies responded by stating that they were waiting for the government to calculate the interest and bill them for payment. Little and Morris stated that this process was contrary to federal laws and regulations, which placed the responsibility of calculating interest on the companies.

To illustrate the severity of the issues raised in the lawsuit, Little and Morris collected data for the month of May 2003 and calculated that the defendant companies owed MMS a combined total of \$1,589,613.

In their lawsuit, Little and Morris included an e-mail from a Manager, Financial Management, MRM, dated July 22, 2005, that was sent in response to an inquiry by Little about interest collection. In his response to Little, the Manager stated that while it was true that interest was "rarely reported" on Form 2014 and that MRM Financial Management routinely billed for late interest payments, MRM's current interest billing system "doesn't work very well" and interest billing was deemed "less of a priority" than other MRM Financial Management responsibilities/functions. In his e-mail, the Manager continued by stating that the collection issues had resulted in a "huge backlog," adding that many of the interest bills that had been created had still not been reviewed or issued.

Little and Morris also included in their lawsuit an October 13, 2005 e-mail from the Regulatory Accounting office, Kerr-McGee Oil and Gas Corporation. In the e-mail, the

Kerr-McGee Employee stated that since he knew MRM was “years behind” in calculating interest, he did not want to pay interest on a portion of the monthly Form 2014 and keep track of it until the full amount of interest was assessed. He added, “Plus, this way I don’t have to keep track of all the interest rate changes between the due date and the payment date. Yes, I’m taking the easy way out.”

2005 Investigation in Response to *Qui Tam* Filing

Upon receipt of Little and Morris’s filed *qui tam* complaint in December 2005, DOJ notified both the DOI-SOL and the DOI-OIG of the lawsuit and requested assistance in determining the merits of the claim.

According to an SOL Attorney-Advisor, DOJ, the SOL, and the OIG conducted an in-depth investigation into the merits of the claims in the lawsuit. The investigation included multiple joint interviews, document reviews, and legal analysis.

The Attorney-Advisor stated that the investigation had determined the relators’ claim stemmed from a disagreement with management decisions. He added that, in his opinion, the actions and decisions made by MMS officials related to the lawsuit claims were legal. He noted that he believed an appropriate use of discretion had been exercised.

Associate Solicitor James Harris also participated in the review of Little and Morris’s claims. According to both Harris and the Attorney-Advisor, the SOL consulted with DOJ concerning the relators’ lawsuits upon completion of the investigation. Ultimately, DOJ declined to intervene in those lawsuits.

On September 8, 2006, DOJ filed a Notice of Election to Decline Intervention in the lawsuit. DOJ stated, in part, that it appeared that some or all of the material facts and documents that served to support the allegations made in the complaint were obtained by the relators while serving as employees of the U.S. Federal Government. DOJ noted that because federal employees had a fiduciary duty to use all information gained in the course of their employment solely for the benefit of the United States, the government reserved the right to object, at the appropriate time, to any award made to the relator.

2006 OIG Investigation of the Relators’ Claims

We began our investigation by reviewing the Royalty Simplification and Fairness Act, which contains the following language amending the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), under Section 111A, Adjustments and Refunds:

- “(2)(A) For any adjustment, the lessee or its designee *shall calculate and report the interest due* attributable to such adjustment at the same time the lessee or its designee adjusts the principle amount of the subject obligation, except as provided by subparagraph (B) [emphasis added].”

- “(B) In the case of a lessee or its designee who determines that subparagraph (A) would impose a hardship, the Secretary or such delegated State *shall calculate the interest due and notify the lessee or its designee within a reasonable time of the amount of interest due*, unless such lessee or its designee *elects* to calculate and report interest in accordance with subparagraph (A) [emphasis added].”

During our investigation, we also found that MMS periodically provides royalty payment training classes to the oil and gas industry. Slide 26, titled, “Reporting Your Own Interest,” from the presentation used for the training advises companies that they do not have to report their own interest. The slide contains the following language: “Do I have to? It’s too hard. The answer is NO!”

We also found that on March 31, 1997, Lucy Querques Denett sent a Dear Payor Letter to all relevant oil and gas companies containing guidance stating that MRM would be sending “interest statements,” rather than “interest bills,” which would show interest for each month. *Note: Our investigation revealed that MRM regularly uses Dear Payor Letters to convey regulatory interpretation, provide guidance, and inform oil and gas companies about new information or operational changes.*

In the letter, Denett added that the interest statement would contain totals for interest owed by MRM, interest owed by the company, and the net difference. Denett also addressed the question, “What if I do not report interest on my Form MMS-2014?” answering, “MMS will conclude that you are claiming an interest reporting hardship” and “We will then calculate the interest and notify you of any interest owed or owing on the Interest Statement.”

During his interview, Geoff Heath, Assistant Solicitor for Royalty and Offshore Minerals, Division of Mineral Resources, SOL, said the Royalty Simplification and Fairness Act did not require the promulgation of regulations and that Dear Payor Letters could be used to inform lessees how MMS intended to administratively handle a certain situation, such as calculating and reporting interest.

On October 1, 1997, Denett sent another Dear Payor Letter to the relevant oil and gas companies stating that they were not required to report interest to MRM. The letter stated, “If you do not report interest on your form MMS-2014, MMS will assume you have determined interest reporting to be a hardship for your company,” and “MMS will compute interest and notify you of any interest owed to you or to MMS on an interest statement.”

MRM provided the following data for Fiscal Year (FY) 2002 through FY 2006 depicting the number of interest bills issued on federal and Indian oil and gas leases, the amount billed, the amount collected, and credits:

- Interest Bills Invoiced
 - Federal Leases – 5,324 interest bills for \$12,755,992
 - Indian Leases – 2,940 interest bills for \$8,603,861
 - Total – 8,264 interest bills for \$21,359,853

- Interest Bills Paid
 - Federal Leases – \$8,449,864
 - Indian Leases – \$5,148,152
 - Total – \$13,598,016

- Overpayments Credited Back to Payors
 - Federal Leases – \$8,597,747
 - Indian Leases – \$1,926,951
 - Total – \$10,524,698

Note: Credit for overpayments on federal leases includes interest. Interest is not paid to companies for overpayments on Indian leases.

During his interview, Little recalled that MRM had issued the two Dear Payor Letters, noted above, in 1997. When we told Little that both Dear Payor Letters advised companies that if they did not calculate interest, MRM would consider it a hardship and bill them for the interest, Little responded that he “deemed it differently” and added that “[The Dear Payor Letters] didn’t say you didn’t have to pay.” He said, “It didn’t say anywhere in that letter that [the letter] would negate that statute.”

Little acknowledged that the Royalty Simplification and Fairness Act did not define “hardship” and that MRM had the authority to interpret what was not defined. However, he said he disagreed with MRM’s decision to tell payors that MRM would simply assume that a company was claiming a hardship if the company did not calculate its interest. Little explained his disagreement by stating the following:

I believe [Payors] are bound to follow the law. They’re bound to follow the statute[Lucy Querques Denett] does not have the authority and the power to circumvent what Congress has put out. She does have the authority ...her agency does have authority to clarify ... I believe to clarify statutes if there’s an area which they feel needs to be clarified by the way of putting together regulations and putting those out.

Further, in reference to the failure of many companies to calculate and pay interest, Little stated the following:

That tells me you got a major oil and gas company claiming a hardship. And I’m saying they can’t do that. I think that’s ... false. And that’s why

we filed [the lawsuit]; that's why we've gone after these companies, because the statute is clear; they know it's there; they know what [Lucy Querques Denett] said. 'Follow the statute. If you don't, we will assume that you're claiming hardship.' And so for those companies to do that, they are claiming a hardship, and I'm saying that is false.

Little stated that when he asked the companies why they did not pay the interest, they responded, "You go ahead and bill us." Little said he asked the companies, "Are you claiming a hardship? Do you, a major company like you, have a hardship in paying and calculating an interest?" Little claimed that the company representatives would laugh and say, "No. We just figure that, you know, we can ride you guys" and "we know your system is broken; we know it's not working, and maybe you'll never get around to billing us."

Little opined that the intent of the companies was the following:

One, they'll have free use of [the government's] money for 4, 5, 6 years, if we ever do get around to billing ... [and] we're not billing the interest on that interest. That's one. And two, that perhaps they may get away and never being [sic] interest and never be charged because our system is so screwed up.

During his interview, Morris said he was aware of the two Dear Payor Letters but claimed that MRM did not have the authority or discretion to issue them because, in his view, "[Lucy Querques Denett]'s making law there." He said, "[The Royalty Simplification and Fairness Act] says that [the oil and gas companies] will pay the interest. If they don't then we assume they have a hardship. I think those letters are totally wrong."

Morris stated that payors should ignore guidance by MMS and "follow the law" by calculating interest. He added, "The law is plain. They're sophisticated companies, so I don't see any – there's no excuse for that. If you're a one-man operation, maybe you can't read the law, but the Exxons and so-and-so companies have vast legal departments. I'm sure they're extremely aware of that law."

When asked to explain how the companies committed fraud if MRM told them they did not have to calculate interest, Morris responded, "I don't think we've ever contended fraud. It's a false claim because the amount of money that they're certifying is not correct. That's the false claim." Morris explained that payors were making a false claim when they certified their Form 2014s without including calculations for interest because "once [a payor] submit[s] a payment on a 2014 or information on a 2014, [the payor is] certifying to the U.S. Government that there is a hardship." Morris asserted that the payors had not demonstrated that calculating interest would be a hardship, so their certification, in his opinion, was a false claim.

Morris also said, “There is no reason to be billing out that interest. It’s not our job. Every man-hour spent on billing out, unless those companies have a bona fide hardship, is waste, fraud, and abuse.”

Little and Morris noted in their “Statement of Reasons for the United States Department of Justice to Take On the Qui Tam Litigation Case” that “[h]ardship exemptions require a written request for such exemption which has not been made by the companies at issue.”

We asked Morris about the assertion in his lawsuit that hardship exemptions required a written request. Morris’s Attorney, who was present during the interview, intervened and said the assertion that there was a written requirement might just be the relators’ belief. Morris’s Attorney stated that he had not researched how MRM was supposed to know when companies were claiming a hardship.

When we asked Little about the assertion that hardship exemptions required a written request, he stated that the requirement was not in the statute and that he did not know where the assertion came from. He opined that companies should write a letter to MRM explaining why they were claiming a hardship regardless of the Dear Payor Letters. Little opined that the companies should comply with the law and that MRM could not override the law.

Note: Our review of the Royalty Simplification and Fairness Act determined that the Act does not define a process for claiming an interest reporting hardship and does not address whether a company must submit its claim for an interest reporting hardship in writing.

During his interview, Geoff Heath, Assistant Solicitor for Royalty and Offshore Minerals, Division of Mineral Resources, SOL, stated that, in his opinion, MMS had the authority as the regulating agency to define “hardship” in the Dear Payor Letters and to determine that it was more efficient for MMS to calculate and bill interest as opposed to having the lessees do it.

When told the relators believed industry should ignore MMS guidance and calculate their interest, Walter Cruickshank, Deputy Director, MMS, responded, “Perhaps, but if I’m in industry’s shoes, and if the regulatory agency says, ‘This is how I want you to operate on this,’ that’s what I’m going to do.”

During her interview, Denett said MMS was charged with interpreting the law and making policy guidance and the companies relied on MMS to explain how the law would be interpreted. She said she issued the two Dear Payor Letters in 1997 that provided guidance to industry on the Royalty Simplification and Fairness Act, which required MMS to pay interest on overpayments to companies and required companies to calculate interest on their adjustments.

Denett said MMS and the companies could not immediately comply with the Act’s requirements without the expense of reprogramming their computer systems.

Additionally, Denett opined that MMS would end up doing more work if payors calculated their interest because MMS would have to verify the payors' calculations, and, if they were incorrect, MMS would have to bill the payors for the corrections. She concluded that it was easier for MMS to "just bill them." She said MMS planned to be current on interest billing and collection by the end of FY 2007.

When asked if the direction provided in the 1997 Dear Payor Letters was contrary to the Royalty Simplification and Fairness Act, Denett responded, "Yes and no." She indicated that the impact of having to calculate interest could be a hardship for the oil and gas industry. She explained that a small company might be able to use a calculator to determine its interest obligation, but a large company would have to do a computer system modification to make the same determination. Denett said she believed it could be considered a hardship for a company to spend a few million dollars to change their computer system. She added that MMS would receive the interest money regardless of how it was collected, so there would be no loss to the government.

In response to a question about whether she believed the public would understand that a major oil company could claim a hardship calculating interest, Denett said, "How do you define hardship, just because they have a lot of money?" She admitted that when Congress enacted the Royalty Simplification and Fairness Act, MMS should not have considered the impact on industry, but she said she believed that MMS needed to be "reasonable" in its implementation of the law. However, she stated that "if Joe Public looks at it, they probably think we're crazy." Denett added that MMS took the "easy way." She said that rather than have every payor struggle to figure out how to calculate interest, MRM management took the approach that "if you don't do it, we're going to assume that that's the hardship."

When asked if the reasons for issuing the Dear Payor Letters were still valid almost 10 years later, Denett concluded, "[Y]eah, we probably should be rescinding it."

The MRM Chief of Financial Management related that although the Royalty Simplification and Fairness Act required oil companies to calculate and report interest to MMS, he believed MMS had the authority to authorize oil companies not to calculate and report interest. He said that in the MRM training for the oil and gas industry, MRM advised companies that if they did not have interest calculation built into their system, MRM would bill them.

In a separate interview, the Chief of Financial Management said that if the companies calculated their interest in accordance with the Act, it would create extra work for MRM Financial Management because of variances that would require MRM to have to send bills regardless of who made the calculation.

The Chief of Financial Management said he participated in the 1997 business decision that resulted in Denett sending the Dear Payor Letters to oil and gas companies, and he said he still considered the decision to make "good business sense." He explained that MMS's interest calculations were very complicated because there were many variables.

He said he believed the companies would not be able to correctly calculate interest, which would result in an additional burden on MRM Financial Management.

When asked if the Dear Payor Letters should be reconsidered based upon the possible public perception that MMS appeared to be giving companies too much latitude in not calculating and reporting their interest, the Chief of Financial Management responded that it would place a large burden on the oil and gas industry and opined that many companies would not do it. He said, “They would throw a bunch of junk at us.”

An Accountant, Financial Services, MRM, said that when MRM attempted to explain to payors how to calculate their own interest, including providing a calculation formula, the companies “went ballistic.” He stated that they were not receptive to the idea of calculating their own interest because it would require changes to their computer systems.

MRM Support System – Interest Billing/Collection Issues

Throughout our investigation, we talked to various MRM managers and support personnel, including Little and Morris, regarding the billing and collection of interest through the MRM Support System – the computer system used for conducting MRM operations. MRM employees outlined numerous concerns regarding the system since its inception, including problems when the system was first deployed; a backlog resulting from the *Cobell v. Norton* litigation, which required a temporary system shutdown; delays in system improvements due to system upgrading; and constant changes in priorities. **Note:** *The MRM Support System was shut down from December 6, 2001, through March 20, 2002, due to the Cobell v. Norton litigation.*

According to an MRM Manager for the Project Management Office, the MRM Support System was developed through a contract awarded to Accenture, LLP, with many subcomponents. He stated that the financial subcomponent was based on PeopleSoft software modified to the needs of MRM. He explained that it was designed to account for, track, and disperse royalties paid by oil and gas companies as well as to bill and collect interest.

Note: *MRM awarded the original contract for the development of the MRM Support System to Accenture, formerly Andersen Consulting, on September 23, 1999. The PeopleSoft based component was deployed in November 2001, the interest billing/collection module was deployed in January 2003, and Compliance Information Management was deployed in July 2004.*

During his interview, Little related that MRM began to encounter problems with the interest billing and collection module of the MRM Support System when it was first deployed. He said this resulted in MRM not billing or paying interest as required under the Royalty Simplification and Fairness Act. Little expressed a belief that MRM had not billed payors for interest in many years.

Little said that when he received an e-mail from a Manager, Financial Management, MRM, on July 22, 2005, in which the Manager said MRM was behind in interest billing and that MRM was focusing on other priorities, he interpreted the e-mail to mean that MRM Financial Management did not place much priority on billing and collecting interest.

When interviewed, Morris said that in 2000 or 2001, the MRM Support System was shut down because of the *Cobell v. Norton* litigation and explained that no interest was billed or collected during the time in which the system was shut down. Morris added, “[W]e were told approximately in 2002 by [the Financial Manager] – not to try to collect interest; they had no receivables to put those funds to. And he would notify us when collections would be started again. As far as I know, [interest collections] never were [collected] from 2002 forward.” *Note: The Cobell v. Norton (now former Secretary of the Interior Gale Norton) litigation was based upon complaints that DOI was not fulfilling its fiduciary responsibilities involving the Indian Trust. The judge in that litigation ordered that DOI and its bureaus, including MMS, shut down automated systems that might involve DOI’s actions pertaining to the Indian Trust. After assurances that records would be preserved, the judge allowed some of MMS’s systems to return to full operation. The ongoing lawsuit was originally filed on June 10, 1996. The MRM Support System was shut down from December 6, 2001, through March 20, 2002.*

When we questioned Morris about the July 22, 2005 e-mail from the Manager, Financial Management, MRM, regarding a billing backlog, he claimed that the e-mail said MRM “had other pressing projects, and they were not making any collections.” He added, “So at that point in time, [Little and I] decided that ... we needed to do something.”

During his interview, the MRM Chief of Financial Management said the timing of the decision to convert from the former automated financial system to the MRM Support System was primarily based on a desire not to have the expense of paying two contractors (one maintaining the former system and one developing the MRM Support System) at once. He explained that the implementation of the new system occurred in November 2001, but the billing module was not implemented until later. According to the Chief of Financial Management, at the time the decision was made to convert to the new system, there was no “show stopper” to prevent the conversion.

The Chief of Financial Management stated that the system shutdown caused by the *Cobell v. Norton* litigation created a backlog in royalty and interest processing. At some point after the shutdown was lifted, he said the interest module was deployed. During the shutdown and prior to deployment of the interest module, he explained that MRM Financial Management chose not to bill interest manually due to a risk of double billing companies. He said any attempt to manually generate bills or collect interest would have created duplicate billing once the interest module was deployed.

When asked, the Chief of Financial Management stated that MRM did not focus on actually eliminating the interest backlog created by the Cobell litigation until September 2006 because resources were being used to reduce debt collection backlogs. He said the

Corrective Action Plan was going well, and he provided a copy of PowerPoint slides showing that MMS invoiced \$16,732,309 for interest by issuing 3,286 bills during the first quarter of FY 2007. He contrasted this total to the interest invoiced for FY 2006 – \$7,632,376 for 3,818 bills. The Chief of Financial Management noted that MRM billed more interest in the first quarter of FY 2007 than in all of FY 2006.

Note: A larger number of bills does not necessarily equate to a larger billing amount because the dollar amounts for bills vary widely.

The Chief of Financial Management said work on improvements to the interest billing and collection module was stopped in anticipation of an upgrade to the PeopleSoft software used by the MRM Support System. He added that completion of the upgrade would “get [MRM] out of the freeze so [MRM] can do additional improvements to the system.” He said interest billing issues would be included in the upgrade prioritization schedule. *Note: We determined that the “freeze” on changes to the MRM Support System were in effect from March 2006 through February 2007. A few changes pertaining to data warehouse and RIK work were allowed during the “freeze.”*

A Manager, Financial Management, MRM, recalled that approximately 1 year after the *Cobell v. Norton* litigation shut down the MRM Support System, the interest billing module began working. He said the priority for MRM following the shutdown was to reconcile and distribute royalty payments rather than to pursue interest billing. Therefore, according to the Manager, MRM Financial Management became backlogged in its efforts to send interest bills. He noted that interest bills were being generated by the MRM Support System and then manually verified before being sent.

The Manager compared the MRM Support System to the previous system, stating that some components of the new system were better. Other components, he noted, such as the interest billing and collection module in particular, were not as functional. One example, he said, could be seen in the fact that interest bills needed to be manually verified before they were sent to payors until system problems were corrected by the contractor. He also said the MRM Support System did not handle large bills very well. He added, “If there’s [a bill] you can’t do, you set that aside and work on one you can do.”

During interviews with an Accountant, Financial Management, MRM, the Program Director (now retired), Compliance and Asset Management, and an MRM Manager, all stated that the *Cobell v. Norton* litigation shutdown contributed to the backlog in billing interest. The Program Director, Compliance and Asset Management, said the court-ordered shutdown of the MRM Support System created significant backlogs in matching royalty payments and in the processing of production reports, which was a priority following the implementation of the MRM Support System.

Denett stated that the interest and general ledger modules of the MRM Support System were creating problems for MMS. However, she claimed that the system was functioning and “generally work[ed].” Denett also said she was frustrated with the MRM Support

System because it did not generate reports very well. She indicated that the system was designed to track data by case so it did not easily translate information to cumulative data calls. She added that because the PeopleSoft-based financial subcomponent of the MRM Support System received funds from a debt collection that was not tied to a report, the system could not disperse the funds because it required that they be tied to a report. Denett explained that this resulted in delays while MRM attempted to match money to reports.

Denett said she recognized that the payors were continuing to have use of their money, to the detriment of the government, due to the MRM interest billing backlog, but she said the MRM Support System could not handle the interest payments if payors calculated and sent them without a bill being generated by MRM. When Denett was asked whether the public would perceive that MRM gave industry a “free ride,” she responded, “I never looked at it like that.”

An Accountant, Financial Services, MRM, said that after the MRM Support System interest module was deployed in January 2003, MRM found that the system had problems in that it dated bills incorrectly, billed interest when companies paid early, and did not identify overpayments made by companies. He indicated that MRM was working on correcting the issues but was presently under a freeze until an upgrade to the underlying PeopleSoft software could be completed.

The Program Director, Compliance and Asset Management, said the development of the interest billing module was intentionally delayed due to its complexity, while Deborah Gibbs Tschudy stated that the interest billing module was intentionally delayed because development and deployment of other parts of the system such as royalty collection and dispersal were higher priorities.

When asked what was being done to eliminate the interest billing backlog, MMS Director R.M. “Johnnie” Burton (now retired), said, “We’re doing the best we can. We don’t have very many resources to throw at the problem, outside of what needs to be done daily.”

We also interviewed five MRM accountants to obtain input from users of the MRM Support System financial subcomponent.

One Accountant said it took him twice as long to complete interest billing using the MRM Support System, as opposed to the previous financial system, stating that due dates and interest calculations had to be manually verified for accuracy. He acknowledged that there were problems with the previous system; however, he claimed that the MRM Support System was much worse and referred to the financial subcomponent of the MRM Support System, developed by Accenture, as “the rape of the American taxpayer.”

Another Accountant said he had not experienced problems with the MRM Support System financial subcomponent but said he processed bills for Indian leases, which were generally not complicated. He said he had not used the interest calculation panel, which had been the source of many complaints from his peers who worked on federal leases.

He said that under the interest backlog Corrective Action Plan, he had a quota of issuing 30 interest bills per week and that the overall goal was to be caught up on interest billing by the end of FY 2007.

Another Accountant said processing interest bills and collections was much more cumbersome using the MRM Support System than it was using the prior system. He provided an example of an interest billing for British Petroleum Oil Company that he was working on at the time of his interview. He estimated that he had worked 8 hours on the bill, while under the previous system he would have completed the work in about 30 minutes.

This Accountant said the Interest Calculation Panel of the MRM Support System created delays in issuing bills because it was not capable of handling all of the information needed to make revisions for interest bills. He also said he was currently holding seven interest bills for British Petroleum because the MRM Support System, in its current state, could not process them. He said 3 bills had been pending for 2 years, 1 for 1 year, and 3 for 4 months. The dollar amount for the delayed interest bills, according to him, was \$321,057. He said he planned to send the bills to British Petroleum after the contractor made changes to the system so that it could handle the bills.

Another Accountant said the MRM Support System did not work “real well.” He said it was a slow, difficult, manual process to clear out “hold-status” documents in the MRM Support System because the system did not recognize them. He explained that accountants had to “reactivate a lease” in order to process a hold-status payment and that they also had to use manual “work arounds” to do their jobs.

The last Accountant said he was assigned as the MRM accountant to the ExxonMobil Corporation from March 2003 through March 2005 and to the Forest Oil Corporation from April 2005 through December 2006. He said he never encountered an interest-related problem with the MRM Support System. He said he issued interest bills to ExxonMobil and Forrest Oil and had not received any complaints about the interest calculations. He said there was a problem with the MRM Support System calculating payments made before the due date, and these were corrected by “deleting the lines” and making manual corrections in the system.

Note: ExxonMobil has regularly included interest in its royalty payment but was included in the lawsuit because Morris and Little felt ExxonMobil was underpaying the interest.

After learning of the MRM Support System’s problems and considering the fact that over \$148,000,000 has been spent to implement the system, we decided to open a separate investigation to examine the procurement process, modifications to the original contract, and MMS’s management/oversight of the contractor’s performance.

Potential Time Value Losses

When interviewed, Little expressed a concern about time value loss of money owed to the government and said the following:

And the other point is, I want to throw out to you, is the fact that you're losing tens of millions, if not hundreds of millions, of dollars of time value of that money not paid into our coffers. Now [Lucy Querques Denett's] trying to claim, 'Well, it's our fault. It's not your fault, company. We'll eat that interest.' The taxpayers, again, ought to be outraged because the companies owed it at this date; they're using this as a tool to have free use of that money for three, four, five, ten years – and maybe forever – and never pay interest on that. They know what's happening. Believe me, industry knows what's happening out there. They know they got a free ride. And they're using a little loophole, if you call it a loophole. Personally, I think that they're going to have to prove a hardship [in court]. I don't think they're going to be able to prove that, to be able to say, 'Your Honor, we have a hardship, so therefore we couldn't do it.'

Note: Time value loss means the loss of the interest the government would have accrued on the money if MRM had submitted the interest bills in a timely manner and the companies paid the bills by the due date.

A Senior Auditor, Compliance and Asset Management, MRM, said that due to the interest billing backlog, the government incurred a loss of the time value of interest dollars. He explained that if MRM was supposed to bill a certain amount of interest today, and then sent an actual bill a year from now, MRM would still bill the same amount that was due today.

The MRM Chief of Financial Management opined that MRM was about 2 years behind in interest billing and said there would be no loss to the government once interest billing was caught up. The Chief of Financial Management and a Manager, Financial Management, MRM, both said MRM was not at risk of surpassing the 7-year statute of limitations on collecting unpaid interest.

The Chief of Financial Management admitted that due to long billing delays, there was a loss to the taxpayers in the time value of interest dollars. However, he noted that the regulations stated that interest for late payments was calculated from the due date of the royalty payment to the receipt date of the payment.

The Chief of Financial Management said MRM Financial Management had, in fact, calculated an estimate for the time value loss to the government. He explained that MRM used a random sample generator to select 10 percent of interest bills issued from July 2001 through September 2006. He explained that MRM decided to determine a "ball park" estimate for the time value loss because to be more precise, they would have had to look at every bill that was issued during the sample time period. The Chief of Financial

Management stated that MRM had higher priorities such as resolving the backlog; therefore, he believed that taking the time to do more than the estimate was not worth the effort.

He provided a written explanation of the calculation process, which calculated a total time value loss of \$489,220.

MRM Collection of Interest on Interest

During his interview, Little also alleged that companies were not being billed interest on unpaid interest. He opined that if MRM billed a company for interest on a late royalty payment 4 or 5 years late, the company should also pay interest on the late interest charge. He indicated that the interest should accrue like a credit card.

Our review of 30 C.F.R. § 218.54, Late Payments, disclosed that interest charges should be assessed for unpaid/underpaid royalties from the date the amount is due, and interest will be charged on the amount not received (and for the number of days the payment is late).

However, through interviews with various MRM officials, our investigation determined that MRM considers the receipt date of the late payment/underpayment (MMS Form 2014) as the payment date, whether interest has been included or not. Interest on late royalty payments is accrued from when the royalty should have been paid until the actual royalty payment date (receipt of the 2014). MRM then bills the company for the interest that is owed from the late payment. Interest does not continue to accrue for the period in which the government delays billing for the interest; however, 35 days after the company receives a bill from the government, the government begins charging interest on interest. Once MRM receives payment for interest on late royalty payments, MRM will send another bill for interest on the late interest payment.

When interviewed, a Manager for Financial Management stated that MRM charged interest on late royalty payments by comparing the date the royalty payment was received to the due date. He explained that once MRM sent a bill to the company, the company had 35 days to pay the interest, after which it was subject to additional interest charges. He said MRM could not calculate the interest on the unpaid interest until the initial interest was paid. He added that once the initial interest payment was received, an additional interest bill was generated.

According to the MRM Chief of Financial Management, when MRM received a late royalty payment or royalty underpayment from a lessee (through submission of the Form 2014) MRM stopped interest from accruing. He said that if the payor underpaid on its Form 2014, the original due date was used to calculate the interest owed. He added that late interest payments were calculated from the due date to the date MRM received the royalty payment, and interest did not accrue thereafter.

We told the MRM Chief of Financial Management that Little alleged that interest should be compounded, or accrued, monthly like a credit card. He responded that Little's assertion was incorrect and explained that in accordance with regulations, interest was only charged from the date the royalty was due until it was paid.

During their interviews, an Accountant, Financial Management, MRM, and the MRM Chief of Financial Management said the relators' allegations that MRM was not billing interest and not billing interest on late interest were unfounded. The Accountant said MRM was current on interest billing through August 2005 and had initiated a Corrective Action Plan that MRM Financial Management believed would bring MRM current on all interest billing and collection by the end of FY 2007.

MRM Instructions to Auditors Regarding Interest Collection

In their lawsuit, Little and Morris included examples of letters to payors that they had prepared in May 2002 in which payors were informed of the Royalty Simplification and Fairness Act requirement to calculate and report interest owed. The letters also informed the payors that a calculation of the interest owed was being provided to them as a convenience by MRM auditors. Additionally, Little and Morris included a copy of an e-mail message sent by Arnold on June 5, 2002, informing recipients that, under Maxwell's direction, they were not to issue any Orders to pay interest. The e-mail stated that MRM Financial Management would be responsible for billing interest on any additional royalties identified by audit or compliance efforts.

According to Little, Bobby Maxwell had encouraged the auditors under his supervision to include interest collection in their Issue Orders (in May 2002); however, he said MRM Financial Management stopped the auditors before they sent the modified Orders with the interest collection language. Little said he believed Financial Management did not want the auditors to include interest collection because doing so would cause a problem for Financial Management if the companies made interest payments with no receivable (bill/invoice) in the system.

Morris stated that in about 2003, auditors in the Oklahoma City, OK, office prepared Issue Letters "demanding interest" from payors at the direction of Bobby Maxwell. According to Morris, approximately a week later, they were told to "stop doing what you're doing." Morris stated that his supervisor at the time told him the direction not to proceed with sending the letters also came from Maxwell.

Joel Arnold, Supervisory Auditor, MRM, said Bobby Maxwell initiated a policy (in May 2002) for the Oklahoma City, OK, Compliance and Asset Management office to put language in their Issue Letters notifying companies of the requirement to calculate and pay interest. He added that the auditors would sometimes calculate the interest that the company owed and provide that figure to them in the Issue Letter as a convenience. When asked whether his efforts and direction to his employees to attempt to collect interest was contrary to MRM policy, Arnold responded that he believed the policy was

outdated. He added that he was just doing what his supervisor (Bobby Maxwell) told him to do.

We determined that the MMS Audit Manual, Release 2, dated January 16, 1998, Chapter 23.2, states, “Auditors should never generate separate interest bills for post-[Royalty Simplification and Fairness Act] audit periods because the bills will duplicate interest amounts.” The MMS Audit Manual, Release 3, dated January 1, 2005, Chapter 22.2, states, “Auditors should not generate separate interest bills because the invoices will duplicate interest invoiced on system-generated ...invoices.”

Little, Morris, and Arnold acknowledged that they were aware that the MMS Audit Manual directed that auditors should not issue demands for interest when they were seeking payments from payors and that auditors should notify Financial Management, which would then calculate and bill interest.

An MRM Western Team Manager said that because the MRM Support System interest billing and collection module was not working well, MMS Compliance and Asset Management set up an interim process in which auditors would use a program similar to Financial Management’s program to calculate the interest. He said the auditors would then post interest calculations manually as “sort of a book entry to document what will ultimately happen when the system catches up with its backlog and bills the interest.”

This Manager said there was no intention of forgiving interest owed to the government. He described the interim process as a “place holder” instituted because of the interest backlog in Financial Management. He noted that this process was communicated to auditors in an October 13, 2004 memorandum titled, “Case Management and Tracking through the Compliance Information Management Application.”

The Manager said the auditors were informed through the aforementioned memorandum not to calculate and bill interest. He said the auditors were advised that billing interest directly created a burden on Financial Management because it required additional steps to account for the billing and to prevent duplicate billing.

He stated the following in a July 22, 2005 e-mail to Little:

I found the following in the Audit and Compliance Policies and Procedures Manual, from page 4 of the October 13, 2004 memo on case management and tracking: ‘Until we’re current in issuing automated interest bills and have a means of distinguishing interest in [Compliance Information Management], manually calculate interest due, document it in the workpapers (please see Attachment 1 for a sample workpaper to document the interest calculation), and add it as a finding and collection into the [Compliance Information Management] fieldwork subcase. Note in the comments that the interest calculation is not an actual bill.’

A Minerals Revenue Specialist, Office of Enforcement, MRM, recalled that he was assigned as the acting supervisor for the Oklahoma City, OK, Offshore Compliance and Asset Management office after Bobby Maxwell retired in June 2003. He said he served in that capacity for approximately [Exemptions (b)(6) and (b)(7)(C)]. He recalled advising auditors in that office not to calculate interest or request manual bills from Financial Management. He explained that he provided this guidance to the auditors because the payors' Form 2014s would eventually be processed through the MRM Support System, which would automatically generate interest bills. He said that if the auditors calculated the interest or requested manual bills, the payors could be billed twice.

The MRM Chief of Financial Management said the MMS Audit Manual specifically stated that auditors should not attempt to collect or calculate interest. He said that if auditors attempted to collect interest manually, it would create a duplicate billing because the MRM Support System would do it automatically as well.

A Senior Auditor, Compliance and Asset Management, MRM, opined that Bobby Maxwell influenced the Offshore Compliance and Asset Management office in Oklahoma City, OK, into pursuing interest calculations. He said that office was the only group in MRM pushing to calculate interest manually. He recalled Maxwell once stating that findings "paid like slot machines" when referring to MRM efforts to get companies to pay additional royalties.

A Supervisory Auditor (and Morris's former Supervisor), Offshore Compliance and Asset Management, MRM, Oklahoma City, OK, said auditors were instructed to enter royalty collections and interest calculations in the Compliance Information Management System, which would create a "place holder" until the actual interest was calculated by Financial Management.

Allegation that MRM Returned Valid Payments

During his interview, Little said that in about 2005, the following situation occurred:

I [got] a call from Finance, Financial. And [the MRM Chief of Financial Management]¹ said, 'We got some money [coming] in here without an offsetting receivable. What's this about?' And I said, 'Well, that's got to do with these people owed us, they shorted us on some royalty-in-kind, and there's some of them that's paying us in oil and we're taking care of that, but some of them are paying us in cash.' And they said, 'Well, give it back to them.' I said, 'What do you mean, give it back to them?' I said, 'You're talking about three, four million dollars here.' He said, 'Well, give it back to them, because we don't have a receivable.' I said, 'I'm not going to – if you give this money back to those companies, we may never see it again.' I said, 'This money's been collected on behalf of the taxpayer. Why would I give that money back to them?' He said,

¹ Little later stated that the caller was the MRM Chief of Financial Management.

‘Because we don’t have receivable.’ I said, ‘That doesn’t make sense to me that you’ve got a company who’s willing to pay you.’

Note: When we contacted Little’s Attorney, subsequent to our interview of Little, he said Little had been referring to a situation involving a company named Anadarko. When asked, he also advised that Little had told him that he was referring to the MRM Chief of Financial Management as the person from Financial Management who talked to Little, as described above.

Little said an Enforcement Specialist, MRM, began working on the issue above because “Finance [was] so outraged that we collected money with an offset receivable...” He said the Enforcement Specialist was working on a settlement agreement and told him that Financial Management was letting the money sit unprocessed because it did not have an offset receivable. *Note: An offset receivable is the application of a payment (credit) to a payor's file to account for all or part of the royalty/interest owed by the payor (debit). If MRM does not receive the documentation (i.e. Form 2014) associated with the payment, MRM cannot apply the payment to an account as an offset receivable. The goal is to match a credit to a debit to properly reflect that payment was made.*

When asked if he was describing royalty payments or interest payments, Little replied, “It’s interest on the late paid royalties... We look at it as royalties owed, because they didn’t pay the royalties on the due date.”

When interviewed, Morris claimed that he heard of instances where MRM returned money to companies because MRM could not match the payment to an account receivable, but he had no specific knowledge that it had actually happened. Morris added, “Why would you send [the money] back? I don’t agree with that philosophy, if in fact it was done.” Morris provided no specific examples of MRM returning the money.

Our review of e-mail messages between Little and the Enforcement Specialist, obtained from Little’s government computer and via fax from Little’s Attorney, disclosed no indication that MRM had returned money or attempted to return money to Anadarko or the other two oil companies (British Petroleum and Union Oil) found to be involved in the settlement that the Enforcement Specialist was creating. The e-mails chronicled MRM’s efforts to obtain reimbursement for credits taken by the companies after MMS erroneously directed the companies to take the credits. An e-mail written by Joel Arnold, Supervisory Auditor, MRM, on January 19, 2005, to the Chief (now retired), Office of Enforcement, MRM, stated the following:

During our recent review of Offshore [RIK Strategic Petroleum Reserve] oil we determined Anadarko Petroleum, Union Oil and [British Petroleum] Exploration took erroneous credits on MMS Form 2014. The companies explained that the credits were taken in response to an ‘Order to Comply’ it received via an email from a non-Management employee in the MMS RIK Group.

...Because of the somewhat confusing language and perhaps the inappropriate use, delivery and structure of the Order to Comply and numerous companies' misinterpretation of the Order, we recommend settling the issue via formal Settlement Agreements by having the companies reverse their credit entries without being liable for paying interest.

Additionally, an e-mail written by Little on June 7, 2005, and sent to the Enforcement Specialist summarized the issue as follows:

I discovered the Anadarko, [British Petroleum], and Union Oil problem during a reconciliation of delivered volumes for the SPR oil Phase IIa contract period of August 1999 through December 1999. I uncovered credit Form-2014 entries for each company for December 1999 for oil volumes the companies did not over-deliver. Upon contacting one of the companies, I was emailed a copy of [the Lead RIK Revenue Specialist's] 'Order to Comply' without attachments. I sent you a copy of this 'Order.' I then had several discussions with representatives of each company concerning the accuracy of the 'Order to Comply.' After weeks of research, each company representative acknowledged their company did not over-deliver volumes for this time period and should not have taken the credit. They agreed to refund the credits taken, but thought they should not be responsible for interest because the MMS had *ordered them to take the credit in error* [emphasis added].

The Enforcement Specialist said there was no accuracy to the allegation that MRM returned a payment. He retrieved the Anadarko case, file number [Exemption (b)(2)], dated April 17, 2005. He said the MRM Office of Enforcement had opened a file based upon an erroneous RIK recoupment of oil volumes for the Strategic Petroleum Reserve.

The Enforcement Specialist also said Compliance and Asset Management auditors had attempted to use an Office of Enforcement transaction code specifically designated for alternative dispute resolution (settlement) purposes and that the transaction code kept interest from accumulating in the MRM Support System. He said the Office of Enforcement took over the pending Compliance and Asset Management issue on April 17, 2005, when it found out that Compliance and Asset Management had attempted to use the transaction code, which was confidential. He said no money was returned to Anadarko in resolving this issue.

The MRM Chief of Financial Management said he did not know of any situation where MRM Financial Management returned money because of a processing issue. He said Financial Management would take money from anywhere, anyone, and anything, even if there was no receivable. He explained that the money would sit on the books until Financial Management obtained a receivable, allowing the funds to be properly distributed. He said there had not been a problem with processing any money brought in as a result of the auditors' findings. However, he said auditors often did not provide the

proper paperwork (Form 2014) to allow Financial Management to appropriately process the money.

The Chief of Financial Management said a common problem between Financial Management and auditors occurred when money was collected by auditors without the necessary documentation. According to the Chief, auditors often did not ensure Form 2014 was completed and provided to Financial Management. He said some auditors believed that once a payment was collected from a company, any additional work was the responsibility of Financial Management. He admitted that when he was an auditor, he subscribed to this same philosophy.

The Chief of Financial Management explained that if Financial Management did not have a receivable identified with a payment, the money remained as unapplied cash. He said Financial Management needed a receivable matched to the payment to ensure that it could be distributed correctly. He stated that companies liked to send money ahead of the receivable because it stopped interest accrual, but Financial Management could not distribute the money to the ultimate recipients until the money could be attributed to the appropriate account.

The Chief of Financial Management said it was an auditor's job to ensure that Financial Management received Form 2014. The receipt of Form 2014 allowed Financial Management to apply the money and eventually charge late interest payments where necessary. He said he did not recall having a telephone conversation with Little regarding a payment or returning money to a payor; however, he stated, "I could easily see having a conversation with Randy [Little], or any auditor, that if I know it's an audit collection, I'm gonna tell them you gotta get me a receivable, and I am gonna threaten them a little saying if you don't get me a receivable we're gonna return the money."

According to the Chief of Financial Management, Financial Management never returned money on audit findings, and he said, "[W]e push[ed] hard to get the receivable because we should not have open money on our books." However, he described certain situations where MRM returned money to companies in response to refund requests or rental overpayments.

Reporting and Safeguarding Requirements

Our investigation found that Little and Morris attended the MRM Office of Enforcement Illegal Acts Awareness training on September 15, 2004, in Oklahoma City, OK. A class sign-in sheet included their signatures.

Our review of the MMS Information Technology Rules of Behavior database used to record employee acknowledgement of the rules, which includes discussion of safeguarding and use of official and proprietary information, disclosed the following:

- Little completed the acknowledgement for FY 2005 and FY 2006.
- Morris completed the acknowledgement for FY 2005.

A review of MMS training and education records for calendar years 2005 and 2006 disclosed that Little and Morris completed the MRM FOIA and Privacy Act training during calendar year 2005.

As noted earlier in this report, the MMS Internal Quality Control System, Audit and Compliance Policies and Procedures, states under the heading of “Fraud, Illegal Acts and Abuse” that “Any company actions that potentially could be considered fraudulent, abusive, or illegal should be brought immediately to the attention of the audit manager for appropriate follow-up and in accordance with the MRM Audit Manual.” This document includes an acknowledgement of receipt that MRM employees are required to sign. Review of the receipts retrieved from Little and Morris’s manuals disclosed the following:

- Little’s form was blank.
- Morris signed the form on January 25, 2005.

Reporting Requirements

When interviewed, Little stated that he did not report his findings regarding unpaid interest to the MRM Office of Enforcement or the DOI-OIG because he did not trust them. Little said he felt compelled to report his concerns to someone independent of DOI. He said he considered notifying the FBI but elected to file a False Claims Act lawsuit after receiving guidance from private counsel.

When asked why he did not report his concerns specifically to DOI-OIG, Little responded, “I didn’t at first. I did simultaneously at the time I filed the action of *qui tam* – they were under seal. The day they were under seal, they were given to the Department of Justice, the U.S. Attorney, and [the OIG] was also involved.”

In regard to whether he was alleging that oil companies had engaged in fraudulent actions against the government, Little said, “I filed what we call a false claim, and I know that’s still considered some level of fraud, but as far as criminal liability, I believe it’s, you know, I’m not an attorney, they can speak to that, but I think we have a lesser degree of proof for a false claim that [sic] we do actual criminal fraud, but that’s correct.”

Little recalled an e-mail from Lanis Morris sent on July 18, 2005, in which the DOI Ethics Office suggested that Morris consult the SOL if he planned to file a False Claims Act lawsuit. Little recalled that his response to Morris was, “I guess we should notify the Solicitor.” Little stated that he did not consult the SOL before filing the lawsuit.

Little, when apprised of the section of the MMS Audit Manual that referenced the Departmental Manual’s instruction to DOI employees on their duty to report fraud, waste, or abuse to the OIG, responded that he was not conducting audits but rather compliance reviews. He stated that the Compliance Review Manual did not include language referring to the Departmental Manual. Little asserted that he did not violate any MMS or

DOI policies because he made notification to the OIG by filing his *qui tam* lawsuits. Little stated that the policies indicated he needed to report fraud to the OIG, but DOI/MMS policy did not indicate he needed to do so prior to filing a False Claims Act lawsuit.

Note: Our review of the MRM Compliance Review Manual, Release 1, determined that it contained no guidance or direction to employees pertaining to their responsibility to report suspected fraud, waste, or abuse to the OIG.

Little maintained that he saw no potential of a conflict between MMS or DOI policies and filing his *qui tam* lawsuit. He opined that through filing his False Claims Act lawsuits, he was still pursuing companies on behalf of the government just as he would as a government auditor. Little said it was his job to pursue the companies and the only difference was that he stood to gain financially under the lawsuit. When asked if he felt he exhausted all available avenues within DOI, including the OIG, Little commented that false claims were “a little bit lighter” than an intentional fraud.

When interviewed, Morris said he did not report his concerns to MMS managers about companies not calculating and paying interest because he believed Little and Arnold had raised other issues without success. Morris said he did not believe anything would change if he approached MMS management with his concerns.

Morris said he did not file a complaint with the Office of Enforcement or the OIG because he was not sure what action would be taken. He claimed that he was not confident that the OIG would respond to a complaint [Exemptions (b)(6) and (b)(7)(C)]. Morris said he decided to file the *qui tam* lawsuit because “[the lawsuit] would be the tool that management would have to address.”

[Exemptions (b)(6) and (b)(7)(C)]

When asked why he did not comply with the requirements of the Departmental Manual and the Generally Accepted Government Auditing Standards (GAGAS) (also referred to as the Yellow Book standards) to report suspected fraud to an authority such as the OIG, Morris responded, “Fraud? Well for one thing, it was not an audit, so it didn’t fall under Yellow Book.” Morris added that the OIG was notified when he filed the False Claims Act lawsuit.

[Exemptions (b)(6) and (b)(7)(C)] Morris also acknowledged that he contacted (via e-mail on July 11, 2005) an MMS employee relations counselor to inquire whether a GS-12 auditor could file a *qui tam* lawsuit. Morris admitted that he was thinking about filing a *qui tam* lawsuit when he sent the e-mail to an MMS Ethics Specialist, stating, “That’s exactly when I was thinking about doing a False Claims on interest.”

[Exemptions (b)(6) and (b)(7)(C)]

Morris added, “[The False Claims Act] overrides those ethics or those Standards of Conduct.” Morris claimed that because he filed the lawsuit on behalf of the government, the standards of conduct and ethics rules applicable to federal employees did not apply to him in this situation. He added, “[S]o I’m excluded from those; Bobby [Maxwell] is, too.”

Further, Morris stated the following:

And actually I don’t think government employees should collect under the False Claims Act. I think they should have the right to file these things, and I don’t think they should be retaliated against like I’m being retaliated against. But I do think they have the right to file that and I think they should be able to do that to get management to do the right thing.

Morris added, “I didn’t do this for the money. Not at all.”

In response to Morris’s inquiry, noted above, the Ethics Specialist, in his e-mail, said that if Morris or another federal employee filed a *qui tam* lawsuit, it might be considered a supplementation of salary. The Ethics Specialist suggested that Morris consult the SOL before filing a *qui tam* lawsuit.

When asked whether he followed the advice in the MMS Ethics Specialist’s e-mail, Morris responded, “Yeah, when the False Claims was filed, the Solicitor’s Office was there. Yep, everybody was contacted at the same time.” He added, “[the OIG was] notified at the same time with the False Claims Act when it was presented to the Department of Justice.”

We advised Morris that the MMS Manual, Part 370, Chapter 735, Employee Responsibilities and Conduct, defined *conflict* under the Conflict of Financial Interest section as a situation where (1) “an employee’s public duty is or will be affected by his or her financial interest” or (2) “an employee’s financial interest is or will be affected by decisions he or she makes or operations in which he or she is involved in an official capacity.”

Morris said, “I don’t see where there’s any financial interest.” He added, “Under a *qui tam* I am supposed to be working for the government.” Morris claimed there was no conflict of interest because he was trying to collect money for the U.S. Government. Morris opined that it would create a beneficial environment for audits if the companies knew that every auditor who entered their offices could potentially file a *qui tam* lawsuit against them.

Morris said he believed the subject of conflict of interest was covered in ethics training he received and stated, “I understand conflict of interest.”

Safeguarding Requirements

We contacted an MMS FOIA/Privacy Act Officer to determine if MMS had received any FOIA requests from Little, Morris, or their attorneys. The FOIA/Privacy Act Officer responded by e-mail that there had been no FOIA requests from attorneys representing Little. The MMS FOIA/Privacy Act Officer said in an interview that Little made one FOIA request in October 2004 for information on awards given to employees at the Oklahoma City, OK, Offshore Compliance and Asset Management office.

The FOIA/Privacy Act Officer, in another e-mail, said there was a FOIA request from an Attorney representing Morris. He said the Attorney had submitted two FOIA requests. He said the first asked for (1) all MMS meeting minutes from June 2, 2002, and June 13, 2002, and (2) all orders to pay from June 2, 2002, to the present (request dated October 30, 2006). He said the second FOIA request, also dated October 30, 2006, was for information on 24 companies, including the following: several kinds of Form 2014 data, letters from Lucy Querques Denett on the Royalty Simplification and Fairness Act, and references associated with an MMS press release made on September 28, 2006. The FOIA/Privacy Act Officer said Morris's Attorney's FOIA requests were never fulfilled because the Attorney did not agree to pay the appropriate FOIA fees.

During his interview, the MMS FOIA/Privacy Act Officer said Morris made three FOIA requests – on September 29, 2005; January 5, 2006; and January 8, 2007 – for information on all awards given to employees in the Compliance and Asset Management office, Oklahoma City, OK, for GS-15s and below. He said that on March 30, 2006, Morris also made a FOIA request for contracts by and between MMS and its retired and/or retiring personnel. According to the FOIA/Privacy Act Officer, Morris wanted the names and grades of personnel as well as the amount, description, and duration of the contracts. The FOIA/Privacy Act Officer related that MMS did not provide any information to Morris related to this request as it would have required MMS to create a document. He explained that FOIA did not require MMS to do so.

An MMS FOIA Staff Member and an MMS Records Officer said the MMS Manual, Part 386, was the regulation used for determining whether a document was protected or proprietary. We showed both of them exhibits used by Little and Morris in their lawsuits. They identified the documents presented to them as either proprietary or protected as internal MMS business records, or a combination of both categories.

Additionally, we asked the FOIA Staff Member if any of the exhibits used in the “Statement of Reasons for the United States Department of Justice to Take On the Qui Tam Litigation” contained information that would be redacted or not released in response to a FOIA request. He identified Exhibit A6 as containing information that would be considered a confidential business record not releasable to a requestor under the FOIA. He identified Exhibit E as containing information that would be redacted under Exemption 5 of the FOIA because it contained information involving inter/intra-agency communications. He added that specific oil values shown in Exhibit A3 would be redacted because the oil value data was a proprietary business record. He noted that

Exhibit F contained information on page two that would be withheld pending a determination of whether the data was cumulative or representative of individual month data.

A Supervisory Auditor, Offshore Compliance and Asset Management, added that he did not assign Morris to conduct any interest billing/collection-related projects. He opined that Little and Morris probably conducted the research for their lawsuit using the MRM BRIO² system and looked for underpayments or late payments.

When interviewed, Little admitted that he took official documents and information from his office to use in support of his *qui tam* lawsuit. Little denied that he obtained any of the information used in his lawsuit through a FOIA request, and, in response to a question about where he got the documents and information, he said he obtained all of it from his office. He denied using government computers or material to conduct research to further his lawsuit but acknowledged that he checked the MMS databases to verify that the companies he was suing had not paid what he believed they owed to the government.

Little said he was familiar with the proprietary information section of the MMS Manual (Part 386, Safeguarding of Records and Information). He said he received annual training related to proprietary information. He said he was also familiar with the MMS policy on conflict of financial interest and stated that he completed annual financial disclosure statements.

Little maintained that by providing official or proprietary information to his attorneys, he had not violated MMS policy. Moreover, he asserted that the information never left the government, as his attorneys were working on his behalf in efforts to collect money due to the U.S. Government. Little stated that the MMS policy on conflict of financial interest (Part 370, Employee Responsibilities and Conduct) was not applicable to his situation because he did not yet have a financial interest.

When asked if he had used government time or materials to research and prepare for his lawsuit, Morris responded, "Yes, I did." Morris explained, "We had to quantify the amount of interest that could possibly be up there that was not being collected. And I think we started putting that together like in August 2005." He added, "Well, [Randy Little and I] wanted to quantify and see if it was an amount that would be worthwhile going after."

Morris said their efforts were not associated with an assignment given to them by supervisors. He said he conducted this research in about August 2005 and retained counsel for his lawsuit in September 2005. Morris, in response to a question about whether he used government time and material to further his lawsuit after retaining counsel, said, "I'm sure we went back and checked to see if any of those companies had paid, because I definitely don't want to sue somebody that paid their interest."

² Software package within the MRM Support System.

Morris also admitted that he took or copied official and proprietary documents that were available to him in his official capacity as an auditor to use in his False Claims Act lawsuit. He said he took the material to “quantify the amount of interest,” adding, “... I brought them down here to his attorney for safekeeping. It was my schedules, which I took from those disks and I left my attorney with the disks.” Morris explained that he was referring to his “interest calculation schedules” that were used in his lawsuit. He denied releasing the documents or information to anyone else.

Morris also said he conducted Internet searches on his government computer for his lawsuit. When asked about his Internet searches, Morris said he may have researched the term *qui tam* because he “wanted to know how [Maxwell] did it and if it was legal ... because it conflicts with, like you said, everything in ethics.”

Morris said he was aware of requirements for safeguarding proprietary information and had completed courses on the subject; however, he was not specifically familiar with the MMS Manual Part 386, Safeguarding of Records and Information. He stated that the MMS Manual was probably available online.

Morris stated that his understanding of safeguarding proprietary information was that such information could not be released to the general public. Morris said he was sure some of the information he provided to his attorneys was proprietary but did not believe he violated MMS policy. He explained that he was still working on behalf of the government and had only released the information to his attorneys. He commented, “[The documents and data] never left the government as far as I’m concerned.”

Note: Our investigation found no evidence that the documents used by Little and Morris in their lawsuit were provided to anyone other than the attorneys who were retained for the lawsuit.

Declination of Prosecution

On September 20, 2006, the U.S. Attorney’s Office, Public Corruption Unit, Oklahoma City, OK, verbally declined criminal prosecution of Little and Morris for alleged removal and use of official government documents. The Assistant U.S. Attorney said he was declining prosecution because administrative remedies were available to DOI to address the situation.

Dismissal of Lawsuit

On August 22, 2007, the District Court in Oklahoma issued an order³ dismissing this case, finding, “... even if defendants knowingly made a false certification of hardship, the Secretary would, pursuant to statute, calculate the interest that is due and notify defendants of the amount that is due.” The Court also found the following:

³ The Court’s Order on Motion to Dismiss of August 22, 2007, in *U.S., ex rel., Little and Morris v. Eni Petroleum Co., Inc., et al.*, Case No. CIV-05-1397-M (W.D. Ok).

[A]ny allegedly false certification of a hardship and failure to calculate and report interest due did not conceal defendants' obligation to pay the interest because, as alleged by relators, the MMS-2014's filed by defendants reflected the underpayments for which the interest was due, thereby providing notice to the government that interest was due on these underpayments and triggering the Secretary's statutory duty to calculate said interest.

Little v. ENI Petroleum Company, Inc., and AGIP Exploration Company

Randy Little's *Qui Tam* Complaint

On February 3, 2006, MMS Auditor Randy Little filed a *qui tam* lawsuit against ENI Petroleum Company, Inc., and AGIP Exploration Company (ENI/AGIP) for filing false claims regarding transportation deductions taken between October 2002 and August 2004. Little claimed that ENI/AGIP inappropriately claimed transportation deductions totaling \$944,648.

In the lawsuit, Little alleged that ENI/AGIP unlawfully claimed deductions for transportation of oil beyond the delivery point. ENI/AGIP claimed the transportation deductions by using MMS Form 2014, which required a signatory to affirm that all statements in the report were accurate and complete. Little argued that the submission of the form by ENI/AGIP constituted a false claim to the government.

Little further alleged that MRM informed ENI/AGIP, via an August 13, 2002 letter, that “effective October 1, 2002, a Royalty in Kind (‘RIK’) program began in which MMS would take crude oil royalties ‘in kind’ in lieu of ‘in value.’” *Note: Taking oil in kind meant MRM would be receiving the actual oil at the Federal Metering Point, rather than money for the value of the oil. The Federal Metering Point is usually located at the production platform where the oil or gas is brought to the surface. It is also the point at which the government measures production volume to determine the royalty owed to the government. Prior to October 2002, the ENI/AGIP lease was RIV (royalty in value). ENI/AGIP extracted the oil, marketed/sold the oil, and paid a royalty to MRM based upon a percentage of the sale price, minus allowable deductions.*

According to the lawsuit, the aforementioned August 13, 2002 letter informed ENI/AGIP that beginning on October 1, 2002, MRM would start taking custody/ownership of its oil under an RIK contract at the Federal Metering Point, thus making the Federal Metering Point the delivery point. The letter stated, “The delivery points for Royalty Oil produced from the properties is [sic] at the [Federal Metering Point] or first interconnect into a main pipeline, as identified in the enclosures.”

Little further asserted in his lawsuit that the letter placed ENI/AGIP “on express notice that they could not continue to take a transportation deduction unless they were instructed by MMS to transport MMS oil downstream of the [Federal Metering Point] (which, to this date, has not been requested) [emphasis included].” Based upon the letter, Little concluded that ENI/AGIP “are, and have been, aware that since October 1, 2002, small refiners have assumed costs of transportation from the [Federal Metering Point] and that MMS has been paying the small refiners for transportation costs via a deduction from MMS royalties.” Regarding the leases at issue in Little’s lawsuit, MMS, according to Little’s Statement of Material Evidence filed with the court, sold its RIK oil to a small refiner (purchaser) under a bidding system, and the contract stated that the purchaser would take custody of the oil at the Federal Metering Point.

Little's lawsuit also stated that ENI/AGIP were responsible for knowing the laws that pertained to their leases with MMS. The complaint then cited Title 30 C.F.R. § 208.8(b), which states the following:

The lessee shall deliver royalty oil from section 8 offshore leases issued after September 1969 at a delivery point to be designated by MMS. The lessee shall deliver royalty oil from section 8 offshore leases issued before October 1969 or from section 6 leases at a delivery point to be designated by the lessee. *If the delivery point is on or immediately adjacent to the lease, the royalty oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by MMS* [emphasis included]. If the delivery point is not on or immediately adjacent to the lease, MMS will reimburse the lessee for the reasonable cost of transportation to such point in an amount not to exceed the transportation allowance determined pursuant to 30 C.F.R. Part 206.

The conclusion section of Little's lawsuit summarized the above allegations and included additional allegations against MMS management officials. The conclusion stated the following, in part:

[T]he United States Government has been subjected to **\$944,648.03** in unlawful deductions taken by Defendants over a period of twenty-three (23) months during which time Defendants were not actually transporting MMS oil [emphasis included]. At the same time the Government RIK oil being sold to small refiners was apparently burdened with duplicate transportation costs which effectively resulted in MMS's oil being charged twice for transportation. The unlawful acts of Defendants have been, at best, ignored and at worst, promoted by management supervisors in the RIK Group in Denver. Relator has tried to rectify Defendants unlawful actions, but has been prevented from doing so. ... The practice of the management supervisors at the RIK Group in Denver, in affirmatively stopping the pursuit of collection of the falsely reported deductions, is contrary to the job function of an independent auditor, which Relator is. The actions set forth above also violate applicable federal laws and regulations

Investigations in Response to *Qui Tam* Filing

On February 10, 2006, DOJ received notification of Little's *qui tam* lawsuit and in turn requested investigative assistance from the DOI-OIG. In addition, the DOI-SOL was notified and requested to provide recommendations as to what actions the government should take and to ensure the retention and government control of all relevant records. Two DOJ attorneys coordinated the investigative efforts with an OIG Special Agent and an SOL Attorney-Advisor.

When interviewed, the Attorney-Advisor stated that he and DOJ conducted an in-depth investigation into the claims and found they all lacked merit. He stated that, in his opinion, the actions of MMS officials were both legal and an appropriate use of discretion, and the defendant company, in turn, simply acted pursuant to direction provided by MMS officials.

The Attorney-Advisor stated that the investigation further determined that the relator's lawsuit stemmed from the fact that he was disgruntled about having his recommendations for enforcement actions overruled by supervisors.

On September 8, 2006, DOJ notified the court of its decision not to intervene in the matter. In addition, DOJ stated, in part, that it appeared some or all of the material facts and documents supporting the allegations made in the complaint were gained by the relator while serving as a government employee. Because federal employees have a fiduciary duty to use all information gained in the course of their employment solely for the benefit of the United States, DOJ reserved the right to object, at the appropriate time, to any award made to the relator.

Also, in September 2006, the OIG initiated a new investigation into the legitimacy of Little's claims to include, in part, whether the earlier DOJ investigation adequately addressed Little's assertion that the decision by MMS management to not pursue collection of the reported fraudulent deductions was proper. In addition, our investigation addressed concerns regarding whether Little complied with DOI/MMS policy when filing his claim, specifically with reporting violations and use of government/proprietary documents.

Transportation Costs Questioned

When interviewed, Little stated that he had been tasked to independently conduct reviews of RIK leases. In about 2004, Little said he discovered that ENI/AGIP were deducting costs for transportation beyond the delivery point, which in this case was also the Federal Metering Point. Little said he believed this was a violation of federal regulations because the purchaser of the oil (Gary-Williams Energy Corporation), was taking custody of the oil at the Federal Metering Point. Little said he believed that both ENI/AGIP and Gary-Williams were claiming transportation deductions beyond the Federal Metering Point, resulting in MRM being double-billed for transportation costs.

Little claimed that ENI/AGIP were told when their leases were converted to RIK (from RIV) that they could not take transportation deductions on the RIK lease. He said ENI/AGIP could have requested an exception, but they did not.

Little said he informed his supervisor, Joel Arnold, of his findings, who subsequently began to look into the matter to determine the validity of the transportation costs. Little said Arnold took responsibility for the issue and that he (Little) discontinued his

participation in the matter. Little said he was kept apprised of the matter through discussions with Arnold.

According to Little, once Arnold learned of the questionable transportation deductions from him, he (Arnold) contacted an ENI/AGIP Representative to ask why ENI/AGIP were claiming transportation deductions under the RIK contract for costs incurred beyond the Federal Metering Point. The ENI/AGIP Representative responded with the following information via e-mail:

We researched the transportation deducts per your attached schedule and determined the allowance is related to a monthly charge from the Manta Ray pipeline which delivers the oil from the [Federal Metering Point] to Poseidon Oil Pipeline at Ship Shoal Block 332. This is a monthly charge from Manta Ray and expires this year. When MMS began taking its oil in kind, Manta Ray did not prorate this transportation fee between MMS and ENI: we continued to pay 100% of the fee; therefore, we continued to take the appropriate allowance. It is my understanding the oil must be transported through this pipe in order to reach market. If we did not pay this fee the MMS would not be able to move its oil to Poseidon. I believe Manta Ray also charges additional transportation fees which would be billed to the MMS directly or your purchaser during your RIK term. Let me know if you have any other questions.

Little said Arnold then contacted a Minerals Revenue Specialist, RIK Program, MRM, to determine if the RIK contract between MRM and the purchaser provided for an exception to the rule that only the purchaser would be able to deduct transportation costs after it took custody of the oil at the delivery point. Little said that after being informed of the terms of the contract between MRM and the purchaser, and reviewing ENI/AGIP's explanation as to why they were deducting transportation costs beyond the delivery point, Arnold concluded that ENI/AGIP should not be allowed to take the transportation deduction.

Little said Arnold took the issue, developed as part of a compliance review, to his supervisor, a Supervisory Program Analyst, Compliance and Asset Management, MRM (formerly the Team Manager for Offshore Compliance and Asset Management, Lakewood, CO), and to the MMS RIK group to determine how to address the matter and to obtain additional input on whether the transportation deductions were or were not allowable.

MMS Management Response to Questioned Costs

According to Little's lawsuit, the Minerals Revenue Specialist, RIK Program, MRM, requested that Arnold and his team discontinue their pursuit to collect additional royalties owed. In addition, Little claimed in his lawsuit that he was "directed to discontinue delving into the fraud and wrongful claims that [I] had discovered and to cease [my] investigation."

When interviewed about his role in this issue, the Minerals Revenue Specialist stated that Arnold had contacted him to inquire about the RIK contract between MRM and the purchaser (Gary-Williams). He said it was his understanding that Arnold contacted the RIK group because Little had identified a situation where ENI/AGIP had taken a transportation deduction allowance under an RIK contract. He said this deduction raised a red flag because producers were not typically allowed transportation deductions under an RIK contract beyond the delivery point.

According to the Minerals Revenue Specialist, Arnold had already contacted ENI/AGIP requesting that they explain their transportation deduction, and ENI/AGIP responded to Arnold by stating that the deduction was related to a monthly flat “interconnect” fee they were committed to paying to use a section of pipeline beyond the delivery point, which ENI/AGIP had used under the previous RIV lease. He said that considering this explanation, Arnold did not believe ENI/AGIP were entitled to the deduction. Accordingly, Arnold contacted the RIK group in order to request the specific terms of the RIK contract.

In response, the Minerals Revenue Specialist said he assigned an MRM RIK Oil Marketing Specialist to inquire with ENI/AGIP regarding the issue raised by Little and Arnold. According to the Minerals Revenue Specialist, ENI/AGIP provided the RIK Marketing Specialist with the same explanation they supplied Arnold. The Minerals Revenue Specialist said he then received an e-mail from the RIK Marketing Specialist in which the Marketing Specialist stated, “[ENI/AGIP] would have taken this fee if we were taking the production in value, so as far as I can tell they should be allowed to take it in kind. It’s up to [Compliance and Asset Management] to determine if they are taking the correct amount.” The Minerals Revenue Specialist then forwarded this explanation to Arnold.

In his lawsuit, Little included an e-mail string initiated by Arnold on November 1, 2004, to the Minerals Revenue Specialist. The e-mail stated that the Oklahoma City, OK, Offshore Compliance and Asset Management team supervised by Arnold did not believe the deductions taken by ENI/AGIP were allowable since the purchaser (Gary-Williams) should have paid the interconnect fee (for use of the pipeline). The same day, the Marketing Specialist responded to Arnold explaining that Gary-Williams did not consider this annual fee into its bid for the oil. The fee was being paid by the producer, ENI/AGIP, under an annual flat-fee contract and was not based upon volume. The Marketing Specialist concluded his response to Arnold by stating, “I feel [ENI/AGIP] should be allowed this cost since they would have been allowed to take it if it were in value. Perhaps we need a telecom.”

During our investigation, we discovered that the Minerals Revenue Specialist sent an e-mail to Arnold on December 15, 2004, as a follow-up to the above-noted e-mail string, stating, “[J]ust following up on some loose ends. Do we need a telecon on this? Thx.” The next day, Arnold responded to the Minerals Revenue Specialist in an e-mail stating, “[The Supervisory Program Analyst, Compliance and Asset Management, MRM,] and I discussed this and decided not to pursue this as an issue.”

When interviewed, the Minerals Revenue Specialist denied Little's allegation that the Minerals Revenue Specialist requested Arnold or his group to stop investigating or pursuing the matter. The Minerals Revenue Specialist said he had received an e-mail from Arnold stating that he and his supervisor (the Minerals Revenue Specialist) had decided not to pursue the matter; therefore, the Minerals Revenue Specialist concluded that the issue was closed as far as the RIK Program was concerned.

The Minerals Revenue Specialist further stated that he would have no authority to request the auditors to discontinue their actions. He stated that the RIK group had no authority to decide whether a transportation deduction was allowable or not. According to the Minerals Revenue Specialist, such decisions were strictly within the purview of Compliance and Asset Management. He said the RIK Program simply provided Compliance and Asset Management with information about the terms of RIK contracts in order to facilitate Compliance and Asset Management in making an informed decision regarding such deductions. He said the RIK Oil Marketing Specialist's recommendation that the deduction was allowable was simply a recommendation.

Regarding the ENI/AGIP deductions, the Minerals Revenue Specialist pointed out that the deductions ENI/AGIP were taking were *not* being taken by Gary-Williams. He said the section of pipeline for which ENI/AGIP were taking the deduction essentially had two fees – one fee was the annual flat fee paid by ENI/AGIP, and the other fee was a user fee based upon the volume of oil being transported through the pipeline, which was being paid by Gary-Williams. He stated that the deductions for both fees were valid.

The Minerals Revenue Specialist stated that after learning about this issue from Joel Arnold, but not as a direct result of it, MRM moved the delivery point downstream from the Federal Metering Point, beyond the section of pipeline with the interconnect fee. He said MRM did not move the delivery point in order to give ENI/AGIP the financial benefit of claiming the transportation costs but rather moved the delivery point after receiving a request from the pipeline owner in order to alleviate accounting challenges for the companies involved, including ENI/AGIP, Gary-Williams, and the pipeline owner.

According to the Minerals Revenue Specialist, the MRM leases provided MRM with the discretion to move the delivery point beyond the Federal Metering Point in situations where it made business sense. He stated that after the delivery point was moved downstream, ENI/AGIP began paying both fees associated with use of the concerned section of pipeline and taking the appropriate deductions. *Note: The relocation of the delivery point did not create any new deductions, but rather shifted the volume-related transportation costs for that section of pipeline from the purchaser, Gary-Williams, to the producer, ENI/AGIP.*

In his interview, the MRM RIK Oil Marketing Specialist echoed the Minerals Revenue Specialist's description of events surrounding the RIK Program's involvement in the ENI/AGIP issue. The RIK Oil Marketing Specialist stated that ENI/AGIP submitted

pipeline statements and charged the RIK Program a flat fee for pipeline expenses. He said the RIK Program could not pass along the flat fee expense to RIK purchasers (such as Gary-Williams), so they recommended allowing the deductions for transportation. The RIK Oil Marketing Specialist explained that ENI/AGIP charged the flat fee instead of a per barrel fee as a result of their contract to pay a connection fee for use of the Manta Ray pipeline. He said ENI/AGIP were advised to take the deductions, subject to audit, under the assumption that the deductions, which were allowed under RIV, were also allowed under RIK. He explained that the RIK Program did not have the authority to approve transportation deductions. He noted that Compliance and Asset Management later approved the deductions.

The RIK Oil Marketing Specialist stated that the RIK group made the decision to move the delivery point downstream from the Federal Metering Point, which it was authorized to do. He explained that this action actually lessened the overall transportation deductions MRM allowed, and thus benefited the government.

The Deputy Director, RIK Program, MRM, said the delivery point (for the ENI/AGIP leases) was moved to benefit the government and reduce costs. We also asked him a number of questions via e-mail in an effort to determine whether ENI/AGIP and Gary-Williams both claimed transportation deductions beyond the Federal Metering Point. In an e-mail to the OIG, the Deputy Director reported that Gary-Williams had never requested reimbursement from MRM for the pipeline interconnect fee. We asked him whether the change in delivery point increased transportation costs to the government. The Deputy Director, in the written response, stated, "No," and added that the transportation costs were approximately the same for either delivery point.

When interviewed, a Supervisory Program Analyst, Compliance and Asset Management, MRM, stated that in a typical Compliance and Asset Management scenario, once an auditor and his/her direct supervisor evaluated an issue and determined that an Issue Letter or Order to Pay needed to be issued, the Compliance and Asset Management manager had to be consulted for a final decision on the matter. Upon being consulted, the Supervisory Program Analyst said he would perform an official review of the file and make a final decision on what action needed to be taken.

The Supervisory Program Analyst said he was the Compliance and Asset Management manager who made the final decision that the deduction taken by ENI/AGIP was allowable. He said he made this decision only after performing an official review of the file. Contrary to Little's allegations, the Supervisory Program Analyst stated that the MRM Minerals Revenue Specialist did not direct Little and Arnold to stop their investigation. The Supervisory Program Analyst stated that the Minerals Revenue Specialist had no authority to direct Compliance and Asset Management to do anything, much less cease a review of a producer's deductions. According to the Supervisory Program Analyst, once he made the decision to not approve the Issue Letter, the matter was closed. In fact, the Supervisory Program Analyst stated that Arnold did not express any dissatisfaction to him about the decision to allow the deduction.

Regarding Little's claim that 30 C.F.R. § 208 prohibited the deduction, the Supervisory Program Analyst stated that 30 C.F.R. § 208 concerned RIK specific to the Small Refiner Program, whereas the "current projects, the things [the RIK Program is] doing now are not covered under regulations, so that's why it's kind of a gray area as to what is applicable [and] what is not."

The Supervisory Program Analyst opined that the RIK Oil Marketing Specialist went beyond his duties in recommending that the deduction taken by ENI/AGIP be allowable. He said the RIK group was supposed to simply provide factual information about the RIK contract to Compliance and Asset Management, not make recommendations. The Supervisory Program Analyst said he believed this recommendation upset Little and Arnold. According to the Supervisory Program Analyst, however, the recommendation had no weight in his opinion. He stated that if the RIK group told a producer it believed a certain deduction would be allowable, it would make no difference because Compliance and Asset Management made the final decision on such issues.

We asked the Supervisory Program Analyst if MMS headquarters or industry influenced his decision to allow the deduction. He stated that he received input from various sources; however, he said the ultimate decision was his own and he did not receive any undue influence in making it.

Regarding Compliance and Asset Management's relationship with oil and gas companies, the Supervisory Program Analyst said, "I don't think we're too cozy with industry at all." According to the Supervisory Program Analyst, Compliance and Asset Management auditors had great flexibility in pursuing potential findings against industry without fear of being "stepped on" by upper management. He acknowledged that audit investigations might be stopped in certain situations by upper management, such as in the event of a pending litigation.

Regarding the lawsuit's allegations of fraud, the Supervisory Program Analyst stated that under MMS policy (30 C.F.R. Part 206), producers were not required to ask permission to take deductions prior to filing their Form 2014 unless the deductions were greater than 50 percent of the production value. He said producers simply took the deduction and it was MRM's job to evaluate whether the deduction was valid. He said a deduction could never be a "false claim" since the companies were not required to verify whether the deduction was valid or not prior to submitting their Form 2014s.

We showed Little the December 16, 2004 e-mail that Arnold sent to the Minerals Revenue Specialist that stated, "[The Supervisory Program Analyst, Compliance and Asset Management, MRM,] and I discussed this and decided not to pursue this as an issue." After reviewing the e-mail, Little stated that he had never seen the e-mail. Little did state, however, that he learned in 2005, prior to filing his lawsuit, that the Supervisory Program Analyst was the person responsible for stopping his investigation.

Little said he never spoke directly to the Supervisory Program Analyst, the Minerals Revenue Specialist, the RIK Oil Marketing Specialist, or the ENI/AGIP Representative

about the matter. He said Arnold was the person who “fought the battle” after Little had informed him of his initial findings. Little stated that he and Arnold disagreed with the Supervisory Program Analyst’s decision to allow the deduction because they believed it was contrary to federal law and regulations. Furthermore, Little said he believed that the RIK group probably pressured the Supervisory Program Analyst into allowing the deduction. Little said, “Politically, you’d find out the RIK group is probably one of the strongest arms within MMS.”

When interviewed, Arnold concurred with Little’s description of events surrounding the ENI/AGIP transportation deduction issue. Arnold stated that he did not agree with the Supervisory Program Analyst’s decision to allow the deduction. When asked about the e-mail he sent to the Minerals Revenue Specialist on December 16, 2004, indicating that he and the Supervisory Program Analyst, together, made the decision to “not pursue this as an issue,” Arnold stated that the Supervisory Program Analyst, alone, was the person who made the decision. In his interview, Arnold said, “[The Supervisory Program Analyst] decided [not to pursue the issue]. I mean, maybe I didn’t write it real good, but I’m just telling what [the Supervisory Program Analyst] decided and to put this in the file and document it.” Arnold added, “[I] would have [given] them at least an Issue Letter and let them come back with some kind of arguments.”

Arnold acknowledged that it was within the Supervisory Program Analyst’s discretion to allow the transportation costs. He said he never considered filing a False Claims Act lawsuit regarding this issue; in fact, he said he never knew Little was considering such an action until he learned about the lawsuit after it was filed.

When asked about this issue, Lonnie Kimball, Program Manager, Offshore Compliance and Asset Management, MRM, said the Supervisory Program Analyst (GS-14) had the authority to review and resolve transportation deduction issues. He said GS-14 supervisors were delegated the authority to send Issue Letters and Orders to Pay and to sign final audit reports.

Little said he disagreed with the Supervisory Program Analyst’s decision not to pursue his transportation deduction issue pertaining to ENI/AGIP and subsequently filed a False Claims Act lawsuit because he believed the transportation deductions were not allowable and ENI/AGIP were making a false claim. Little continued to claim that there was a requirement for ENI/AGIP to request an exception in order to claim transportation deductions on an RIK lease. He noted that they did not make such a request. Little was unable to provide a reference to substantiate his assertion that a request was required.

Notwithstanding the fact that Little disagreed with the Supervisory Program Analyst’s decision in this particular matter, Little said, “[The Supervisory Program Analyst was] the one redeeming quality of management I’ve seen within the organization.” Moreover, Little continued, “[The Supervisory Program Analyst] likes to pursue these issues” and “we have a lot of respect for him.”

Later in his interview, Little said, “[The Supervisory Program Analyst] is probably the one person that I feel, even without his experience, he understands oil and gas. He came from industry, and he knows what these companies are doing wrong. So he lets us do our thing.”

Little said regardless of the fact that the regulatory agency responsible for enforcing the regulations (MMS) ultimately allowed the deduction, he believed ENI/AGIP should have interpreted the law as he did. He said ENI/AGIP should have known such a claim was illegal and therefore represented a false claim.

Reporting and Safeguarding Requirements

Reporting Requirements

After reviewing the OIG investigative case management system, we found no record indicating Little reported allegations of fraud or mismanagement to the OIG regarding ENI/AGIP, the RIK Program, or inappropriate transportation deductions.

Note: Little expressed the same views about his obligation to report his concerns – that his actions did not constitute a violation of Department or MMS policy, and that there was no conflict of interest – in regard to this case as he did in the other cases (See pp. 47-48).

Safeguarding Requirements

We showed an MMS FOIA Staff Member and an MMS Records Officer documents used by Little in his “Statement of Reasons for the United States Department of Justice to Take On the Qui Tam Litigation.” They both identified the documents presented to them as either proprietary or protected as internal MMS business records, or a combination of both categories.

Additionally, we asked the FOIA Staff Member if any of the exhibits used in the “Statement of Reasons for the United States Department of Justice to Take On the Qui Tam Litigation” contained information that would be redacted or not released in response to a FOIA request. He identified the document stamped RL100 as containing confidential business information that would be withheld under Exemption 4 of the FOIA. He also said portions of the document stamped RL0011 that disclosed specific dollar amounts would be redacted because the information was confidential commercial information.

We contacted an MMS FOIA/Privacy Act Officer to determine if MMS had received any FOIA requests from Little or his attorneys. He responded that there had been no FOIA requests from attorneys representing Arnold or Little. He said Little made one FOIA request in October 2004 for information on awards given to Offshore Compliance and Asset Management employees.

When interviewed, Little admitted that he took official documents and information from his office to use in support of his *qui tam* lawsuit. Little stated that he obtained all of the information used in his lawsuit from his office. He denied using government computers or material to conduct research to further his lawsuit; however, he acknowledged that he checked the MMS databases to verify that the companies he was suing had not paid what he believed they owed to the government. Little further reported that he did not issue FOIA requests for any documents or materials regarding this lawsuit.

Our investigation found no evidence that the documents used by Little in the lawsuit were provided to anyone other than the attorneys who were retained for the lawsuit.

Note: Little expressed the same views about his use of proprietary information – that his actions did not constitute a violation of Department or MMS policy, and that there was no conflict of interest – in regard to this case as he did in the other cases (See page 51).

Declination of Prosecution

On September 20, 2006, the U.S. Attorney's Office, Public Corruption Unit, Oklahoma City, OK, verbally declined criminal prosecution of Little for alleged removal and use of official government documents in order to pursue this False Claims Act lawsuit. The Assistant U.S. Attorney advised that he was declining prosecution because there were administrative remedies available to DOI to address the situation.

Little and Arnold v. Royal Dutch Shell

Little and Arnold's *Qui Tam* Complaint

On February 15, 2006, MMS auditors Randy Little and Joel Arnold filed a *qui tam* lawsuit against Royal Dutch Shell for filing false claims regarding oil transportation deductions between October 2001 and December 2005 in relation to six separate RIK leases, amounting to \$3,854,858. Little and Arnold asserted that the location of the six leases at issue in the lawsuit lie “within, or is adjacent to, the [Federal Metering Point]/custody transfer point.”

On March 14, 2006, Little and Arnold filed a second lawsuit against Shell for filing false claims regarding oil transportation deductions on an additional six RIK leases during the same time period for the amount of \$15,198,968. Little and Arnold asserted that the leases at issue in this lawsuit involved wells that were not immediately adjacent to the platform.

According to the allegations in the lawsuits, Shell's combined fraudulent claims totaled \$19,053,826.

While acknowledging that oil companies were permitted to claim deductions for certain transportation costs in their complaints, Little and Arnold alleged that Shell claimed transportation deductions for costs associated with the subsea movement of oil (transporting oil beneath the sea floor) and tension leg platforms (floating drilling rigs, anchored with cables attached to the sea bed). They asserted that such deductions were prohibited by federal regulations. According to the lawsuits, Shell made false claims to the government by claiming invalid transportation deductions on Form 2014s.

In their lawsuits, Little and Arnold also alleged that Invitations to Offer (the government's solicitation for bids on leases) issued by MMS established that “successful offerors will take custody of the royalty oil at offshore delivery points, and will be responsible for all movement of royalty oil downstream of these points.”

Additionally, according to the lawsuits, the Invitations to Offer for the 12 leases also established that the offshore delivery points or custody transfer points were the same as the oil platform where the oil was first brought to the surface, known as the Federal Metering Point.

Both lawsuits stated that the lease terms required that the defendants transport the product, at no cost to the Government, to the Federal Metering Point/custody transfer point. The first lawsuit added, “as long as that point was not further than the adjacent leases.” The lawsuits also stated that the leases required that royalty oil be placed in marketable condition at no cost to the government.

Additionally, Little and Arnold asserted in their lawsuits that the terms of the Invitations to Offer, including exhibits, and/or the law or regulations stated that gathering activities

were considered a part of bringing lease production into marketable condition and did not constitute transportation, but were an “antecedent activity” to transportation. *Note: Title 30 C.F.R. § 206.101 defines **gathering** as the movement of the lease production (oil) to a central accumulation or treatment point.*

As additional supporting evidence, the first lawsuit (CIV-06-0156-HE) quoted section 6(c) of one of the leases at issue, as follows:

When paid in amount, such royalties shall be delivered at pipeline connections or in tanks provided by the lessee. **Such deliveries shall be made at reasonable times and intervals and, at the Lessor’s option, shall be effected either (i) on or immediately adjacent to the leased area, without cost to the lessor, or (ii) at a more convenient point closer to shore or on shore, in which event the lessee shall be entitled to reimbursement for the reasonable cost of transporting the royalty substance to such delivery point [emphasis included].**

As further support of Little and Arnold’s claims, both lawsuits state that all persons dealing with the U.S. Government are presumed to have knowledge of relevant regulations, citing Walter Oil and Gas Corp., 111 IBLA (Interior Board of Land Appeals) 260 (October 25, 1989).

The lawsuits cited Title 30 of the C.F.R. § 206.106, which states that oil companies must place oil in marketable condition at no cost to the government, and Title 30 C.F.R. § 206.101, which defines *gathering* as the movement of the lease production (oil) to a central accumulation or treatment point. Further, the lawsuits noted that under an Interior Board of Land Appeals decision, IBLA 97-0016, gathering activities were considered part of bringing the lease production into marketable condition and that transportation, in the sense that “transportation” costs could be deducted from royalties, occurred after the product had been made into marketable condition. The Interior Board of Land Appeals decision also stated that gathering did not constitute transportation but was a precursor to transportation.

In the first lawsuit (CIV-06-0156-HE), Little and Arnold referred to Lease 054-007944-0 as “Shell No. 1,” and the second through sixth leases as “Shell No. 2.” In the second lawsuit (CIV-06-0260-W), Little and Arnold identified a “standard lease form” as supporting evidence. The relators included a footnote in each lawsuit referring to “Shell No. 1” and the “standard lease form,” respectively, that stated the following:

Relators have found it difficult to obtain copies of the actual leases that are the subject of this litigation. However, Relators were able to obtain a copy of this particular lease. Based upon Relators’ best knowledge, all leases that are the subject of this litigation contain the same substantive provisions.

Investigations in Response to *Qui Tam* Filing

On February 15, 2006, DOJ received notification of Little and Arnold's initial *qui tam* lawsuit in this matter and received notification on April 10, 2006, of the second lawsuit. DOJ requested investigative assistance from the DOI-OIG. In addition, the DOI-SOL was notified and requested to provide recommendations of what actions the government should take and to ensure the retention of all relevant records in the government's control.

Two DOJ attorneys coordinated the investigative efforts with support from an OIG Special Agent and an SOL Attorney-Advisor.

When interviewed, the Attorney-Advisor stated that he and DOJ conducted an in-depth investigation into the claims in the lawsuits and found that they lacked merit. The Attorney-Advisor stated that, in his opinion, the actions of MMS officials were both legal and an appropriate use of discretion, and the defendant companies simply acted pursuant to the direction given to them by MMS officials.

The Attorney-Advisor stated that the investigation determined that the relators' claims stemmed from the fact that the relators were disgruntled about having their recommendations for enforcement actions against companies they audited being overruled by their supervisors.

On September 8, 2006, DOJ notified the court of its decision not to intervene in the matter. In addition, DOJ stated, in part, that it appeared that some or all of the material facts and documents that served to support the allegations made in the complaint were gained by the relators while serving as employees of the United States. DOJ added that because federal employees have a fiduciary duty to use all information gained in the course of their employment solely for the benefit of the United States, DOJ reserved the right to object, at the appropriate time, to any award made to the relator.

Also, in September 2006, the OIG initiated a new investigation into the legitimacy of Little and Arnold's claims to include, in part, whether the earlier DOJ investigation adequately addressed their assertion that MMS management decided to not pursue collection of the reported fraudulent deductions. In addition, our investigation addressed concerns regarding whether Little and Arnold complied with DOI/MMS policy when filing their claim, specifically regarding reporting known or suspected fraud and use of government/proprietary documents.

Little and Arnold's Actions

During their interviews, Little and Arnold summarized their lawsuits broadly by stating that the 12 leases included in their lawsuits were RIK leases, in which the Federal Metering Point and the delivery point were the same, and Shell had taken invalid transportation allowance deductions. They asserted that a company was never entitled to

take transportation deductions when the Federal Metering Point and the delivery point were the same on an RIK lease.

Little and Arnold provided further explanation of the two lawsuits, which we also found in court documents. In general, Little and Arnold said they did not believe Shell could deduct costs for transportation of the oil when the oil was not considered to be in marketable condition until it reached the Federal Metering Point. They asserted that gathering activities associated with bringing the product to the surface were not considered to be “transportation” of the product, but were a predecessor to transportation.

With respect to the second set of leases (CIV-06-0260-W), Little and Arnold further alleged that Shell was relying on incorrect theories to support transportation deductions that it knew to be incorrect.

According to Little and Arnold, one of the theories that Shell erroneously relied upon was a May 20, 1999 memorandum, “Guidance for Determining Transportation Allowances for Production from Leases in Water Depths Greater than 200 Meters” (Denett Guidance Memorandum), drafted by Lucy Querques Denett, Associate Director, MRM. They further alleged that Shell’s “alternate theory for taking transportation deductions” appeared to be based upon the fact that the Federal Metering Point/delivery points for the six leases were tension leg platforms. As stated earlier, Little explained that a tension leg platform is a floating drilling rig, anchored with cables attached to the sea bed. *Note: Tension leg platforms are often used for deepwater (more than 300 meter) applications.*

Little stated that Shell would be authorized to take marginal deductions associated with its tension leg platforms. However, he claimed that if the deductions taken by Shell for oil going through the platform were added up, the amount would almost equal the cost of the platform. When asked about the basis for his claim, Little said he would not actually know (specific dollar amounts) unless he gathered all of the invoices for the cost of the platform. He said MMS should conduct an audit because Shell took the deductions without agreement from MMS.

Little said that under RIK leases (the Shell leases were RIK leases), the government took possession of the oil at the platform and then awarded contracts to transport the government’s oil to a market center or small refiner. He said Shell won the contract to transport the government’s oil *after* delivery at the platform. Little stated, “[T]hey were paid a transportation fee that was agreed upon on that contract. The oil to the MMS at that platform is free of charge.” According to Little, Shell should have included the deduction it believed it could take in its bid for the transportation contract.

Little said he discussed his concerns about the large transportation deductions taken by Shell with Joel Arnold, who encouraged him to contact Shell. According to the lawsuits, Little and Arnold discussed the “false claims” with a Supervisory Program Analyst, Compliance and Asset Management, and an MMS Petroleum Engineer, who agreed that the claims appeared to be false, thereby warranting an investigation.

After discussing the deductions and potential false claims with the Petroleum Engineer and the Supervisory Program Analyst, Little said he and Arnold informed Lonnie Kimball, Arnold's supervisor, of their findings. Little and Arnold, in their lawsuit, stated that during the discussion with Arnold's supervisor, they indicated their intent to draft an Issue Letter to Shell requesting that it rectify the false claims. Little said they also indicated that if the Issue Letter was unsuccessful, they intended to draft and pursue an Issue Order directing Shell to reimburse MRM for the monies that were wrongfully and falsely claimed on the Form 2014s submitted from October 2001 through December 2005.

Little said he sent an e-mail to Shell on October 14, 2005, questioning the transportation deductions. In December 2005, Shell subsequently e-mailed its response to MMS and stated the following, in part:

We agree that subsea transportation [costs] on Lease No. 054-007944-0, for oil for the period April 2004 through June 2005 was deducted in error and we agree to pay back \$827,326.57 of the requested \$3,219,254.74 due to this error. The difference of 2,391,928.17 deducted is associated with Tension Leg Platform (TLP) rate which is an allowed deduction.

Shell added the following:

[W]e agree that subsea transportation [costs] on Lease No.054-007944-0, for gas for the period of April 2004 through June 2005 was deducted in error and we agree to pay back \$191,837.93 of the total deducted amount of \$484,779.54. The difference of \$292,941.61 deducted is associated with the Tension Leg Platform (TLP) rate which is an allowed deduction.

In summary, Shell agrees to pay back \$1,019,164.50 in total for subsea transportation costs for both oil and gas rates associated with Lease No. 054-007944-0.

In response to Shell's e-mail, Little sent an e-mail to a Shell Employee requesting that he send him a "copy of the MMS letter to Shell allowing Tension Leg Platform costs to be deducted as transportation." This request was forwarded by the Shell Employee to another Shell Employee who responded to Little by stating, "Shell is deducting TLP costs based on the Auger decision allowing TLP costs. Do you concur with Shell paying back the subsea portion of \$1,019,164.50?"

In his e-mail response to Shell, Little said the Auger decision (Shell Offshore Inc., GFS (OCS) 207 (1998), 142 IBLA 71) was based on the unusual facts regarding the Auger platform that only involved gas transportation.

Little answered the second Shell Employee in a December 13, 2005 e-mail that stated the following, in part:

We agree Shell should pay back the subsea portion of \$1,019,164.50. Please let us know when this has been accomplished.

We do not agree to the deductions on the platform for TLP costs for the following reasons:

- 1) The Auger decision was based on the unusual facts regarding the Auger platform only.
- 2) The Auger decision spoke to gas transportation only.
- 3) Shell did not transport oil/gas during the RIK contract period for the MMS (Shell may have transported the royalty barrels for MMS contractor at [Federal Energy Regulatory Commission] tariff rates during the RIK contract period).
- 4) MMS regulations for RIK production do not allow transportation allowances if the products are not moved beyond the [Federal Metering Point].
- 5) Lucy Querques Denett's 'Guidance Letter for Production in Water Depths Greater Than 200 Meters' states 'To qualify for a transportation allowance, the movement must be to a facility that is not located on a lease adjacent to the lease on which the production originates.'

The e-mail continued with Little explaining that the Petroleum Engineer, Shell Compliance Team, Offshore Compliance Asset and Management, MRM, concurred with the five reasons above and that the Petroleum Engineer expected Shell to ask for an MMS valuation determination for each tension leg platform with unusual transportation situations. Little advised the Shell Employee that no decision had yet been made for oil tension leg platform deductions.

During his interview, Arnold said the Petroleum Engineer and the Supervisory Program Analyst agreed that the Shell transportation deductions were invalid.

Both Little and Arnold alleged in their lawsuits that at some point, probably in December 2005/January 2006, Shell coerced their supervisors to retract their support for the relators' investigation.

Arnold said Kimball met with him shortly prior to a January 11, 2006 meeting between Kimball and Shell officials. According to Arnold, Kimball said he (Arnold) did not need to go to the Shell meeting because they were not going to discuss the transactions that Arnold's team was reviewing. In the lawsuits, Arnold asserted that Kimball did, however, direct him to continue his review of Shell and to proceed with drafting an Issue Letter.

In their lawsuits, Little and Arnold asserted that on January 26, 2006, Kimball verbally directed them to discontinue their investigation into the issues they discovered pertaining to Shell. During their interviews, Little and Arnold stated that Kimball informed them

that he would not sign their Issue Letter to Shell. According to Little and Arnold, Kimball also directed them to terminate their review of Shell.

Little told us that later the same day, he received an e-mail from Kimball that indicated Kimball was rescinding Little's earlier e-mails to Shell. Kimball's e-mail was sent to a Supervisory Auditor, Shell Residency Team, Compliance and Asset Management, MRM; Arnold; Little; the Petroleum Engineer; and a Shell employee and stated the following:

As Manager for Offshore [Compliance and Asset Management]:

1. MRM will not take any action on the e-mail message below from Randy Little dated 12/13/2005 because MRM, [Offshore Minerals Management], and Shell are currently discussing issues related to the MARS/URSA TLP audit currently under way by the MRM Residency team. MRM and [Offshore Minerals Management] are using the Auger decision as a basis for the MARS/URSA TLP equipment. Some of the TLP cost in Randy's properties may be allowed as a transportation [sic].
2. The work being done by Joel Arnold's team is a desk review and not an audit. They are looking at RIK transactions and transportation costs (TC 11) taken by payors. More information is needed before a definite conclusion (allowable transportation) can be made and a demand made to Shell.
3. MRM can not [sic] require a payor to seek a value determination.

Little and Arnold concluded in their lawsuits that based upon Kimball's e-mail, "it appears that there was a concerted effort between management supervisors and Defendants to cause any further investigation into Defendant's deduction of transportation costs to be thwarted." Additionally, according to the lawsuits, Little and Arnold "were verbally directed by Mr. Kimball to discontinue delving into the fraud and wrongful claims that they had discovered and to cease their investigation."

Little, when interviewed, said he interpreted Kimball's e-mail to mean MMS was not going to pursue or address the issues he raised in his December 2005 e-mail to Shell.

During his interview, Arnold said that after receiving Kimball's e-mail informing Shell that it could disregard Little's e-mail, he believed that Kimball had simply dismissed Little's findings and was not going to pursue the matter.

MMS's Description of Events Pertaining to Little's Findings and E-mail to Shell

During his interview, Kimball stated that he had been employed by MMS since [Exemption (b)(6)] and became the manager for Offshore Compliance in [Exemption (b)(6)]. He confirmed that he was Arnold's direct supervisor and thus his signature would have been required for any Issue Letters or Orders originating from the Oklahoma City office.

Kimball stated that he had held multiple meetings with auditors informing them of the difference between a data request and an Order to Pay. He noted that in some instances, a data request resulted in a refund for transportation expenses. He added that companies such as Shell would use the data request to conduct their own internal review and might determine that additional funds were owed.

According to Kimball, he assigned Arnold and his team (sometime in 2005) to review billings and transportation deductions taken by Shell, some of which involved deepwater leases. As a result, he said Little and Arnold conducted compliance reviews, not audits, and identified significant questionable billings for transportation by Shell.

Kimball stated that Little was conducting a broad-based compliance review. He said that based upon that review, Little alleged that Shell should not have been taking transportation deductions for subsea gathering before the Federal Delivery Point (usually the Federal Metering Point). He said Little wanted him to sign an Issue Letter to Shell requesting reimbursement through an evaluation determination. He said he refused to sign the letter because Little was performing a compliance review and a Supervisory Auditor of the MMS Shell residency team was conducting an audit that would address Arnold and Little's concerns. *Note: The Supervisory Auditor leads the MRM audit residency team at Shell.*

Kimball said the Oklahoma City office had traditionally been aggressive in making claims against industry without all of the facts and added that he believed Bobby Maxwell was responsible for this culture. He said there were some good employees in the Oklahoma Office; however, he said, "[They] don't walk on water." According to Kimball, Maxwell built his staff up as being exceptional. He said, "I just don't see it."

The Supervisory Program Analyst, Compliance and Asset Management, stated that when Little contacted him about Shell's alleged erroneous deductions, he originally thought it was a "good issue." However, he said he later discovered that the MRM Shell residency team was reviewing Shell's transportation deductions. The Supervisory Program Analyst said he believed Lonnie Kimball directed Little and Arnold to stop their inquiry since the MRM Shell residency team was already addressing Little's concerns. *Note: Before Little and Arnold began questioning Shell's deductions, the Supervisory Program Analyst was transferred from his role as Little and Arnold's supervisor on the Compliance and Asset Management team.*

During his interview, an MRM Petroleum Engineer stated that he worked on projects involving the determination of transportation allowances on deepwater oil and gas production related to platforms, subsea manifolds, and pipelines and has worked on RIK imbalance projects, which involved analyzing reported oil and gas volumes.

According to the Petroleum Engineer, in late 2005, Little telephoned him and asked for his opinion on deepwater allowances related to Shell. He said Little took his opinion as

“the gospel” and subsequently sent an e-mail to Shell disagreeing with Shell’s transportation deductions.

The Petroleum Engineer stated that at the time of his conversation with Little, MMS was negotiating with Shell regarding the Auger decision. He noted that Shell was being very cooperative. He also said MMS had not established policy on deepwater allowances at the time and the internal memorandum of guidance for deepwater allowances (Denett Guidance Memorandum), issued on May 20, 1999, by Lucy Querques Denett, was open to interpretation.

The Petroleum Engineer, after learning about Little’s e-mail to Shell, said he called Little and told him their conversation was intended to remain “in-house” and that Little was premature in contacting Shell. During this conversation, the Petroleum Engineer said he pointed out to Little that he (the Engineer) was involved with negotiations with Shell regarding transportation and tension leg platform deductions, and MMS had not established a policy on the subject. According to the Petroleum Engineer, he also told Little that Little should have sought supervisory approval and/or guidance on the matter before sending an e-mail directly to Shell.

The Petroleum Engineer opined that the *qui tam* lawsuits filed by Little and Arnold against Shell were premature and lacked substance due to the fact that MMS had not established policy on the allowances at issue.

When interviewed, the Supervisory Auditor, Shell Residency Team, stated that he was a supervisory auditor for the MMS residency auditing team that was physically located within Shell’s office building in Houston, TX. According to the Supervisory Auditor, the residency team was created and housed within Shell’s building to ensure the royalties paid by Shell to MMS were correct according to MMS rules and regulations. He said the residency team was a part of Compliance and Asset Management.

The Supervisory Auditor stated that the residency team conducted official audits, using the GAGAS, of Shell’s largest operations producing RIV royalties, along with performing compliance reviews of other Shell properties. *Note: A compliance review is less extensive than a full audit and is based upon comparing a company’s operation against national index prices and industry averages.* The Supervisory Auditor said that if the residency team identified a “systemic issue” while performing an audit, it would subsequently review all Shell properties in the Gulf of Mexico for the identified issue.

In addition to the Supervisory Auditor’s residency team, he said Compliance and Asset Management was also composed of “property specialists” or compliance review teams. He said the Oklahoma City MMS Compliance and Asset Management office that included Arnold and Little was a compliance review team. He stated that the compliance review teams conducted compliance reviews of RIK transportation deductions for all companies operating in the Gulf, as opposed to dealing specifically with one particular company. The Supervisory Auditor said the results of the compliance reviews were

placed in “e-rooms,” whereas the full audits conducted by his team were stored in “hard-files.”

During his interview, the Supervisory Auditor brought up the previously mentioned 2005 e-mail exchange between Shell and Little. According to the Supervisory Auditor, Little had sent an e-mail to a Shell Employee in October 2005 questioning subsea and tension leg platform transportation deductions Shell had taken on a lease in relation to its oil production for the period of April 2004 through June 2005. According to the Supervisory Auditor, Shell had responded to Little’s inquiry on December 2, 2005, by acknowledging it had erroneously taken subsea transportation deductions related to oil and therefore agreed to pay back the deductions taken in error.

The Supervisory Auditor further stated that Shell had also acknowledged erroneously taking subsea transportation deductions related to its production of *gas*, which was not identified by Little. He said Shell, however, stated that it believed the transportation deductions it had taken in relation to the tension leg platform rate were allowable. In sum, he said Shell agreed to reimburse MMS \$1,019,165 for the erroneous subsea transportation deductions for both oil and gas rates associated with the lease.

The Supervisory Auditor also said that on December 13, 2005, Little sent an e-mail to the Shell Employee stating that he and Arnold did not agree with Shell’s “deductions on the platform for TLP cost” and subsequently listed five reasons for their disagreement. In addition, Little stated that the Petroleum Engineer agreed with him that the deductions were not allowable, and Little suggested that Shell seek a determination from the Petroleum Engineer and the Supervisory Program Analyst regarding the platform deductions.

The Supervisory Auditor stated that the Shell Employee approached him after receiving Little’s e-mail in order to inquire how Shell could comply with MMS.

According to the Supervisory Auditor, even though Little’s initial e-mail identified itself as a “data request,” it was not a true data request, but rather a request to Shell asking for an explanation as to why it took certain deductions. He said that in this matter, Little was denying Shell’s deductions without first making a true data request and reviewing such data. Accordingly, the Supervisory Auditor said he believed Little had neither the authority nor the necessary information to deny Shell’s deductions.

The Supervisory Auditor stated that auditors could not deny deductions taken by a company without supporting data. According to the Supervisory Auditor, if an auditor identified an issue, he/she also needed to make a data request to the company, and if that data supported the existence of a problem, the auditor would at that time send a “preliminary request” to the company requiring a response by a certain date. He said Little’s e-mail to Shell basically skipped the data request – and the subsequent review of data – and jumped straight to a preliminary request denying Shell’s deductions.

Additionally, the Supervisory Auditor explained that Little did not have the authority to direct Shell to seek a determination; in fact, he said no person in MMS had the authority to *direct* Shell to seek a determination. He said a determination was sought by a company, on its own initiative, when it was uncertain how to address a certain matter. The Supervisory Auditor noted that Little directed Shell to ask for a determination from the Supervisory Program Analyst and the Petroleum Engineer, yet neither one would have the authority to issue a determination.

The Supervisory Auditor explained that the Petroleum Engineer was a very knowledgeable engineer who would certainly help MMS in deciding whether certain deductions were allowable under a tension leg platform situation; however, he did not have the authority to issue a determination. Moreover, the Supervisory Auditor stated that he showed Little's e-mail to Compliance and Asset Management Program Manager Lonnie Kimball, and Kimball agreed with him that Little had no authority to direct Shell to seek a determination.

Meeting With Shell

During his interview, Kimball stated that he may have directed Little and Arnold not to attend the January 11, 2006 meeting with Shell because it concerned the Supervisory Auditor's residency team's audit, not their compliance review. Regarding Little and Arnold's allegation that Kimball was directed by Shell to stop Little and Arnold in pursuing collection of unpaid royalties, Kimball stated that he was never pressured by Shell in the January 11, 2006 meeting to make any decision.

We asked Kimball why both the Supervisory Auditor's residency team and the Oklahoma City office (Little and Arnold) were performing simultaneous reviews of Shell, for the same issue and for the same properties. He responded that conducting simultaneous reviews was improper and he should have halted the reviews. He admitted that Shell was irritated with redundant information requests. Kimball said he made it clear to Little and Arnold that their review was a compliance review and not an audit. He said the auditors, Little and Arnold, in their compliance review, should have reviewed MMS databases and not requested detailed information from Shell.

The Petroleum Engineer stated that he attended the January 11, 2006 meeting with Shell in order to discuss Shell's interpretation of the Auger decision and how it related to certain platforms. According to the Petroleum Engineer, Kimball raised the issue of Little's e-mail to Shell during the meeting. He stated that Kimball informed Shell that the e-mail would be rescinded due to the fact that MMS policy had not been finalized. He opined that Kimball was not influenced by Shell to rescind Little's e-mail.

The Supervisory Auditor said that on January 11, 2006, he, Kimball, and the Petroleum Engineer attended a meeting with Shell to discuss the MARS transportation system audit being conducted by his team. According to the Supervisory Auditor, the meeting had been scheduled several months earlier, and the underlying issue of whether Shell's deductions identified in Little's e-mail were valid was not scheduled to be discussed. He

said Kimball decided to add a discussion about Little's e-mail to the meeting agenda after he discussed the matter with him at a Christmas party in December 2005.

The Supervisory Auditor stated that after Kimball reviewed Little's e-mail and the underlying issue, Kimball determined that Shell's tension leg platform deductions needed to be addressed in the Supervisory Auditor's comprehensive settlement audit of Shell, and not dealt with separately via Little's compliance review. He said that during the January 11, 2006 meeting, Kimball discussed the e-mail with Shell and informed Shell that he would "rescind" Little's e-mail denying the deductions and directing Shell to seek a determination. He said that as a result of Kimball's decision, Kimball sent a January 26, 2006 e-mail rescinding Little's e-mail.

The Supervisory Auditor stated that he fully agreed with Kimball's decision to rescind Little's e-mail and with Kimball's reasons for doing so as articulated in his January 26, 2006 e-mail. Regarding the first reason listed in Kimball's e-mail, the Supervisory Auditor said it made sense to include the tension leg platform deductions within the purview of the audit his residency team was conducting because the audit was going to lead to a comprehensive settlement between Shell and MMS. Additionally, the Supervisory Auditor said Kimball's second reason in the e-mail supported the Supervisory Auditor's notion that Little's e-mail to Shell about denial of deductions was not based on any supportable data. Finally, the Supervisory Auditor stated that Kimball's final reason was simply a fact – MMS could not require a company to seek a determination.

The Supervisory Auditor said he did not believe Kimball was unduly influenced or pressured by Shell in rescinding Little's e-mail. He confirmed that he also did not receive any pressure from Shell regarding the e-mail.

The Supervisory Auditor stated that there was a difference between an "approval" and a determination. He said companies were required to request prior approval from MMS if they planned on taking a deduction they knew would not comply with regulations. However, he said the company could seek a determination – on its own volition – if it was uncertain whether a deduction would be in compliance with regulations.

Transportation Deductions Taken by Oil Companies

Regarding Little's claim that Shell committed fraud because it had taken deductions in excess of 50 percent of the value of the product without obtaining prior permission from MMS, Kimball agreed that if a company planned on taking deductions in excess of 50 percent of the value of the product, it needed to ask for an approval to do so. However, Kimball questioned Little's ability to determine that this occurred because Little did not review any source documents. Moreover, Kimball stated that if a company did, in fact, take deductions exceeding 50 percent of the product's value, per regulations, the company would merely be required to pay interest until it applied for approval; this was not fraud.

Note: 30 C.F.R. § 206.109(2)(c) states that transportation allowances “may not exceed 50 percent of the value of the oil,” and 30 C.F.R. § 206.109(2)(e) states, “If MMS determines that you took an excessive transportation allowance, then you must pay any additional royalties due, plus interest”

Kimball explained that oil companies paid royalties to MMS similar to how a taxpayer paid taxes to the IRS. He said companies paid what they thought they owed MMS and it was up to MMS to review their payment for accuracy and contact the company if MMS disagreed with the amount.

Regarding some of Shell’s questioned deductions, Kimball stated that Shell claimed it took the deductions based upon its interpretation of the Denett Guidance Memorandum. Whereas Little and Arnold did not believe the memorandum was supported by regulation, Kimball stated that the memorandum was issued as a result of a congressional hearing by an MMS Associate Director and thus, as employees of MMS, Little and Arnold were obligated to follow its guidance.

Regarding Little’s allegation that Shell fraudulently deducted 100 percent of its tension leg platform and subsea costs, a Supervisory Auditor, Shell Residency Team, Compliance and Asset Management, acknowledged that, under MMS regulations, companies had to request an approval to take a transportation deduction if the deduction was greater than 50 percent of the RIK oil value. According to the Supervisory Auditor, however, his team’s audit determined that Shell did not claim deductions representing 100 percent of its tension leg platform costs and determined that the deductions claimed did not exceed 50 percent of the RIK oil. In addition to stating that his team’s audit refuted Little’s allegation that Shell fraudulently deducted 100 percent of its tension leg platform and subsea costs, the Supervisory Auditor pointed out that Little’s finding was inherently flawed since such a determination could never be possible without conducting a full audit.

According to the Supervisory Auditor, the Denett Guidance Memorandum provided guidance on determining proper subsea and tension leg platform costs for offshore deepwater leases. He said this memorandum stated that production from a deepwater lease might qualify for a transportation allowance; however, the memorandum stated, “[T]o qualify for a transportation allowance, the movement must be to a facility that is not located on a lease adjacent to the lease on which the production originates.” The Supervisory Auditor stated that the leases identified in Little’s October 2005 e-mail to Shell questioning its subsea deductions concerned adjacent leases. He said that was the reason Shell acknowledged its error and paid back the deductions for all of the leases in question. Since that time, the Supervisory Auditor stated that an MMS Petroleum Engineer had compiled a spreadsheet identifying all adjacent leases owned by Shell that were not entitled to subsea transportation deductions.

According to the Supervisory Auditor, Shell relied upon the Auger decision made by the Interior Board of Land Appeals in taking the tension leg platform deductions. He said the

tension leg platform issue would be addressed in the residency team's audit and resulting comprehensive settlement with Shell.

Rationale for the Denett Guidance Memorandum

We interviewed MRM Associate Director Lucy Querques Denett regarding the reasoning behind the issuance of the Denett Guidance Memorandum. She said a task group, composed of representatives from MMS Policy and Management, MRM, and the DOI-SOL was formed to attempt to study and resolve the issue of allowable transportation deductions for subsea movement of production from deepwater leases. She indicated that reviewing the information was a very complex undertaking because it was difficult to say "it is/it isn't" when determining what should be allowed. Denett said MMS even held a workshop on the issue to obtain input from industry. She said the task group eventually presented its recommendations to MMS executives, and the task group's recommendation resulted in the issuance of the Denett Guidance Memorandum.

During her interview, we asked Denett if it made sense to grant deductions for some of the subsea movement of production. She responded, "I think so. I mean, that's why we had Offshore involved. And it was sort of like, here's the platform; here's another platform; we were trying to say okay, if it's right next to it, forget about it; if it's further away, then you can [take a transportation deduction]"

On October 15, 1998, MMS announced the following Notice of Meeting in the Federal Register (63 FR 56217):

Announcement of Minerals Management Service Workshop on the Development of Criteria To Be Used in Distinguishing Between Gathering and Transportation in Deep Water in the Outer Continental Shelf.

In summary, the Notice stated the following:

The Minerals Management Service (MMS) will hold a day-long meeting with parties interested in the development of deep water leases that may involve subsea well completions. We are interested in developing specific criteria to be used in distinguishing between gathering and transportation to determine permissible deductions in calculating royalty value.

Under the Supplementary Information section of the Notice, MMS stated the following:

MMS is investigating the impact of deep water production systems on the distinction between gathering and transportation.

Current MMS regulations provide for an allowance for the actual and reasonable costs of transporting production when value for royalty purposes is determined away from the lease. No allowance is permitted

for gathering (movement to a central accumulation and/or treatment point).

The new technologies involved in deep water development were not specifically contemplated in the current regulations, particularly when distinguishing between gathering and transportation.

We are interested in specific comments regarding what criteria should be used on a case-by-case basis when making the gathering/transportation differentiation for deep water leases.

Some possible criteria we would like comments on include: water depth, distance of movement, location of the approved measurement point, marketable condition of the production, and on-lease v. off-lease movement. Specific comments are welcome on any other criteria with a bearing on the issue.

In response to the Notice, MMS received comments from several companies, including the following: Chevron USA Production Company; CNG Producing Company; ExxonMobil, USA; Marathon Oil Company; Mobil Exploration and Producing U.S., Inc.; Shell Oil Company; and Texaco Inc., in addition to receiving responses from the American Petroleum Institute, the Domestic Petroleum Council, and the Independent Petroleum Association of America.

When interviewed about the Denett Guidance Memorandum, Geoff Heath, Assistant Solicitor for Royalty and Offshore Minerals, Division of Minerals Resources, SOL, stated that he did review the memorandum and assisted MMS in its drafting. According to Heath, the provision in the 1988 federal crude oil royalty valuation regulations defining *gathering* did not address the operational logistics related to deepwater production. Therefore, MMS issued the memorandum in an effort to take into consideration some of those operational logistics (e.g. the long distances over which lessees sometimes needed to move oil from an undersea manifold to a platform where it first surfaced, which could often be over 25 miles).

According to Little, the Denett Guidance Memorandum “flies in the face of regulation.” In their second lawsuit (CIV-06-0260-W), Little and Arnold stated that the Denett Guidance Memorandum “is not part of the regulations and is not part of the definition of ‘gathering’ in 30 C.F.R. § 206.101.”

When interviewed, Walter Cruickshank, Deputy Director, MMS, stated that the Denett Guidance Memorandum was not a regulation and did not carry the weight of law. Cruickshank said the Denett Guidance Memorandum was written for specific circumstances involving deepwater, subsea movement of production that were not addressed when the regulations were written. As such, he said the Denett Guidance Memorandum was issued interpreting the regulation to take into consideration the new technology involved with deepwater production. Cruickshank stated that the Denett

Guidance Memorandum “is consistent with the regulation, but it is not itself a regulation.”

When asked if the industry should have been able to rely on the Denett Guidance Memorandum in order to know how MMS would treat certain transportation deductions related to deepwater production, Cruickshank stated that industry should have been able to rely upon the memorandum’s guidance as long as the criteria articulated in the Denett Guidance Memorandum were met. Additionally, he said industry was not required to ask MMS prior to taking a deduction in reliance upon the memorandum. Cruickshank said, “[T]hat is why we have compliance activity, to see if we agree with the way they have done it.”

Cruickshank said MMS recognized that the regulations defining gathering and transportation, as they related to deductions, were written at a time when “you rarely saw production moving from one lease to another,” when industry was operating in mostly shallow water where the platform/accumulation point was “right on top” of the well. Today, however, he said more companies were drilling wells in deepwater where they “put the well hardware on the sea floor” and then connected it back to a platform that could be many miles away (the longest distance being in excess of 60 miles, and the average being 20 to 25 miles).

Cruickshank said MMS was trying to determine, through the task force, how it should handle the logistics of this new “paradigm.” Cruickshank stated that MMS did not want to be in a position where its regulations would force companies to make an investment and do something differently “just so [it] could fit a certain criteria in the rules.” Cruickshank stated that the Denett Guidance Memorandum – which allowed companies to take transportation deductions for subsea movement of the product between nonadjacent leases in water depths greater than 200 meters – was “an outgrowth of the task force process.”

Cruickshank stated that the Denett Guidance Memorandum did not controvert the regulations. He confirmed Heath’s statement that the Denett Guidance Memorandum was submitted to the SOL for review to ensure it complied with regulations.

Residency Team Audit of Shell

Kimball said he considered a Shell Residency Team Supervisory Auditor’s audit of Shell to be a test case for subsea deductions that would set guidelines for all companies operating in deepwater in the Gulf. He said Shell had been cooperative with MMS. He said, for example, that Shell agreed to a tolling agreement to extend the 7-year statute of limitations in order to provide MMS with time to study subsea transportation deductions.

According to the Supervisory Auditor, his residency team had been working on an extensive audit of Shell’s MARS Platform in relation to how Shell took subsea and tension leg platform transportation deductions. He said the goal of the audit was to reach a comprehensive settlement with Shell in determining how MMS would treat subsea and

tension leg platform transportation deductions for all Shell properties in the Gulf. In fact, he stated that the audit would ultimately establish guidelines related to these types of deductions for all companies operating in the Gulf, not just Shell.

The Supervisory Auditor said the final comprehensive settlement between MMS and Shell would include both RIV and RIK properties. He stated that Shell and MMS already agreed on which transportation deductions would be allowable and which would not. However, he explained that due to the need to establish the methodology required to calculate the accurate totals for all Shell properties in the Gulf, which the Supervisory Auditor stated would be a massive undertaking, he speculated that the final settlement would probably not be signed until mid-2007. Once signed, the Supervisory Auditor stated that the settlement would serve as a guideline for all other companies operating in the Gulf regarding transportation deductions.

In sum, the Supervisory Auditor stated that he did not believe Little and Arnold's lawsuits had any merit. He stated that Shell had always been very cooperative with his residency team during his audits, and he believed Shell truly attempted to pay all of the royalties due to MMS under the law. As an example of Shell's willingness to do the right thing, he pointed out how Shell, on its own initiative, identified its erroneous deductions related to gas that Little did not identify (his findings only concerned oil transportation deductions).

In a November 27, 2006 e-mail to the OIG, the Supervisory Auditor provided the status of the 12 leases contemplated in the lawsuit. Regarding the lease mentioned in Little's initial e-mail to Shell (Lease No. 054-007944-0), the Supervisory Auditor stated that Shell paid back \$1.2 million of erroneously taken subsea transportation deductions. Regarding the remaining five leases contemplated in CIV-06-0156-HE, he stated that Shell informed him that it did not claim any subsea deductions, and all of the transportation Shell did claim was a part of its "global settlement." Regarding each of the six Shell leases included in CIV-06-0260-W, the Supervisory Auditor stated that Shell "[could] claim subsea transportation" and that "the transportation claimed by Shell is a part of our global settlement."

Further, he said the tension leg platform-related deductions and the subsea transportation deductions related to nonadjacent leases would be included in his residency team's audit of Shell.

Relators' Responses Concerning the Residency Team Audit

During a follow-up interview, we asked Arnold if he knew that the Supervisory Auditor's residency team was addressing Shell's transportation deductions challenged in his lawsuits. In response, Arnold stated that after receiving Kimball's e-mail directing Shell to disregard Little's e-mail, he believed Kimball had simply dismissed Little's findings and was not going to pursue the matter. Arnold stated that Kimball never informed him that the issues were transferred to the Supervisory Auditor's residency team for handling.

After being informed that the questioned deductions were not dropped by MMS but were transferred to the Supervisory Auditor's residency audit team for handling, we asked Arnold if he would have still filed his lawsuits had he known this fact. Arnold stated that he did not believe any additional work needed to be done – the deductions were not allowable. He said there was no need for further discussion. Notwithstanding this belief, Arnold stated that if he knew the Supervisory Auditor's residency team was "following up on" the issue, he would not have filed his lawsuits.

We also asked Little if he knew that the Supervisory Auditor's residency team was addressing Shell's transportation deductions contemplated in his lawsuits. In response, Little stated that no one had informed him that Kimball had directed the Supervisory Auditor's residency team to address the issues. When asked what meaning he derived from Kimball's January 26, 2006 e-mail rescinding Little's previous e-mail to Shell, Little stated the following:

...I read [in Kimball's e-mail to Shell], 'MRM will not take any action on the e-mail message below,' so it tells me that anything I have suggested in my e-mail, he's telling Shell MRM will not pursue it. That's what I read into it. And he kicks me off the case. 'We'll not take any action on the e-mail message.'

When asked if he believed the Supervisory Auditor's residency team was competent to handle the issue he raised, Little opined that the team would address the issues "in accordance with what Lonnie Kimball tells them to do." Little said he had doubts that "everything that I put on the table regarding these issues will ever be brought forth by MMS."

Note: In an e-mail to the OIG, dated December 6, 2006, the Supervisory Auditor said he became aware that Shell's tension leg platform and subsea deductions would be included in his review in December 2005. An MMS Petroleum Engineer, in an e-mail to the OIG, dated December 7, 2007, said he began working on the tension leg platform and subsea deductions in January 2006.

Reporting and Safeguarding Requirements

Reporting Requirements

Our investigation found that Little and Arnold attended the MRM Office of Enforcement Illegal Acts Awareness training on September 15, 2004, at Oklahoma City, OK. A class sign-in sheet included their signatures.

The MMS Internal Quality Control System, Audit and Compliance Policies and Procedures, states under Fraud, Illegal Acts and Abuse, "Any company actions that potentially could be considered fraudulent, abusive, or illegal should be brought immediately to the attention of the audit manager for appropriate follow-up and in accordance with the MRM Audit Manual." This document includes an acknowledgement

of receipt that MRM employees are supposed to sign. Review of the receipt retrieved from Arnold's manual disclosed that Arnold signed the form on October 27, 2006. Little's receipt was not signed.

A review of the OIG investigative case management system found no record of Arnold or Little reporting allegations of fraud or mismanagement to the OIG regarding Shell or any inappropriate transportation deductions.

Note: Little expressed the same views about his obligation to report his concerns – that his actions did not constitute a violation of Department or MMS policy, and that there was no conflict of interest – in regard to this case as he did in the other cases (See pp. 47-48).

During his interview, Arnold said that although he did not consider contacting the OIG prior to filing his *qui tam* lawsuit, he was uncertain about the objectivity of the OIG because, in his opinion, the OIG took management's side during an audit in about 1998 or 1999.

Arnold stated that he and Little had not done enough work to accuse Shell of fraud. He stated that in his 30 years of audit experience, he would not classify what Shell did as fraud. Arnold commented, "I don't think it rose to that level in my mind. It was what we normally come across in an audit."

Arnold further opined that the Shell issue did not rise to the level of fraud, waste, or abuse reportable to the OIG. He said, "[W]e wouldn't waste OIG's...time accusing every company that pays royalties incorrectly of fraud." He stated that the False Claims Act was a mechanism for recovering money owed to the government. Arnold commented that what they had found with Shell was not something they would take to the OIG. Arnold stated that he did not want any money and that if the government wanted to take the case, it could. He said, "[J]ust pay our attorneys; we don't get anything." Arnold said that as long as the government was paid and his attorneys were paid, he was happy.

Safeguarding Requirements

A review of the MMS database used to record employee acknowledgement of the Information Technology Rules of Behavior disclosed that both Arnold and Little completed the acknowledgement for FY 2005 and 2006.

Our review of training and education records for calendar years 2005 and 2006 disclosed that Arnold and Little completed the MRM FOIA and Privacy Act training during 2005.

We showed an MMS FOIA Staff Member and an MMS Records Officer documents used by Little and Arnold in their "Statements of Reasons for the United States Department of Justice to Take on the *Qui Tam* Litigation." Both identified the documents presented to

them as either proprietary or protected as internal MMS business records, or a combination of both categories.

Additionally, we asked the FOIA Staff Member if any of the exhibits used in the “Statements of Reasons for the United States Department of Justice to Take on the *Qui Tam* Litigation” contained information that would be redacted or not released in response to a FOIA request. The FOIA Staff Member identified the documents stamped RL0465 through RL0486, JA572 through JA586, and JA0007 through JA0017 as documents containing confidential business information not releasable to a FOIA requestor. Additionally, the FOIA Staff Member identified the documents stamped RL713 and RL0117 through RL0119 as containing information that would not be releasable under Exemption 5 of the FOIA because they contained internal government deliberative process information. He also said the documents stamped RL0117 through RL0119 contained business proprietary information that also would be redacted before release of the documents to a FOIA requestor.

We asked an MMS FOIA/Privacy Act Officer if MMS had received any FOIA requests from Arnold, Little, or their attorneys. He responded that there had been no FOIA requests from attorneys representing Arnold and Little. He said Little made one FOIA request in October 2004 for information on awards for Offshore Compliance and Asset Management. He said he found no FOIA requests from Arnold.

Note: Little expressed the same views about his use of proprietary information – that his actions did not constitute a violation of Department or MMS policy, and that there was no conflict of interest – in regard to this case as he did in the other cases (See page 51).

During his interview, Arnold admitted that he took official documents and information from his office and provided them to his private Attorney. Arnold said, “I gave them to [my Attorney],” in reference to official correspondence and documentation that he removed from his office. He denied that he provided the documents or information to anyone else. Arnold also denied that he used government time and materials to further his lawsuits because the information was gathered as part of the work assigned to him.

Arnold stated that he was not familiar with the MMS Manual, Part 386, Safeguarding of Records and Information. He indicated that he knew parts of the MMS Manual were available online, but he was not sure where to find the entire manual. Arnold said he had researched the manual in the past when employees filed grievances.

Arnold said his understanding of the MMS policy on proprietary information was that such information could not be released to the general public. He stated that it could be used for the benefit of the government. Arnold said he used proprietary information to recover money from the “auditee” for the government. He said, “[I]t was still used, in my mind, for official government use.”

Arnold claimed that MMS policy did not address the situation he and Little were involved in (i.e. filing a False Claims Act lawsuit). He maintained that he used proprietary information only to recover money owed to the U.S. Government. He opined that he did not think the MMS policy was relevant to his situation because it did not specifically address the filing of False Claims Act lawsuits.

We advised Arnold that the MMS Manual, Part 370, Chapter 735, Employee Responsibilities and Conduct, defined *conflict* under the Conflict of Financial Interest section as a situation where (1) “an employee’s public duty is or will be affected by his or her financial interest” or (2) “an employee’s financial interest is or will be affected by decisions he or she makes or operations in which he or she is involved in an official capacity.”

Arnold stated that the MMS policy did not contemplate an MMS employee filing a False Claims Act lawsuit. He maintained that he did not have a financial interest, stating, “[T]hat’s yet to be determined.” Arnold opined that the False Claims Act took precedence over MMS policy. He explained that if MMS management would not do its job and “collect the money,” the False Claims Act provided a mechanism to collect such money. He stated that there was no conflict of interest and the False Claims Act encouraged employees to file lawsuits.

Our investigation found no evidence that the information used by Arnold and Little in their lawsuits was provided to anyone other than the attorneys retained for the lawsuits.

Declination of Prosecution

On September 20, 2006, the U.S. Attorney’s Office, Public Corruption Unit, Oklahoma City, OK, verbally declined criminal prosecution of Arnold and Little for alleged removal and use of official government documents in order to pursue his False Claims Act lawsuit. The Assistant U.S. Attorney advised that he was declining prosecution because there were administrative remedies available to DOI to address the situation.

Relator Claims of Retaliation

During their interviews, Arnold, Little, and Morris, as well as their attorneys, claimed that they had been subjected to reprisal actions by MMS management. We also received reprisal allegations from an Attorney representing Arnold and Little. We later contacted the attorneys representing all three of the relators and asked them to verify the reprisal allegations we had documented, and we invited them to provide any further claims of retaliation that had not been communicated to OIG investigators. After receiving responses from the attorneys, we identified a total of 17 allegations of reprisal pertaining to Arnold, Little, and Morris.

We did not obtain allegations of reprisal directly from Maxwell because, as noted earlier in this report, he would not agree to an interview. However, through a review of documents contained in Maxwell's lawsuit, we identified one claim of reprisal pertaining to his termination of employment.

The following segment of this report is organized into sections pertaining to claims of reprisal made by Maxwell, Arnold, Little, and Morris. Each allegation or related set of allegations is presented to the reader followed by witness testimony and other investigative activities related to each allegation.

Bobby Maxwell

***Allegation No. 1:** Bobby Maxwell's employment as a re-employed annuitant was allegedly terminated as a direct result of, and in retaliation for, filing his qui tam lawsuit.*

In an affidavit to the court involving his *qui tam* lawsuit, dated April 1, 2005, Maxwell stated, "I believe that my termination of employment from MMS was a direct result of, and in retaliation for my having filed this False Claims case." Maxwell also claimed the following in the affidavit:

- He "received absolutely no input about any possible job elimination or inquiry as to other positions that might be of interest."
- He attended a meeting on January 27, 2005, where he was advised that his position had been eliminated because of a reorganization.
- He was never offered the opportunity to apply for other MMS positions of interest.
- He did not recall participating in a meeting with other MMS managers to discuss the organizational structure of the Compliance and Asset Management Program as stated in an MMS memorandum.

As noted earlier in the report, our repeated efforts to interview Maxwell for this investigation were unsuccessful.

Our investigation found that Maxwell served as an MRM supervisory auditor until he retired on June 28, 2003. Maxwell was hired as a re-employed annuitant on October 19,

2003, and served as an MRM program manager until his employment was terminated on February 25, 2005.

We found that the Notification of Personnel Action (SF-50) for Maxwell's appointment as a re-employed annuitant stated under the Remarks Section, "As a reemployed annuitant, you serve at the will of the appointing officer."

Our review of Title 5, U.S.C., Chapter 33, Subchapter I § 3323 (b)(1) disclosed that "An annuitant so reemployed, other than an annuitant reappointed under paragraph (2) [applicable to administrative law judges] of this subsection, serves at the will of the appointing authority."

A review of the DOI Departmental Manual archived files (370 DM 7.1) disclosed that "Regardless of the type of appointment a reemployed annuitant may be separated at any time at the discretion of the appointing officer." Our review of active Departmental Manual files disclosed no current policy or direction pertaining to re-employed annuitants.

When interviewed regarding Maxwell's allegations, Deborah Gibbs Tschudy, Deputy Assistant Director, MRM, said Maxwell's position was eliminated as a result of the reorganization of Compliance and Asset Management. She explained that MRM decided to consolidate the Offshore Compliance and Asset Management responsibilities under one, rather than two, GS-15 managers. Tschudy said the reorganization of Compliance and Asset Management was the reason for eliminating Maxwell's position and it was not in response, or retaliation for, his *qui tam* lawsuit.

Tschudy stated that she did not know about Maxwell's lawsuit until July 12, 2004. She added that Maxwell was a re-employed annuitant and therefore served at the will of the employer.

Tschudy stated that during a meeting on June 8, 2004, Lucy Querques Denett announced a decision to combine Onshore and Offshore Compliance and Asset Management and to fill the then-vacant manager position at the MRM Business Center in Houston, TX. According to Tschudy, Maxwell talked to Denett about Offshore Compliance and Asset Management being consolidated under one manager rather than two. She said Denett tasked her with talking to other Compliance and Asset Management managers about the future framework of the organization. Tschudy identified the managers as Maxwell; a Program Director, Compliance and Asset Management, MRM; and a Manager from Onshore Compliance and Asset Management, MRM.

Tschudy said she met with the Compliance and Asset Management managers, including Maxwell, on June 30, 2004. She said the managers agreed with the consolidation, including a decision to locate the Offshore Compliance and Asset Management manager in Houston, TX. During the week of the meeting, Tschudy said she informed Maxwell that she might ask him to serve on the interview panel for the Houston, TX, manager position. Maxwell's response, according to Tschudy, was that he might apply for the

vacancy so he would decline an offer to serve on the selection panel. Tschudy added that Maxwell had offered to move to Houston, TX, at his expense but did not recall exactly when he mentioned it.

Tschudy said she informed Denett about Maxwell's interest in the Houston, TX, position and, according to Tschudy, Denett responded, "Well, let's follow up with Bobby, because if we don't need to advertise [the vacancy], we won't."

According to Tschudy, she left a voicemail message for Maxwell on July 2, 2004, stating that she wanted to discuss his interest in the Houston Business Center manager position. Tschudy said Maxwell never responded to her message so she assumed he was no longer interested in the job. When asked if she made any further attempts to contact Maxwell about the job, Tschudy responded that she did not. She opined that she should not "have to beg" someone about his/her interest in a job and added that that if Maxwell was interested in the job, he should have responded to her message.

Tschudy stated that on August 3, 2004, she met with the MRM executive team (Denett; an MRM Senior Policy Advisor; the MRM Chief of Staff; and the MRM Deputy Associate Director). *Note: The Chief of Staff and the Deputy Associate Director are no longer employed with MRM.*

Tschudy said she presented the Compliance and Asset Management reorganization proposal to the team and received concurrence to proceed with a vacancy announcement for the Houston, TX, position.

Tschudy provided a copy of the vacancy announcement to hire a program manager (GS-15) in Houston, TX. The announcement was open on USAJobs from August 17, 2004, to September 1, 2004. Tschudy said Maxwell did not apply for the vacancy.

When asked, Tschudy also provided a copy of the e-mail originally sent to announce the vacancy on August 18, 2004, by the MRM Human Resources Branch to the "WASC HR Services Area no [Outer Continental Shelf]" e-mail group, which included all MRM employees nationwide; MMS administration and budget employees in Denver, CO; and some Offshore MMS employees. The e-mail also revealed that the MRM Human Resources Branch later forwarded the e-mail to the same mailing group to announce that the closing date of the vacancy announcement had been extended to September 8, 2004.

A review of the e-mail showed that it contained a caveat that stated the following:

Please note that it is still your responsibility as an applicant to do your primary job searches through USAJOBS, because that is the only official Department of the Interior vacancy distribution system. While we will do our best to send out courtesy e-mail messages in a timely manner, we will not extend vacancy announcements if an employee does not receive/read this message; e.g. employee is on leave, in travel status, etc.

We obtained a chronology of events involving Compliance and Asset Management organizational changes from Tschudy that she said led to the decision to eliminate one management position. Tschudy also provided copies of e-mail invitations for meetings during the summer of 2004 that included Maxwell as an addressee.

When asked, Tschudy said she did not know why Maxwell, whose position would be eliminated by the decision to have a single Offshore Compliance and Asset Management manager in Houston, TX, did not apply for the Houston, TX, position.

Tschudy notified Maxwell in a memorandum dated January 27, 2005, that his position was no longer needed by MRM as a result of the reorganization. In the memorandum, she told Maxwell that he was a re-employed annuitant who served at the will of the appointing officer and that his employment was being terminated on February 25, 2005.

According to Denett, Maxwell approached her (in about June 2004) and said he did not believe MRM needed a GS-15 manager in Houston, TX, and a GS-15 manager in Lakewood, CO. Denett said she told Maxwell that she would be receptive to the elimination of one of the two Offshore Compliance and Asset Management manager positions if it made good business sense.

Denett said that at her direction, Tschudy met with the other Compliance and Asset Management managers and they decided to recommend the elimination of one of the two Offshore positions.

Denett said she directed Tschudy to ask Maxwell if he was interested in the remaining Offshore manager position, which would be located in Houston, TX. According to Denett, Tschudy told her she had left a message for Maxwell but he never responded, so they decided to proceed with the job announcement for the position in Houston, TX.

Denett said she announced to MMS personnel that the position was going to be advertised, and Maxwell did not apply for the vacancy. She explained that at the time, she thought that perhaps he did not apply because he wanted to return to Hawaii. Denett commented that if Maxwell had expressed any continued interest in the Houston, TX, position before a selection was made, the job announcement could have been canceled to accommodate him.

Denett said she learned about Maxwell's lawsuit shortly after he filed it in about June 2004 because MRM had to recuse Maxwell from working on anything related to Kerr-McGee. Denett said Maxwell claimed that he was fired in retaliation for filing his lawsuit. She acknowledged that Maxwell was terminated around the same time that the lawsuit was unsealed by the court but denied that the two actions were related. She denied that there was any retaliation against Maxwell because he filed a *qui tam* lawsuit.

Denett said Maxwell's employment was terminated because he was a re-employed annuitant and the position for which he was hired was eliminated with the decision to consolidate the two Offshore manager positions into one position located in Houston, TX.

The Program Director, Compliance and Asset Management, MRM, said he agreed with the plan to combine the two GS-15 positions into one “for business reasons.” He said he did not recall seeing Maxwell at the June 2004 manager’s meeting and added that he was not involved in any of the decisions regarding Maxwell’s lawsuit. When asked, the Program Director said he did not recall any conversations about “getting rid of [Maxwell].” He recalled Maxwell informing him that he was applying for the Senior Executive Service position that he currently occupied. The Program Director also noted that he learned about Maxwell’s lawsuit from the media.

A Manager for Onshore Compliance and Asset Management, MRM, said he was present at a manager’s meeting on June 30, 2004. He said Compliance and Asset Management managers met to discuss combining two management positions into one. The Manager recalled that meetings were held to discuss combining Onshore and Offshore compliance operations and to determine where to locate the one remaining position. He also recalled that Maxwell participated in these discussions. When asked, the Manager said he neither recalled any discussions about taking retaliatory actions against Maxwell nor any reason to think that any retaliatory action was taken against him.

Tschudy told us that after Lonnie Kimball was selected for the Houston position, Maxwell’s services were no longer needed and his position was eliminated. Tschudy related that Maxwell accepted a discontinued services retirement in a resolution agreement. *Note: A discontinued services retirement is used when an employee is involuntarily separated from federal service.*

[Exemption (b)(6)]

An Attorney-Advisor, Rocky Mountain Region, SOL, said he was the attorney assigned to handle the negotiations pertaining to Maxwell’s Equal Employment Opportunity complaint. [Exemption 5] The Attorney-Advisor said Maxwell had previously “beat MMS” out of \$300,000 in an earlier Equal Employment Opportunity complaint in which Maxwell alleged gender discrimination.

[Exemption 5]

[Exemption 5]

The Attorney-Advisor stated that it was best to just “roll and settle.” He said the settlement avoided a long drawn out legal process. He added that the settlement terms allowed Maxwell to pursue his claims in the Kerr-McGee *qui tam* lawsuit but forbid any other actions against DOI.

On August 4, 2005, Maxwell signed a settlement agreement with DOI, reaching a global resolution for any and all pending and potential claims and complaints against MMS and any entity, organization, or bureau of DOI. Maxwell agreed to retire from federal service effective June 28, 2005, and to submit all retirement paperwork within 15 days of

execution of the resolution. Maxwell received approximately \$25,000 and a discontinued services retirement at a GS-15, Step 10, salary of \$123,905, with 31 years and 5 months of service.

The resolution agreement included language that the settlement would not be construed as an admission by either the complainant or the agency of any liability or acts of wrongdoing. The settlement agreement allowed Maxwell to pursue his lawsuit against Kerr-McGee.

Arnold, Little, and Morris

Arnold, Little, and Morris alleged during interviews with the OIG and/or through their attorneys that they were victims of retaliation by MMS because they filed *qui tam* lawsuits against oil companies. Their allegations and our investigative results are chronicled below.

***Allegation No. 1:** Information from the *qui tam* lawsuits was allegedly released to MMS personnel as an act of reprisal while the lawsuits were sealed.*

Our investigation found that information about the sealed *qui tam* lawsuits was released to the SOL, the OIG, and MMS by DOJ as part of its authorized efforts under the False Claims Act to assess whether or not to intervene and proceed with the action or to allow the relator to maintain primary responsibility for the conduct of the litigation.

A Trial Attorney, Civil Division, Commercial Litigation, Frauds, DOJ, advised us that DOJ, consistent with its obligation to investigate violations of the False Claims Act, and because a full and complete investigation in the interest of the government required the participation of agencies beyond DOJ in every *qui tam* case, sent a letter and attached copies of the complaint to the relevant federal agencies. Additionally, the DOJ Trial Attorney said DOJ expected agencies to disclose the contents of the complaint to those who would be involved in the government's evaluation of the case. He added that such disclosures were not a violation of the *qui tam* seal but rather a necessary and appropriate part of the DOJ investigation.

The DOJ Trial Attorney added that the lawsuits had to be filed under seal and that it was important to honor that seal by not disclosing the existence of, or information about, the lawsuits to anyone except those in the government who would be involved in the case.

Tschudy said she learned of the *qui tam* lawsuits filed by Arnold, Little, and Morris from SOL attorneys around the time each lawsuit was filed. Tschudy recalled that she also received an e-mail from the DOJ Trial Attorney stating that he desired to interview MRM employees as part of the DOJ investigation into the *qui tam* lawsuits, which she forwarded to the appropriate MMS managers and supervisors. She said she informed the contacted employees to keep the information regarding the *qui tam* actions on "close-hold."

An SOL Attorney-Advisor who was assigned to work with DOJ on each of the involved *qui tam* lawsuits told us that the DOJ Trial Attorney verbally apprised him that disclosure of information about the lawsuits was authorized on a need-to-know basis. The Attorney-Advisor added that his job as a representative of the SOL was to follow the lead of DOJ.

Denett said she learned about the *qui tam* lawsuits filed by Arnold, Little, and Morris shortly after the lawsuits were filed in late 2005 and early 2006. Denett commented that DOJ advised MMS about each of the sealed lawsuits because decisions had to be made whether DOJ would intervene or not in the lawsuits. Denett said DOJ eventually decided not to intervene in any of the lawsuits.

Allegation No. 2: *As acts of reprisal, Morris, Little, and Arnold were allegedly detailed from their assigned duties after MMS became aware of their qui tam lawsuits.*

Specifically, Morris claimed that his detail assignment to BLM was an act of reprisal because he had little work to do at BLM and he reported to a GS-5-level employee. He also claimed that an involuntary detail was a prohibited personnel practice and that he had never heard of anyone being placed on detail involuntarily. He asserted that over the past 16 or more years, MMS asked for volunteers for detail assignments. Morris also alleged that being detailed to Solids and Geothermal Compliance and Asset Management (Solids and Geothermal) to serve as a program analyst following his detail to BLM constructively fired him from his auditor profession.

Little claimed that his detail to BLM was an act of reprisal because he had no mission at the BLM office and reported to a GS-5-level employee. He said a BLM Administrative Officer told him that usually a bureau requests that employees be detailed when it needs help. He said BLM should have requested that MMS detail employees to BLM versus MMS making the request. He added that the Administrative Officer refused to sign the personnel action for his detail extension because he did not have any duties to perform and BLM did not request the detail.

Arnold's Attorney claimed that Arnold's detail to work with Solids and Geothermal may have been an act of reprisal because he would no longer be a supervisory auditor.

During our investigation, we reviewed Title 5, U.S.C. § 3341, which disclosed that employees may be detailed among the bureaus and offices of a department for no more than 120 days and that a detail may be renewed for periods not exceeding 120 days.

We found that the U.S. Office of Personnel Management Guide to Processing Personnel Actions defines a detail as "a temporary assignment [of an employee] to a different position for a specified period when the employee is expected to return to his or her regular duties at the end of the assignment."

Our review of the current DOI Departmental Manual found that there was no guidance regarding the detail of employees. We found that the portion of the Departmental

Manual that discussed details (370 DM 300) was archived and that this section of the manual remains to be updated.

The Chief, Human Resources Branch, MMS, explained that a detail was a temporary assignment and that employees who were placed on a detail still occupied their permanent position. He said employees might generally be placed on multiple 120-day details, for up to 1 year, but MMS had the discretion to continue a detail beyond a year if desired. The Chief said federal personnel regulations allowed managers to place employees on detail assignments at their discretion. He added that in his professional opinion, the actions to place Arnold, Little, and Morris on detail assignments complied with regulations and no laws or regulations were violated.

In response to the allegation that the detail assignments were a prohibited personnel practice, a Human Resources Specialist, Human Resources Branch, MMS, said management had the authority to determine employees' work assignments and had the discretion to place employees on a detail. He said a detail was a temporary assignment that had no impact on salary or grade. The Human Resources Specialist added that there was no prohibition on placing an employee in a position where he or she had no experience.

MMS Director R.M. "Johnnie" Burton (now retired), Deputy Director Walter Cruickshank, Associate Director Lucy Querques Denett, Deputy Associate Director Deborah Gibbs Tschudy, the Compliance and Asset Management Director (now retired), and Offshore Compliance and Asset Management Manager Lonnie Kimball all stated that the auditors' detail assignments were necessary to avoid conflict of interest and independence issues. All denied the allegations that the details were acts of reprisal.

Deborah Gibbs Tschudy said placing Arnold, Little, and Morris on detail to other duties was not an act of retaliation. She referenced sections of the MMS Audit Manual and the GAGAS that stated that auditors should be free of impairments that affect their independence. She also referenced Section 3.09 of the GAGAS that stated that if an auditor had an impairment to independence, it needed to be resolved in a timely manner. Consequently, she said that if MMS had not "walled off" the auditors to eliminate the independence issue created by the lawsuits, MMS could have been cited for violating the GAGAS during an audit peer review.

Denett said MMS placed the auditors on detail assignments because MMS had to isolate them from working on anything related to the companies they were suing. She noted that the GAGAS required auditors to be independent, and, by filing the *qui tam* lawsuits, the auditors had lost that independence.

Denett related that MMS considered placing Little and Morris on a detail to the DOI Office of the Special Trustee but found that there was a problem involving security clearances. As a result, Denett said they eventually placed the auditors at the BLM office in Moore, OK, which was within the commuting distance of their permanent duty station in Oklahoma City, OK. She said Arnold, who only filed a lawsuit against Shell, was

recused from working on matters involving Shell and assigned to work on geothermal issues.

The former Compliance and Asset Management Director said that after learning about the lawsuits, management decided to detail Arnold, Little, and Morris because the lawsuits created a potential conflict of interest. He stated that he made the decision after consulting with Kimball, Denett, and possibly Tschudy.

The Compliance and Asset Management Director also said MMS considered placing Little and Morris on a detail at the Office of the Special Trustee but decided against the idea because of conflict of interest concerns. He said the Office of the Special Trustee did not have work that was unrelated to oil and gas. When questioned, he said the decision not to place Little and Morris on a detail at the Office of the Special Trustee was unrelated to any issues with security clearances.

He summed up the decision to detail Little and Morris to BLM by saying, “We found a place for them that was reasonably close to the type of work that they were doing; it was outside of oil and gas; we felt like they could be productively used, and that’s where I left it with Lonnie [Kimball].”

Kimball stated that MRM terminated Little and Morris’s access to MMS computer systems so they would not have access to data related to the companies they were suing. Kimball, when asked, said retaliation did not enter his mind when he was trying to find positions for Arnold, Little, and Morris.

Kimball said Arnold’s lawsuit only pertained to one company (Shell), so he was required to sign a statement in which he agreed to recuse himself from working on anything related to Shell. He added that because Arnold’s complaint only involved Shell, he was detailed to Solids and Geothermal to perform actual audits. *Note: Shell was not involved in solids or geothermal production.*

According to Kimball, MMS first tried to assign Little and Morris to the Office of the Special Trustee but could not because the auditors’ security clearance level was not acceptable for the work they would perform. Kimball said MMS subsequently focused on detailing Little and Morris to BLM because the office was in the Oklahoma City, OK, area. He said a Field Station Manager, BLM, Moore, OK, said he could use help on a project involving orphaned and abandoned wells. Kimball said, “And so BLM worked out real well.”

When questioned regarding Morris’s allegation that his detail was a prohibited personnel practice, Kimball opined that Morris was perhaps confusing a “voluntary detail,” in which MMS would publish a request for volunteers for a temporary assignment, and a directed or involuntary detail. In reference to Morris’s detail, Kimball said, “I didn’t come to him and ask him where did he want to go. We just assigned him to BLM.”

Our review of the GAGAS, 2003 Revision, disclosed the following in Chapter 3, General Standards:

- “In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, should be free both in fact and appearance from personal, external, and organizational impairments to independence.”
- “Examples of personal impairments of individual auditors include...financial interest that is direct, or is significant/material though indirect, in the audited entity or program.”
- “When the audit organization identifies a personal impairment to independence, the impairment needs to be resolved in a timely manner.”

An Administrative Officer, BLM Area Office, Albuquerque, NM, said a BLM Field Station Manager assigned him in March 2006 to assist in placing Little and Morris on a detail at his office. He said the Field Station Manager told him Little and Morris were auditors being detailed to work with BLM and they needed position descriptions. The Administrative Officer said he suggested that the Field Station Manager create a list of unclassified duties for Little and Morris. He explained that the BLM auditor position description was not applicable to Little and Morris because they were at a higher pay grade than BLM auditors.

A review of an e-mail string beginning on March 13, 2006, with an e-mail from the Director, Compliance and Asset Management, and ending with an e-mail from the Field Station Manager on March 15, 2006, disclosed the following:

- The MRM Compliance and Asset Management Director advised the BLM Field Station Manager that Little had been informed that he would be on detail to BLM to work on the abandoned/orphan well program for a minimum of 120 days. He stated, “I believe Mr. Little will be able to provide you excellent assistance in this program.”
- The MRM Compliance and Asset Management Director requested that MMS human resources personnel contact the BLM Field Station Manager to “discuss the paperwork and the position description.”
- The BLM Field Station Manager responded to the MMS Human Resources Branch and stated, “[I]n talking with [the Administrative Officer] about a Position description, we came to the conclusion that we would create a list of unclassified duties. We don’t really have a [position description] to cover the project that Mr. Little will be assigned to work on.”

On March 23, 2006, the BLM Field Station Manager sent an e-mail to the BLM Administrative Officer in which he said, “I jut [sic] got a call from Lonnie Kimball with MMS asking if we could use another person on our [Orphaned Temporarily Abandoned, Shut-In wells] project. Their name [sic] is Lanis Morris and will be reporting Monday, 3-27. We will use the same unclassified duties.”

The BLM Administrative Officer said that although he processed the Notification of Personnel Action (SF-50) forms for the initial details, he was reluctant to sign them because he believed the protocol was for the employee's permanent employer, in this case MMS, to process the paperwork since it retained the employee's personnel records.

The BLM Administrative Officer recalled that the BLM Field Station Manager asked him to process extensions for the details of Little and Morris in approximately July 2006. The Administrative Officer said he contacted the MMS Human Resources Specialist and "insisted" that MMS process the extension. According to the Administrative Officer, the Human Resources Specialist concurred and agreed to process the detail extensions.

The BLM Administrative Officer said that in July 2006, Little and Morris approached him at the BLM office in Moore, OK. He said Morris verbally attacked him when requesting a hard copy of the initial Request for Personnel Action (SF-52) completed for the detail. He said he explained to Morris that there was no hard copy and that it was an electronic process. The Administrative Officer said Morris began "ranting" and stated that he wanted to know who generated his initial SF-52. According to the Administrative Officer, Morris was trying to "twist [his] words" and "bully" him into saying that the processing of the details was improper and illegal. He said he told Morris that the detail assignment was not improper or illegal and that it really did not matter who completed the paperwork. According to the Administrative Officer, Morris said he was going to file a complaint and that the Administrative Officer would be taken to court.

When questioned, the BLM Administrative Officer said he never told Morris or Little that he disagreed with the details, that he should not have signed the documents for the details because it was dishonest or illegal, or that there was no work for them at BLM. The Administrative Officer said he told Little and Morris that he refused to process the detail extensions because he felt the "proper" process was for MMS to do it because MMS had the master file. He said that while the details were proper, the correct protocol was for MMS to process the actions.

A Senior Human Resources Specialist, Human Resources Branch, MMS, said he contacted the Administrative Officer after he learned about Morris's allegation that the BLM Administrative Officer refused to process personnel actions for Little and Morris and that the Administrative Officer believed the details were illegal or improper. According to the Senior Human Resources Specialist, when he asked the Administrative Officer about the allegation, the Administrative Officer responded, "[A]bsolutely not," and said he did not believe the details were illegal or improper. The Senior Human Resources Specialist said the Administrative Officer also told him that it was difficult for BLM to process the personnel actions because BLM did not have access to the MMS personnel system. Subsequently, the Senior Human Resources Specialist said he agreed to process extensions for the details.

In regard to the supervision of Little and Morris at BLM, our search of the DOI Departmental Manual and the U.S. Office of Personnel Management regulations

disclosed no policy or guidance pertaining to whether an employee at a lower grade could provide direction, guidance, or tasks to higher-graded employees.

When we informed the Senior Human Resources Specialist, Human Resources Branch, MMS, that Little and Morris had complained that they were being supervised by a GS-5-level BLM employee, he replied that such an arrangement was “odd” but was legal.

Note: Little is a GS-13-level employee and Morris is a GS-12.

The BLM Field Station Manager (now retired), Oklahoma Field Station, BLM, said he supervised Little and Morris while they were detailed to BLM. He said Little and Morris were tasked with working on the BLM orphaned, temporarily abandoned, and shut-in wells project. He added that Little and Morris had been working under the direction of a GS-5, who was the project leader. The Field Station Manager explained that while he was their official supervisor, the GS-5-level employee provided daily guidance and direction on project needs.

Kimball, when informed that Morris had complained that he was working for a GS-5-level employee at BLM, responded that he did not know specifically what Little and Morris were doing at BLM other than that they were working on a project involving abandoned wells. He said he was aware that the Field Station Manager was supervising Little and Morris while they were working at BLM.

When we advised Kimball that the BLM project leader for the orphaned and abandoned well project was a GS-5 and that Little and Morris were given day-to-day direction by that individual, Kimball responded that the arrangement was unusual but acceptable. He explained that sometimes employees received assignments that were below their grade level. He said, “It’s part of a job that you have to do, regardless of what the task is and regardless of who you get the assignments from.” Kimball added that Little and Morris were on temporary details and that their details to BLM were not permanent.

In regard to Little and Morris’s work assignments at BLM, the Field Station Manager said he informed Kimball that Little and Morris would be working on the orphaned, temporarily abandoned, and shut-in wells project. He said he created a list of unclassified duties for Little and Morris and provided copies to them approximately 1 week after they began the detail in March 2006. He stated that Little and Morris did not raise any questions about their duties.

According to the BLM Field Station Manager, Little and Morris’s duties in support of the project included researching data and writing a proposal for project funding, reviewing and analyzing well data, preparing reports, organizing correspondence, planning and organizing the spotting of well locations and digital picture logs, evaluating proposals, tracking progress of projects, and monitoring and reporting on the status and progress of work, as well as other planning and coordinating with management and team members.

On November 21, 2006, the Field Station Manager e-mailed a written summary of Little and Morris’s performance while detailed at BLM to Kimball. In that e-mail, the Field

Station Manager said Little and Morris were assigned to work on the “Orphaned [sic] Temporarily Abandoned, Shut-In (OTASI) project” and that the work they accomplished “was very good.” He added that they “demonstrated their ability to produce a very good product.”

In regard to Little and Morris’s details to Solids and Geothermal, a Senior Human Resources Specialist, Human Resources Branch, MMS, Lakewood, CO, said the two were detailed again after their details to BLM expired on December 31, 2006. He stated that the details to Solids and Geothermal were within management’s authority to assign employees to other duties. The Senior Human Resources Specialist said he believed MMS moved Little and Morris to this area because BLM did not want to continue Little and Morris’s details at BLM. He opined that MMS had few options for placing Little and Morris in positions that gave them meaningful work due to the lawsuits they filed against oil companies.

The Chief, Human Resources Branch, MMS, Lakewood, CO, said the most recent personnel action detailing Little and Morris from their permanent auditor assignments to program analyst positions was legal and complied with personnel regulations. The Chief reiterated that Little and Morris were only on temporary assignments and retained their permanent auditor positions. He opined that details could be an experience-building opportunity for employees.

The Program Director, Compliance and Asset Management, MRM, said that in December 2006, he and Kimball discussed where to assign Little and Morris after expiration of the detail assignments to BLM on December 31, 2006. He said they considered the fact that MRM had to comply with the GAGAS, which required that MRM ensured its auditors were not impaired by a conflict of interest.

The Program Director stated that because Little and Morris had a potential conflict of interest with their audit duties, resulting from their financial interests in the lawsuits, management decided that the two would be detailed to MRM Solids and Geothermal Compliance and Asset Management as program analysts.

The Program Director said Little was assigned to work on a Solids and Geothermal handbook and Morris was assigned to work on Solids and Geothermal training materials. He explained that the Government Accountability Office had placed a deadline on MMS to complete certain audits and to update handbooks and training materials. He added that he worked with the MMS Human Resources Branch to ensure that Little’s position description reflected the work of a GS-13 and stated that the handbook project required a higher skill level than the training materials assignment given to Morris.

A Manager, Solids and Geothermal Compliance and Asset Management, MRM, said Little and Morris were assigned to work on a geothermal handbook and geothermal training material for oil and gas companies. He said he assigned Little and Morris to work under a Supervisory Geologist (GS-13), Solids and Geothermal Compliance and Asset Management, MRM, who would perform their evaluations for the Solids and

Geothermal detail. According to the Manager, the Supervisory Geologist coordinated with the Human Resources Branch to ensure position descriptions and personnel actions were generated for the detail assignments. The Manager stated that Little and Morris were assigned as program analysts for their detail to Solids and Geothermal.

Kimball stated that when Little and Morris's details at BLM ended on December 31, 2006, MRM management decided that Little and Morris would be detailed to Solids and Geothermal (even though they were officially transferred to auditor positions at Indian Compliance and Asset Management as part of a reorganization in December 2006). Kimball said the detail assignments to Solids and Geothermal were the positions management thought Little and Morris would "best be suited for" until they could "find a more permanent spot for them." Kimball explained that because Little and Morris's *qui tam* lawsuit involved so many companies, he believed their independence in doing Indian audit work would be difficult to maintain.

When told that Morris alleged that his assignment to Solids and Geothermal to write a manual was retaliatory because he had no experience in that area and feared being set up for failure, Kimball responded, "It's not retaliatory. I don't think he's being set up for failure." Kimball added, "Can they learn it? Yes. Can they succeed? Yes. At the same level that they think they should be because of their previous years' cash awards? Maybe not. But again, I don't think it's retaliatory."

In response to Morris's allegation that the detail to Solids and Geothermal had "constructively fired" him and removed him from his lifelong profession as an auditor, Kimball said, "And that's why I think he can still do a good job, because he's gotten a number of years of auditing experience. It may not be in Geothermal, but it's just another natural resource. And I'm sure there's some guidance that has already been written, and it's just updating the guidance." Kimball added that Little and Morris would still be attending and participating in continuing education as auditors while on the detail to Solids and Geothermal.

A Program Manager, Indian Compliance and Asset Management, MRM, said Little and Morris completed their detail assignments at Solids and Geothermal and, effective April 30, 2007, were returned to Indian Compliance and Asset Management to work as auditors. He explained that during discussions with the Program Director, Compliance and Asset Management, he told him that he could find audit work for Little and Morris at Indian Compliance and Asset Management that was not related to the oil companies named in their lawsuits. The Program Manager, Indian Compliance and Asset Management, said he would be able to direct work for Little and Morris pertaining only to small oil and gas companies who were not named in their lawsuits.

Subsequent to our interview with the Program Manager, Indian Compliance and Asset Management, a Supervisory Minerals Revenue Specialist, MRM, provided copies of Little and Morris's recusal letters, dated May 9, 2007, via fax.

Regarding Arnold's detail assignment to a non-supervisory position at Solids and Geothermal, the Chief, Human Resources Branch, MMS, said Arnold's detail from a supervisory position to a non-supervisory position complied with federal personnel requirements. He said there was no prohibition from placing supervisory employees in a non-supervisory detail.

A Senior Human Resources Specialist, Human Resources Branch, MMS, said detailing Arnold to a non-supervisory position was allowed and opined that Arnold suffered no harm because he received the same pay and officially remained in his position of record.

Kimball, in response to questions about whether detailing Arnold to a non-supervisory position was retaliatory, said MMS was attempting to place Arnold in a position where he could be productive within the agency. Kimball said he did not believe placing Arnold into a non-supervisory position was harmful and added, "[Arnold] kept his same pay, less responsibility." He said Arnold still retained his original position and the detail was temporary. When asked if detail assignments were harmful in any way, Kimball said, "I don't think they are."

Allegation No. 3: MMS allegedly closed the Oklahoma City Offshore Compliance and Asset Management office as retaliation for the qui tam lawsuits.

Information obtained during our investigation revealed that the Oklahoma City, OK, Offshore Compliance and Asset Management office was part of a reorganization planned prior to the filing of the *qui tam* lawsuits by Arnold, Little, and Morris.

When interviewed, the Program Director, Compliance and Asset Management, MRM, stated that the transition of most of the Offshore Compliance and Asset Management staff to the Indian Compliance and Asset Management office had been planned for approximately 1 year. He said his predecessor (now retired) made the decision. The Program Director said that in his former capacity as the Indian Compliance and Asset Management Manager, he was aggressive in ensuring that the office received additional resources. He said he played a key role in the decision to reorganize the Offshore office and transition some of the staff to Indian Compliance and Asset Management. He explained that Indian Compliance and Asset Management already managed a team in Oklahoma City, OK, which made the transition easier. The Program Director added that a few Oklahoma City, OK, auditors were not going to be transitioned and were going to remain assigned to the Offshore office. He said they were going to be supervised by Kimball to continue to work on Jicarilla Apache Tribe Compliance and Asset Management work.

Kimball disputed the claim that Offshore Compliance and Asset Management was being closed. He said the Offshore office was not being closed but rather the function of the personnel in that location was being transferred or realigned to work for Indian Compliance and Asset Management. Kimball explained that management was reviewing the workload and recognized that many oil companies were located in Houston, TX.

Kimball said the former Compliance and Asset Management Director began planning a reorganization of the Compliance and Asset Management offices before MMS was aware of the *qui tam* lawsuits filed by Arnold, Little, and Morris. He said the plan was to redirect Offshore operations to Houston, TX, and Lakewood, CO. Kimball described the reorganization as a mission adjustment that the MMS Associate Director for Administration and Budget had approved. He noted that no employees had lost their jobs due to the reorganization.

Subsequent to the above interview, Kimball provided a copy of a presentation from April 2006. A review of the presentation disclosed that, as part of an effort to realign Compliance and Asset Management staffing during FY 2006, MMS planned to do the following:

- Redirect Offshore Compliance and Asset Management resources to federal Onshore Compliance and Asset Management.
- Consolidate most Offshore Compliance and Asset Management resources in Houston, TX.
- Consolidate Oklahoma staff under a single management structure.

Our investigation found an Organization Change Clearance Record, including current and proposed changes for the reorganization of Offshore Compliance and Asset Management resources at Oklahoma City, OK. The summary block of the document stated the following:

Currently, MMS is managing approximately 80% and 60% of offshore oil and gas royalties, respectively, through the RIK program. The movement of offshore oil and gas production from in value (cash) to the RIK program results in less Offshore Compliance and Asset Management (CAM) resources required to perform audits and compliance reviews as well as less litigation risks. To address this shift in resources, the CAM is reorganizing by moving Offshore CAM resources in Oklahoma City to Indian Oil and Gas CAM in Oklahoma City.

Allegation No. 4: *Arnold was allegedly treated differently from other employees because he was required to complete his audit work at Solids and Geothermal Compliance and Asset Management after being reassigned to Indian Compliance and Asset Management. Allegedly, no other employees who were transferred to that office were required to complete their prior assignments after they were moved.*

In response to being informed about Arnold's complaint of being treated differently or retaliated against because he was required to complete an audit at Solids and Geothermal after being transferred to Indian Compliance and Asset Management, Kimball responded, "That's not exactly true." Kimball said Arnold was asked to follow up on the audited company's response to the audit Issue Letter he (Arnold) had drafted. Kimball said Arnold was directed to create a draft Order, if needed, or an Order to Pay, and then to complete the final audit report.

Kimball said Arnold's Solids and Geothermal audit was, at that time, in the "resolution stage." He said, "There's no more work currently being done at the field level. It's at a higher level." Kimball explained that MRM would incur a lot of wasted time if the audit was reassigned at that stage because someone would have to learn the details of the audit. He said it was easier to have Arnold, who conducted the audit, complete the remaining work. He added that the other Offshore Compliance and Asset Management employees reassigned to Indian Compliance and Asset Management had gradually completed all of their work to simplify the transition. *Note: Arnold, Little, Morris, a Supervisory Auditor, two Auditors, and a former Secretary were reassigned from Offshore Compliance and Asset Management to Indian Compliance and Asset Management on December 24, 2006.*

A Program Manager, Indian Compliance and Asset Management, MRM, recalled a discussion in which Kimball said he was decreasing assignments to the Offshore personnel being reassigned to Indian Compliance and Asset Management. He said this would help make a smoother transition with little, if any, lingering work. He said Kimball mentioned that Arnold might be needed to complete some remaining work on the audit he was conducting at Solids and Geothermal. He said he told Kimball he had no objection to allowing Arnold to complete the audit.

The Program Manager, Indian Compliance and Asset Management, said he later made an agreement with a Manager, Solids and Geothermal Compliance and Asset Management, MRM, to allow Arnold to conduct tasks related to the completion of the Solids and Geothermal audit. He said allowing Arnold to finish the audit was "the logical thing to do" and made sense. He provided the interviewing agents with an e-mail that he sent to the Manager on December 20, 2006, in which he advised the Manager that he would make Arnold available to complete the audit.

The Program Manager, Indian Compliance and Asset Management, said he also allowed the former Secretary, Offshore Compliance and Asset Management, MRM, to continue working on Offshore Compliance and Asset Management projects for Kimball involving preparation of files for storage at the federal records center. He did not recall if any of the other former Offshore personnel had unfinished Offshore work. He added that he would have allowed any of the Offshore personnel to complete unfinished assignments.

When asked, the Program Manager, Indian Compliance and Asset Management, said Arnold had been, and would be, given all of the time he needed to complete the Solids and Geothermal audit. He said he believed the field work for Arnold's audit had been completed and all that remained was completion of some work papers or reports. He opined that this would not be very time consuming because MRM used templates for many of its work papers and reports. He commented that Arnold was free to work on the audit whenever he wanted to and did not have to ask his permission before doing so.

According to the Program Manager, Indian Compliance and Asset Management, Arnold was not being asked to do anything more than other Indian Compliance and Asset

Management personnel. He said he believed in balancing the workload and that all of the other Indian Compliance and Asset Management supervisors had been assigned audits and/or other duties beyond their supervisory responsibilities. He also stated that two MRM auditors and an Auditor from Indian Compliance and Asset Management were directed to complete work assignments for the team led by another Indian Compliance and Asset Management Supervisor, even though they had been reassigned to Arnold's team.

***Allegation No. 5:** In October 2006, Kimball allegedly asked Arnold whether he wanted to be assigned to Solids and Geothermal as a senior auditor or to Indian Compliance and Asset Management as a supervisor or senior auditor. Arnold allegedly requested to be assigned as a senior auditor with Solids and Geothermal, but Kimball assigned him to Indian Compliance and Asset Management as a supervisor without advanced notice.*

Kimball, in response to questioning regarding the allegation about Arnold's reassignment to Indian Compliance and Asset Management, said Arnold initially responded that he wanted to be treated the same as his peer, an Offshore Supervisory Auditor, when they were eventually reassigned to Indian Compliance and Asset Management. According to Kimball, he responded, "Joel, that's not my question I'm asking you." Kimball said Arnold then commented about a senior staff position similar to the one held by a Senior Auditor at Solids and Geothermal. Kimball said his response was the following: "Joel, I'm asking you when I move you to Indian CAM in this reorganization, do you want to become a supervisory auditor, or do you want to become a staff person?" Arnold, according to Kimball, responded that he wanted to become a supervisory auditor.

Subsequent to the interview, Kimball provided copies of e-mail messages about Arnold's assignment preference. A review of the e-mail messages disclosed the following:

- On October 18, 2006, at 6:16 a.m., Arnold sent an e-mail to Kimball that stated, "Lonnie, If given the choice of either being a Supervisory Auditor with [Indian Compliance and Asset Management] in [Oklahoma City] or a Senior auditor (at the same grade and pay as I am now and located in OKC) with [Solids and Geothermal Compliance and Asset Management], I would prefer a position with S&G CAM."
- On October 18, 2006, at 2:53 p.m., Kimball responded to Arnold via e-mail and stated the following:

Joel, this is to confirm conversations we had on Monday, 10/16 and Tuesday, 10/17. In the reorganization, moving OffCAM employees in OKC to IndCAM in OKC (except three employees), I asked for your preference of work in IndCAM – as a supervisory auditor or a staff auditor. Your answer was that you preferred a supervisory auditor. I did not guarantee that management would place [you] in your preference, but that we would try to accommodate your desire.

In our conversations, you also expressed a desire because of the needs of the manager for the Solids and Geothermal CAM to continue to work as a staff auditor in the Solids and Geothermal CAM. When I asked your preference over a supervisory auditor in IndCAM and a staff auditor in the Solids and Geothermal CAM, you would choose the Solids and Geothermal CAM.

It is understood that in any of the three positions your grade level and pay for OKC will not change.

- On October 18, 2006, at 3:22 p.m., Arnold responded to Kimball via e-mail and stated, “OK, except that it’s my understanding that with Solids and Geothermal CAM my title would be the same as a Senior Auditor rather than Staff Auditor. Don’t know if that makes any difference. Also, OKC would remain my as [sic] my duty station.”

The Program Director, Compliance and Asset Management, recalled that Kimball asked Arnold and a Supervisory Auditor, who were both Offshore supervisors, about their preference for assignment when they were reassigned to Indian Compliance and Asset Management. He said he understood that Arnold said he would prefer to remain a supervisor but he also liked working at Solids and Geothermal. He said the Supervisory Auditor preferred a staff auditor position at Indian Compliance and Asset Management. According to the Program Director, management told Arnold and the Supervisory Auditor that it would take their preferences into consideration but did not guarantee that they would be assigned to their preference. He said Arnold was selected for the Indian Compliance and Asset Management supervisory position based on his indicated preference and the Supervisory Auditor’s stated preference not to continue in a supervisory role.

***Allegation No. 6:** Arnold, in his new assignment at Indian Compliance and Asset Management, would be supervising an Auditor for Indian Compliance and Asset Management, MRM, an employee that Arnold had previously supervised and had complained to Kimball about because of the Auditor’s conduct and attendance problems. Kimball allegedly ignored Arnold’s complaints about the Auditor.*

The Program Manager, Indian Compliance and Asset Management, MRM, recalled that in approximately August 2006, he learned that some of the Oklahoma City, OK, Offshore staff would be transferring to Indian Compliance and Asset Management. He said a Supervisory Auditor, Offshore Compliance and Asset Management, and two other Offshore auditors were going to be transferred, along with the Offshore Secretary at the time. According to the Program Manager, he decided that the Supervisory Auditor at the Offshore office would supervise the two other Offshore auditors once they were transferred to Indian Compliance and Asset Management.

The Program Manager, Indian Compliance and Asset Management, said he believed the Supervisory Auditor should have had more than two auditors assigned to his team, so he

asked the Supervisory Auditor and an Indian Compliance and Asset Management Supervisory Minerals Revenue Specialist to name three auditors who would be reassigned from the Indian Compliance and Asset Management office to the Supervisory Auditor's team. The Program Manager explained that by reassigning three auditors from the Supervisory Minerals Revenue Specialist to the Supervisory Auditor, each of his supervisors would have a team of five auditors. According to the Program Manager, the Supervisory Auditor and the Supervisory Minerals Revenue Specialist decided that three auditors would be transferred from Indian Compliance and Asset Management's team to Offshore Compliance and Asset Management's team.

The Program Manager, Indian Compliance and Asset Management, stated that during a December 20, 2006 telephone call with the Program Director, Compliance and Asset Management, and Kimball, he learned that Arnold would be assigned to Indian Compliance and Asset Management as a supervisory auditor. He said he was further informed that although the Supervisory Auditor would be reassigned to Indian Compliance and Asset Management, he would not be assigned to a supervisory position. The Program Manager, Indian Compliance and Asset Management, said that based upon this new information, he decided to assign Arnold to the team that was initially going to be supervised by the Supervisory Auditor.

The Program Manager, Indian Compliance and Asset Management, said that after he had assigned the team to Arnold, Arnold informed him that he had spoken with Kimball in the past about [Exemptions (b)(6) and (b)(7)(C)]. He said Arnold did not request that [Exemptions (b)(6) and (b)(7)(C)] be transferred from his team and [Exemptions (b)(6) and (b)(7)(C)] did not complain about being assigned to Arnold's team.

When questioned about the assignment of [Exemption (b)(6) and (b)(7)(C)] to Arnold's team, Kimball said, "I had no involvement in the assignment of the individuals at [Indian Compliance and Asset Management]. That was done by [the Program Manager, Indian Compliance and Asset Management]. I don't know his reasoning."

Kimball also said, "When [Exemptions (b)(6) and (b)(7)(C)] was assigned to Joel [Arnold], Joel did tell me he had [Exemptions (b)(6) and (b)(7)(C)]." Kimball claimed that he told Arnold he would support him, but Arnold never acted. He recalled that another Auditor also complained about [Exemptions (b)(6) and (b)(7)(C)] but, like Arnold, took no actions to resolve the problem. Kimball said he believed [Exemption (b)(6) and (b)(7)(C)].

Allegation No. 7: MMS allegedly failed to place Arnold on performance standards while on his detail assignment, precluding him from being rated for his performance at the detail location.

Our investigation determined that Arnold was detailed to MMS Solids and Geothermal as an auditor from March 2006 through December 2006. Little and Morris were detailed to unclassified duties at BLM from March 2006 through December 2006.

Our review of the DOI Departmental Manual, Part 370, Departmental Personnel Program, Chapter 335, Promotion and Internal Placement, and Chapter 430, Performance Management System, disclosed the following:

- Competitive procedures do not apply to “Details made in 120 day increments up to one year to unclassified duties.” (370 DM 335 3B[10])
- Rating officials are responsible for “documenting the elements and performance standards in a performance plan within 60 days of the beginning of ... the assignment of an employee to a detail or temporary promotion scheduled to exceed 120 days...” (370 DM 430 1.5E[1])
- “If the rating official does not place an employee under standards for at least 90 days during a rating period, the employee will not be eligible for a rating. A presumptive rating may not be assigned.” (370 DM 430 1.6G[2][g])

The Chief, Human Resources Branch, MMS, explained that if a detail exceeded 120 days, performance standards should be created for an employee so he/she could be rated for the work performed while on the detail. He added that if the employee was not placed on performance standards while on the detail, the employee could not be rated for the work performed during the assignment.

The Chief said federal personnel policy allowed detail assignments to unclassified duties. He commented that an assignment to unclassified duties was not punitive and it was not hurtful to an employee’s career because the employee continued to receive credit for occupying his or her permanent position. He added that details could be beneficial to employees because details allowed employees to gain new experience and skills.

A Senior Human Resources Specialist, Human Resources Branch, MMS, stated, “[From a Human Resources] perspective, we just don’t like to see folks detailed to unclassified duties for a really lengthy period of time, because it does cause complications with standards and things of that nature.” He said he did not believe anyone at the Human Resources Branch advised managers that not placing Arnold, Little, and Morris under standards would have an effect on their evaluations.

Another Human Resources Specialist, Human Resources Branch, MMS, said that in his experience, it was relatively common to place employees in unclassified positions when they were assigned to details. He explained that there was no suitable classified position when employees, especially GS-12 and GS-13 auditors, were detailed to an organization such as BLM.

When interviewed, the Chief, Human Resources Branch, MMS, and a Senior Human Resources Specialist said Little and Morris were assigned to unclassified duties while on detail to BLM, and they should have been given unique performance standards for the assignment once it exceeded 120 days. The Senior Human Resources Specialist said it would be difficult to provide a rating for Little and Morris unless performance standards were created because there was no position description for unclassified duties.

According to the Chief and the Senior Human Resources Specialist, Little and Morris's BLM supervisor was responsible for placing Little and Morris on performance standards while they were at BLM.

When questioned, the Senior Human Resources Specialist explained that the difference between the description of duties given to Little and Morris by BLM and performance standards was that "...the duties are kind of what you do." He said, "The standard is how well you do it, how well you need to do it."

When interviewed, the former Compliance and Asset Management Director said he believed the auditor performance standards were broad enough to cover assignments such as Little and Morris's details to BLM. He did not recall any discussions or consideration regarding the effect of not placing Little and Morris under standards or the effect the detail assignments would have on their performance appraisals or potential for awards.

A BLM Field Station Manager recalled that he contacted the BLM Administrative Officer to request assistance with personnel issues surrounding Little and Morris's detail assignment to BLM. According to the BLM Field Station Manager, the Administrative Officer asked him to produce a list of unclassified duties describing the work for the detail in lieu of preparing a position description.

When interviewed, the Administrative Officer said he suggested that the Field Station Manager create a list of unclassified duties for Little and Morris because they held higher pay grades than BLM auditors.

The Field Station Manager (who was the Acting Supervisor for the Oklahoma City office) said he did not place Little and Morris under performance standards and he did not rate them during the detail. He said he did not believe it was necessary for him to complete a performance rating for Little and Morris because the detail was only a temporary assignment and Kimball presumably remained their rating official.

When interviewed, Kimball said Little and Morris were placed under unclassified duties because BLM did not have a position description applicable to their assignment. He said he believed it was BLM's responsibility to put Little and Morris on performance standards.

When asked whether the decision to assign Little and Morris to a detail with unclassified duties was retaliatory, Kimball said, "I don't think it's retaliatory. It's a mistake on our part for not giving them the duties ... putting them in a classified position so that we could then have standards. But you can do that. The personnel [regulations] allow you to detail someone to an unclassified position."

In regard to Little and Morris's performance appraisals while at Solids and Geothermal, a Manager, Solids and Geothermal Compliance and Asset Management, MRM, said a Supervisory Geologist, MRM, coordinated with the Human Resources Branch to ensure

position descriptions and personnel actions were generated for Little and Morris's detail assignments.

Regarding Arnold's detail to Solids and Geothermal, the Chief, Human Resources Branch, MMS, said Arnold remained under his permanent position description because, in his opinion, the description was generic enough to use for Arnold's detail assignment to Solids and Geothermal as an auditor.

The Senior Human Resources Specialist commented that when a Supervisory Auditor, MRM, Offshore Compliance and Asset Management, was promoted on March 6, 2006, the Supervisory Auditor could have used the standards that Arnold was placed under earlier in the rating period since the Supervisory Auditor became Arnold's supervisor part way through the rating period. The Senior Human Resources Specialist noted that Arnold was placed on detail almost immediately after the Supervisory Auditor was promoted so he would have had little time to do anything other than inherit the standards already in place.

When interviewed, the Supervisory Auditor said that after he was promoted, Kimball told him Arnold would not be under his supervision, so he believed there was no reason for him to place Arnold under performance standards.

Kimball, when informed about the complaint that the Supervisory Auditor never placed Arnold on performance standards, said the Supervisory Auditor was promoted in March 2006 and Arnold was placed on detail later that month; therefore, the Supervisory Auditor had very little time to meet with Arnold.

A Supervisory Program Analyst, Compliance and Asset Management, MRM, said he served as the acting manager for Solids and Geothermal from approximately March 2006 to late July 2006 or early August 2006. He said he was not involved in the arrangements or discussions involving the decision to detail Arnold to Solids and Geothermal. He said he presumed that the previous manager and the Compliance and Asset Management Director worked out the details for Arnold's assignment.

The Supervisory Program Analyst said he did not place Arnold on performance standards because he believed the detail was only going to be for a short time. In about July 2006, he said he recommended that the Compliance and Asset Management Director extend Arnold's detail because Arnold was working on a mandatory audit that had to be finished. He said it did not occur to him that Arnold should have been placed on performance standards when his detail was extended beyond the initial period. He acknowledged that he should have placed Arnold on performance standards but said he was overwhelmed performing two jobs and simply forgot to do it. The Supervisory Program Analyst stated that the failure to place Arnold on performance standards was not an act of reprisal or retaliation.

The Manager, Solids and Geothermal, said he began supervising Arnold on [Exemption (b)(6)], when he assumed the duties of his position as Manager, Solids and Geothermal

Compliance and Asset Management, MRM. He related that Arnold was under the management of the Supervisory Program Analyst, Compliance and Asset Management, and another Manager in Solids and Geothermal Compliance and Asset Management prior to that date. He said the Manager in Solids and Geothermal Compliance and Asset Management left MRM in March 2006, and the Supervisory Program Analyst, Compliance and Asset Management, became acting Manager for Solids and Geothermal at that time. He said he did not know what performance standards Arnold was placed under while he was detailed to Solids and Geothermal and said he believed it would have been Kimball's responsibility to do so.

When asked about Arnold's detail, Kimball said, "Arnold should have been placed on standards, but was not." Kimball explained that there was a breakdown in communication with the Supervisory Program Analyst, who was the acting manager for Solids and Geothermal. Kimball said, "I mean, even though I was responsible for [Arnold, Little, and Morris] and prepared the paperwork, when Arnold went to Geothermal, I kind of backed away. I didn't follow to make sure that everything got done." Kimball said he did not think it was his responsibility at that time.

As noted earlier, 370 DM 430 1.5E(1) requires that the *rating official* document the elements and performance standards in a performance plan within 60 days of an employee beginning a detail assignment *scheduled to exceed* 120 days. Additionally, our review of 370 DM 430 1.6E disclosed the following:

A performance appraisal will be based on individual employee performance for the 12-month period of the rating cycle, including any details over 120 days...The rating official should make a reasonable effort to obtain written input for details/temporary assignments over 120 days.

Allegation No. 8: *Allegedly, MMS did not provide annual appraisals to Arnold and Little for FY 2006; Arnold did not receive an interim rating; and Kimball did not review Arnold's interim rating of Little.*

Specifically, Arnold and Little alleged that MMS had not provided them with annual appraisals for the FY 2006 rating period that ended on September 30, 2006, which prevented them from receiving awards and hindered promotion opportunities.

In addition, Arnold alleged that he did not receive an interim rating or progress review when he was placed on detail, and he alleged that his performance was not discussed with him at the end of the year.

Little alleged that Kimball had not approved his interim rating, which was drafted by Arnold, and that the review had been in Kimball's possession since May 2006.

A review of 370 DM 430 1.6G(3) disclosed the following:

Annual summary ratings are to be completed and presented to the employee no later than 30 days after the completion of the annual appraisal period, or upon completion of the 90-day rating extension period. The original ratings will be submitted to the servicing [Human Resources office] within 60 days following the end of the rating period.

Further review of 370 DM 430 at 1.5E(4) and 1.5E(7) disclosed that rating officials were responsible for conducting at least one progress review for each employee during the rating period and for preparing interim ratings when appropriate.

When interviewed on January 16, 2007, the Chief, Human Resources Branch, MMS, said it was unusual that the 2006 performance appraisals for Arnold, Little, and Morris had not been completed. However, he stated that he did not believe the delay in completion of the performance appraisals would hinder employment opportunities because the employees could use prior appraisals on job applications and note that MRM had not provided anything more recent if they applied for other jobs. The Chief said Arnold, Little, and Morris would remain eligible for a performance award if they received a Superior or Exceptional rating, but he said it was the supervisor's decision whether or not to give them an award.

When interviewed, a Senior Human Resources Specialist, Human Resources Branch, MMS, said DOI policy required managers to complete the appraisals within 30 days of the end of the rating period. He stated that he provided Kimball with the policy guidance from the Departmental Manual, but he had not completed the appraisals for Arnold, Little, and Morris. Human Resources records showed that the other Offshore employees at Oklahoma City, OK, received their appraisals over a period of time ranging from October 11, 2006, through November 20, 2006.

When asked, the Senior Human Resources Specialist opined that the delay in giving appraisals would not have any impact on promotion opportunities but would result in a delay for performance awards if the rating official elected to provide the employees with a performance award.

The Senior Human Resources Specialist said he was not aware of any efforts or actions to retaliate against Arnold, Little, or Morris. He opined that Kimball was overwhelmed by the circumstances and that any miscommunication or delayed actions were not intentional efforts to harm or inconvenience the employees.

When interviewed on this matter, Kimball said the delay in processing the appraisals occurred because of the time it took to obtain input from BLM and Solids and Geothermal; the uncertainty on how to proceed once he learned that Little and Morris had not been placed under performance standards at BLM; and the complication of assessing what input, if any, he could use from BLM and Solids and Geothermal. Kimball stated

that the delay in completion of the appraisals for Arnold, Little, and Morris had nothing to do with retaliation or reprisal.

When asked to respond to Little's claim that the delay in issuing the appraisals could have hurt promotion opportunities for Little, Kimball said he did not know how "that would even fit [in]to the picture." Kimball added that Little never came to him and said, "I need [an appraisal] because I'm applying for a job."

Regarding allegations that Arnold did not receive an interim rating or progress review during his detail and that his performance was not discussed with him at the end of the year, our investigation revealed that on January 19, 2007, Kimball rated Arnold as [Exemption (b)(6)] for his performance during the period beginning October 1, 2005, through March 20, 2006. The appraisal form showed that Arnold signed the Notification of Standards on December 22, 2005. However, the progress review blocks for the employee and the supervisor signature were blank, and the employee acknowledgement of appraisal block was blank.

We also found that on January 19, 2007, Kimball completed a second appraisal form for Arnold that covered the entire rating period from October 1, 2005, through September 30, 2006. [Exemption (b)(6)]

Kimball, when asked why Arnold did not receive an interim rating, acknowledged that it was his responsibility and said, "I just was going to give it to him and never did get around to doing it until now. So I didn't do it. It's my fault." Kimball denied that he failed to give Arnold an interim rating as an act of retaliation or because he was angry with Arnold. He said, "... paperwork is not my forté in timing this, and I've learned a lot of lessons in all of this. But it wasn't as an act of retaliation or anything like that. No, I did not do that." Kimball said he did not believe Arnold was harmed as a result of this oversight.

Kimball said Arnold's appraisal was not processed after the Human Resources Branch looked at it. He explained that the Human Resources Branch determined Kimball's appraisal of Arnold was not valid because Arnold was not under performance standards for at least 90 days prior to his detail and he was not placed under performance standards while on the detail to Solids and Geothermal. Kimball said, "So bottom line is, through a conversation with [the Senior Human Resources Specialist] is that he will not receive an appraisal for FY06."

Kimball said he sent a copy of Arnold's appraisal to Arnold before he learned from the Human Resources Branch that Arnold could not be rated for the year. He said his intention was to discuss the appraisal with Arnold either by telephone or during a visit to Oklahoma City, OK. However, he said he never contacted Arnold to discuss his performance because he learned that the appraisal was not valid.

The Manager, Solids and Geothermal Compliance and Asset Management, MRM, said Kimball asked him to provide input on Arnold's performance at Solids and Geothermal.

The Manager said he provided input to Kimball but did not provide a formal written evaluation. He said his assessment was based on Arnold's performance on the audit that was assigned to him.

When interviewed, the Human Resources Specialist, Human Resources Branch, MMS, said DOI policy required that to be eligible for a performance rating, an employee had to perform in a position supervised by the rating official, and under a performance plan, for a minimum period of 90 days. He stated that Arnold was placed on performance standards on December 22, 2005, and was subsequently detailed to Solids and Geothermal on March 19, 2006, where he was not placed under performance standards. The Human Resources Specialist said the result was that Arnold was only under performance standards for 87 days during the rating period so he was not eligible to receive a performance rating for FY 2006.

During our investigation into separate allegations that Kimball had not approved Arnold's interim rating of Little, we questioned Kimball about his role in the matter. Kimball said Arnold rated Little as [Exemption (b)(6)] and he believed Arnold was required to consult with him (Kimball) before giving an employee an [Exemption (b)(6)] rating. Kimball stated that he was angry Arnold had not consulted with him before issuing the interim rating to Little, so he did not sign it and withheld his approval.

Kimball said that after further discussions with the Human Resources Branch, they decided that Arnold's interim rating of Little would have to become his final rating due to Little's assignment to unclassified duties (and not being under performance standards).

The Senior Human Resources Specialist said his interpretation of the personnel regulations (DOI Departmental Manual, 370 DM 430 1.6G[6]) were that if a supervisor desired to give [Exemption (b)(6)] rating to an employee, the supervisor had to consult with the next-level supervisor before giving the rating to the employee. He said the regulations did not address whether this was also required when a supervisor provided an employee with [Exemption (b)(6)] *interim* rating.

Our investigation found that Arnold gave Little an interim rating of [Exemption (b)(6)] on May 9, 2006, for the period October 1, 2005, through March 20, 2006. Little acknowledged being placed on performance standards by signing the appropriate block on the appraisal form on December 7, 2005. There was no entry or signature in the progress review section of the form. Kimball rated Little as [Exemption (b)(6)] on January 22, 2007, for the period October 1, 2005, through March 20, 2006. In that rating, Kimball included a rebuttal of Arnold's interim rating that stated the following:

Rebuttal to Randy Little's Appraisal

[Exemption (b)(6)]

Kimball said he approved Little's interim rating as his yearly rating because of Little's unclassified position (he was not under performance standards at BLM). Regarding his

change to Little's rating, Kimball said, "[W]hat I did, I rebutted it and signed it, [Exemption (b)(6)]."

Kimball stated the following regarding his discussions with Human Resources Branch personnel:

[Exemption (b)(6)]

We found that Morris's supervisor (the Supervisory Auditor, Offshore Compliance and Asset Management), prior to his detail to BLM, provided an interim rating for Morris of [Exemption (b)(6)] on May 15, 2006. Morris acknowledged being placed on performance standards by signing the appropriate block on the appraisal forms on December 7, 2005. There was no entry or signature in the progress review section of the form. On January 19, 2007, Kimball wrote on the appraisal form, "This interim rating will serve as your yearly rating."

Allegation No. 9: Morris, Little, and Arnold alleged reprisal regarding their lack of receiving cash awards.

Specifically, Arnold said he received a cash award for 2006, which was [Exemption (b)(6)] than he received the previous year and substantially less than other employees received for 2006 (with the exception of Little and Morris).

Our investigation found that the MMS Human Resources Branch processed a performance award of [Exemption (b)(6)] for Arnold on December 22, 2006.

Our investigation determined that Arnold had previously received a performance award for [Exemption (b)(6)] on December 23, 2005.

Morris alleged that he had received a rating of [Exemption (b)(6)] for his "past year evaluation" but was not given a cash award as he had received in prior years for exceeding his performance goals. Morris also claimed, "[Cash awards] went out to everyone in MMS who received a [Exemption (b)(6)] rating but myself and Mr. Little."

Little's Attorney alleged that Little did not receive any cash awards (during FY 2006).

[Exemption (b)(6)]

The Chief, Human Resources Branch, MMS, said employee performance awards were tied to MMS performance ratings. The Chief and a Senior Human Resources Specialist, Human Resources Branch, MMS, said employees who were rated [Exemption (b)(6)] were eligible for performance awards. However, they also said awards were given at the discretion of the supervisor and there was no entitlement to an award.

Kimball, after being apprised of the complaint that Arnold and Little were adversely affected in their eligibility for performance awards because they were placed on detail,

responded that awards were tied to performance ratings. Kimball said, “It’s always discretionary.”

The former Secretary, Indian Compliance and Asset Management, Oklahoma City, OK, said that when he provided Arnold with a copy of the personnel action for his performance award, Arnold said he received a larger award for 2005. According to the Secretary, he responded that Arnold should have received at least what he received for the prior year. The Secretary stated that he had always admired Arnold’s work and was just being supportive by commenting about the amount of the award.

We questioned Kimball about the allegation that Arnold should have received an award for [Exemption (b)(6)], based upon a comment made by the Secretary. Kimball said the office secretary had no input into the amount of performance awards and that there is no requirement for a specific award amount.

A Human Resources Specialist, Human Resources Branch, MMS, said he was involved in processing Arnold’s performance award in December 2006 before Arnold’s performance appraisal was completed. He admitted that he failed to verify that the performance appraisal was done before processing the award.

The Senior Human Resources Specialist said Arnold could not be rated for the rating period that ended on September 30, 2006, because he had not been on performance standards for at least 90 days. He added that because Arnold could not be rated, he was not eligible for a performance award. He noted that this situation did not affect Arnold’s eligibility to receive other types of awards that were not linked to an annual performance rating.

Kimball said he had rated Arnold as [Exemption (b)(6)] and based the [Exemption (b)(6)] performance award on a percentage of Arnold’s salary. He said the award would have to be “reversed in the system” (because Arnold was not eligible for a performance award).

Kimball, in response to Morris’s claim that “everybody” in MMS who received a [Exemption (b)(6)] rating got an award except for him and Little, replied, “[Little and Morris’s awards] were delayed, but they’re going to get theirs this pay period.”

Our investigation confirmed that Little and Morris received performance awards of [Exemption (b)(6)] and [Exemption (b)(6)], respectively, on January 25, 2007, based upon the untimely appraisals given by Kimball.

We also found that Little had previously received a performance award for [Exemption (b)(6)] and Morris had received a [Exemption (b)(6)] Time Off Award on December 23, 2005.

Allegation No. 10: Kimball allegedly promoted an Auditor into a position that Arnold sought.

We found that on October 12, 2005, Arnold filed an informal grievance, and on October 26, 2005, it became a formal grievance, pertaining to a decision to replace a then-vacant GS-14 supervisory position at Oklahoma City, OK, with a supervisory position at Houston, TX. The Compliance and Asset Management Director denied Arnold's informal grievance on October 25, 2005, after he found no reprisal against Arnold and determined that the change of location for the position was made for "valid business reasons."

On November 22, 2005, Deborah Gibbs Tschudy replied to Arnold's formal grievance. In that reply, Tschudy said she had "determined not to grant [the] grievance and the relief requested." On November 23, 2005, Arnold sent an e-mail to Tschudy in which he stated, "Thanks for the response. Considering that [the Compliance and Asset Management Director] is looking at where to fill [Oklahoma City] Offcam vacancies, then I see no reason to pursue this grievance."

Kimball said Arnold filed a grievance about the position that was filled by another Auditor. He explained that Arnold was complaining about the relocation of a vacant GS-14 position from Oklahoma City, OK, to Houston, TX. Kimball explained that he decided to shift the position to Houston, TX, because many of the oil companies were moving there.

Kimball said he understood that Arnold wanted the position to remain in Oklahoma City, OK, because Arnold did not want to move. Kimball said, "I knew he didn't want to move, but that wasn't the reason [I announced the position in Houston], no."

Allegations No. 11: During a teleconference on October 4, 2006, Kimball allegedly instructed the participants to provide copies of any personnel records in their possession regarding Lanis Morris and Randy Little to the Program Manager, Indian Compliance and Asset Management. Kimball also allegedly told the teleconference participants that if they had no such records, they were to provide a written statement to him to that effect. Kimball allegedly provided no explanation for his request.

Note: Our investigation determined that Kimball had requested the information in response to a request from the U.S. Office of Special Counsel (OSC). OSC is a federal agency charged with investigation of Whistleblower reprisal complaints.

When we informed Kimball of the allegation that Little and Morris were being singled out at a teleconference on October 4, 2006, Kimball responded that the Program Director, Compliance and Asset Management, had contacted him by telephone and said he had received a request from the MMS Human Resources Branch for copies of any unofficial personnel files pertaining to Little and Morris. Kimball said he relayed the records request to Arnold; a Supervisory Auditor, Offshore Compliance and Asset Management; and the Secretary for Indian Compliance and Asset Management. Kimball said he was

instructed to give any files they had to the Program Manager, Indian Compliance and Asset Management, so that he could forward everything to the Human Resources Branch. Kimball said he believed Little and Morris made the request for the records under the FOIA.

The Program Manager, Indian Compliance and Asset Management, recalled that Kimball telephoned him on October 3, 2006, and said the Secretary was going to be providing him with four blue envelopes. He said he sent the unopened envelopes via FedEx (at the instruction of Kimball) to a Senior Human Resources Specialist at the MMS Human Resources Branch.

When asked about the purpose for the aforementioned request for personnel records, the Senior Human Resources Specialist said the information was gathered at the request of an SOL Attorney-Advisor. He explained that OSC had asked the SOL for the information.

Note: While OSC has opened an investigation regarding allegations of reprisal against Arnold, Little, and Morris, our report will be provided to OSC for its use in making a final reprisal determination.

When interviewed, the SOL Attorney-Advisor said he was assigned to represent DOI and MMS for the OSC investigation of reprisal complaints made by Arnold, Little, and Morris. He stated that OSC made three data or record requests as part of its investigation and that he was the conduit for providing the requested information to OSC. He said the requests were made on September 27, 2006; October 19, 2006; and April 11, 2007. The Attorney-Advisor said he coordinated with the Human Resources Specialist for the first two data requests. When asked, he stated that the information collected for each request was provided to OSC and that the information was only used for purposes involving the OSC investigation.

Allegation No. 12: Little allegedly had limited access to MMS computer systems.

Specifically, Little alleged that while Arnold was able to retain his access to MMS computer systems, Little's access was removed when he was placed on detail to BLM in March 2006. Little also alleged that he had no access to the QuickTime time and attendance system and was required to submit spreadsheets to Kimball's secretary, who would then enter the data into QuickTime. Little alleged that he was not able to review his leave balances and had to wait up to 3 weeks for his "paystub."

Little further alleged that he did not have access to e-mail, which prevented him from (1) knowing when continuing education was offered, (2) accessing agency-wide e-mails, and (3) since March 2006, obtaining information about mandatory meetings.

Our review of the DOI Departmental Manual disclosed no information to indicate that there was a requirement to provide employees with access to automated systems such as e-mail and payroll.

The Chief, Human Resources Branch, MMS, said he was not aware of any requirement in the personnel regulations to provide an employee with access to agency computer systems while on detail to another agency.

The former Compliance and Asset Management Director said the decision to restrict Little and Morris from accessing the MMS network was made because of the number of companies involved in their lawsuits. He said that otherwise, MMS would have had to build numerous firewalls within its network. He said Kimball was responsible for ensuring that appropriate MMS e-mail messages reached Little and Morris while they were at BLM.

Kimball acknowledged that Little and Morris were not given access to MMS computer systems after being placed on detail at BLM. He said their system accounts were cut off because their *qui tam* lawsuits involved over 25 companies. He explained that the access was restricted so Little and Morris would not have access to information about the companies they were suing.

Kimball said Arnold's lawsuit only pertained to Shell, and Arnold signed a recusal statement in which he was required to refrain from involvement in any activities involving Shell.

The Program Director, Compliance and Asset Management, said that since Little and Morris were assigned to Indian Compliance and Asset Management at MMS, instead of BLM, their access to some MMS systems such as e-mail was restored. He said they were still blocked from having access to systems that contained royalty data, such as the BRIO interface to the MRM Support System. The Program Director explained that if Little and Morris were allowed access to the BRIO (software used by MRM auditors), they would have access to data on all companies, including those in their lawsuits.

Regarding Little's access to QuickTime, Kimball said BLM signed time and attendance sheets and leave statements for Little and Morris during their detail assignment. He said the auditors (Little and Morris) sent the statements to MMS to be entered into QuickTime. According to Kimball, two MMS secretaries entered the information into QuickTime. Kimball described QuickTime as the system that charged time to various functions, such as leave, holidays, work time, and compensatory time.

Kimball said he did not recall any complaints from Morris or Little regarding the time sheets and he did not think it would be a hardship to have a secretary do the data input. He said, "None of this had to do with, quote, 'retaliation,' in my eyes."

Kimball recalled that Little mentioned that he could not immediately look at his leave balances. According to Kimball, Little admitted that he had access to Employee Express, a system designed for employees to access their payroll, leave, and benefits information. Kimball said he felt access to Employee Express would be sufficient for Little to manage his leave account. He said he never received a complaint or a question from Morris about time and attendance.

Kimball also said, “There was one situation where I think [the Secretary] recorded some time incorrectly. And [Little] brought it to our attention. It was like it was charged annual leave, and it should have been sick leave or vice versa.”

The Field Station Manager, BLM, said Little and Morris did not have access to the QuickTime system while detailed to BLM. He said they used paper leave requests and submitted them to him for approval. He said Little and Morris would then fax the signed leave requests to MMS for entry into QuickTime.

The Field Station Manager said he received no complaints from Little or Morris regarding leave issues. However, he recalled one occasion in December 2006 when Little informed him about an administrative error with his sick leave caused by the MMS timekeeper. The Field Station Manager understood from the conversation that the error was unintentional.

A Senior Human Resources Specialist, Human Resources Branch, MMS, opined that it was acceptable to have an employee manually record his/her time and attendance data and to have clerical personnel enter the data into the QuickTime system. He added that he did not believe there would be any validity to a claim that it was a hardship to wait for a leave and earnings statement to see leave balances. He said employees without automated access to the time and attendance system could contact clerical personnel if they had concerns or questions about their pay or leave. *Note: Leave and earnings statements are generated every 2 weeks for each pay period and are provided to employees.*

Regarding Little’s access to e-mail, the Field Station Manager said Little and Morris claimed they could not access MMS e-mail at the BLM office in Moore, OK, so he allowed them to go to the MMS office in Oklahoma City, OK, each week to check their MMS e-mail messages. The Field Station Manager stated that Little and Morris were provided BLM e-mail accounts and computers soon after they reported to BLM to perform their duties.

A Petroleum Engineering Technician, BLM, Moore, OK, stated that Little and Morris told him their access to MMS databases, MMS e-mail accounts, QuickTime, and the Internet had been terminated during their details to BLM. He said Little and Morris were provided BLM e-mail accounts during their detail.

A search of BLM e-mail accounts disclosed the following:

- Little’s BLM e-mail account contained messages from March 17, 2006, through January 26, 2007. Little communicated with MRM personnel throughout the duration of his detail to BLM. Additionally, Little exchanged e-mail messages pertaining to time and attendance matters with a Secretary for Compliance and Asset Management and a Secretary for Offshore Compliance and Asset Management, who were tasked with entering Little’s time and attendance data

into the QuickTime system. The Secretary for Compliance and Asset Management and the Secretary for Offshore Compliance and Asset Management routinely sent e-mails to Little with a screen print from the time and attendance system of the data entry for the pay period. Additionally, the Secretary for Offshore Compliance and Asset Management routinely provided a screen print that included leave balances. *Note: The Secretary for Offshore Compliance and Asset Management assumed the time and attendance duties for the Secretary for Compliance and Asset Management in June 2006.*

Further review disclosed the following:

- On March 22, 2006, Little advised Kimball, “I now have an email address at the BLM.”
- On April 28, 2006, Little advised Arnold, “I, as of today, have email access.” Arnold responded that Little and Morris were listed as having two e-mail addresses. He said, “One [e-mail was] for MMS and one for BLM. Apparently, you guys are only receiving the e-mail addressed to your BLM email address.”
- Morris’s BLM e-mail account contained messages from March 31, 2006, through January 26, 2007. Morris communicated with MRM personnel throughout the duration of his detail to BLM. Additionally, Morris exchanged e-mail messages pertaining to time and attendance matters with the Secretary for Compliance and Asset Management and/or the Secretary for Offshore Compliance and Asset Management, who were tasked with entering Morris’s time and attendance data into the system. The secretaries routinely sent e-mails to Morris with a screen print from the time and attendance system of the data entry for the pay period. Additionally, the Secretary for Offshore Compliance and Asset Management routinely provided a screen print that included leave balances.

Further review disclosed the following:

- On September 5, 2006, Morris received an e-mail from an Information Technology Specialist, MRM, advising that Morris, Little, and an MRM Auditor had been added to the “deepwater group” and “should be receiving all employee messages.”

We also conducted interviews regarding Little’s allegations that his lack of e-mail access prevented him from (1) knowing when continuing education was offered, (2) accessing agency-wide e-mails, and (3) since March 2006, obtaining information about mandatory meetings.

According to the Program Manager, Indian Compliance and Asset Management, MRM, auditors had to complete 80 hours of continuing professional education (CPE) requirements every 2 years. He stated that auditors had to take a minimum of 20 hours each year, and 24 of the 80 hours had to be for audit or the GAGAS-related training. He

said he believed all auditors reassigned from Offshore Compliance and Asset Management to Indian Compliance and Asset Management had met their respective CPE requirements, including Arnold, Little, and Morris.

A review of MRM training and education records disclosed the following:

- Joel Arnold received a total of 81.5 CPE training credits for calendar year 2005 and 35 CPE training credits for 2006. Arnold's training credits for 2006 were all completed after he was placed on detail to Solids and Geothermal.
- Randy Little received a total of 80 CPE training credits for 2005 and 40 CPE training credits for 2006. Little's training credits for 2006 were all completed after he was placed on detail to BLM.
- Lanis Morris received a total of 69.5 CPE training credits for 2005 and 40 CPE training credits for 2006. Morris's training credits for 2006 were all completed after he was placed on detail to BLM.

In addition to the CPE training, all three auditors received training pertaining to ethics, Federal Information Systems Security Awareness, Information Technology Resources Rules of Behavior, Records Management Awareness, Freedom of Information Act, and the Privacy Act during the 2006 calendar year. Arnold also received training for Ethics and Professional Conduct for Oklahoma Certified Public Accountants during the 2006 calendar year.

A Supervisory Auditor, Offshore Compliance and Asset Management, told us he was not sure whether Little or Morris had e-mail access while on detail to BLM. He stated that since he had been Morris's supervisor before he was detailed to BLM, he "tried to call him and let him know" whenever training was scheduled or when there were birthday celebrations, etc. The Supervisory Auditor said he did this as a courtesy and added that he was not instructed by Kimball to keep Morris apprised of training or any other matters while he was detailed to BLM.

The Field Station Manager, BLM, said he allowed Little and Morris to attend training and other functions at the MMS office in Oklahoma City, OK, during their detail to BLM.

The Petroleum Engineering Technician, BLM, said Little and Morris went to the MMS office in Oklahoma City, OK, once or twice a week throughout their detail to BLM. He recalled that on some of those occasions, Little and Morris said the purpose for their visits was to attend mandatory training.

When asked to respond to allegations that Little and Morris were not kept apprised of continuing education opportunities because they did not have MMS e-mail access, Kimball said, "Yeah, there was some breakdown there. I do admit that." However, Kimball claimed that Little and Morris were brought in for all of the training that was held in Oklahoma City, OK, so that they could receive their CPE credit.

Kimball acknowledged that Little and Morris were not given advance notification for meetings or training and added, “I probably did slip up a couple of times and [did] not let them know right away.” However, he said they always found out and they always attended. He said the untimely communication was not an act of reprisal.

Kimball said he did not recall holding any “all-hands” meetings in which all Compliance and Asset Management auditors were required to attend, with the exception of possibly one meeting in about January 2006 when the Compliance and Asset Management Director visited the office. Kimball said Little and Morris would not have attended meetings concerning ongoing MMS audit work because they were on detail and were not part of the work group during that time.

Kimball told us he traveled to Oklahoma “maybe once a month, every 6 weeks” and that sometimes he “would call people together.” Kimball said he did not consider these to be “all-hands” meetings. He acknowledged that he did not invite Little and Morris to some of the preliminary transition meetings held in preparation for the transfer of Offshore office personnel to Indian Compliance and Asset Management.

Kimball noted that Little and Morris were invited to a meeting held in December 2006 to inform the Offshore staff that the transition to Indian Compliance and Asset Management had been approved. He said neither Little nor Morris were on duty the day of the meeting. He recalled leaving voicemail messages for Little and Morris prior to the meeting and said Little responded to the message when he returned to work the following day. Kimball stated that all participants were given short notice about the meeting because he had to wait for departmental approval before he could announce the approval of the transfer. He said everyone was notified about the meeting at the same time.

We determined that on December 21, 2006, Kimball sent an e-mail to Little, Morris, and other MRM personnel asking that they participate in a teleconference at 9 a.m. that day. On December 22, 2006, Little sent an e-mail to Kimball stating that he was out of the office on December 21, 2006. Little said, “I understand your meeting involved a re-organization effective December 24, 2006.” Kimball responded to Little and said, “I left a message on your phone. Please call me at [Exemption 2]. Thanks.”

Allegation No. 13: *Kimball allegedly failed to uphold his promise to Little to restore sick leave incurred by Little when he had to drive farther to get to his medical appointments as a result of his detail location at BLM.*

We asked the Chief, Human Resources Branch, MMS, if Kimball was required to restore Little’s sick leave because Little had to commute farther to his doctor from the detail location in Moore, OK. The Chief explained that there was no obligation to restore leave if the detail location was within the commuting area of his permanent duty location.

Note: *An Internet search disclosed that it was approximately 16.3 driving miles from the MMS office in Oklahoma City, OK, to the BLM office in Moore, OK.*

The former Compliance and Asset Management Director recalled that he and Kimball discussed Little's request for reimbursement of sick leave related to medical appointments. He claimed that he told Kimball to give Little whatever he needed to get to his medical appointments.

Kimball told us the leave taken by Little was coded correctly as sick leave. He explained that the decision to restore the sick leave was made because it was an issue in Little's Equal Employment Opportunity complaint. Kimball said he discussed the situation with the former Compliance and Asset Management Director, who was Kimball's supervisor at the time, and said, "[I]t was suggested that that's how we handle it, in giving him the additional hours, even though he had enough sick leave to cover him."

| We found that on August 5, 2006, Kimball sent an e-mail to Little with the subject line "Reimbursed Sick Leave." In that e-mail, Kimball stated the following:

This is going to be a lengthy and very tedious process. We are going to have to adjust each pay period and each day. It will get done. I have been out of the office a lot. I will be out next week. When I return, I will have [the Secretary for Offshore Compliance and Asset Management] start the process of adjusting. It will be accomplished by the end of August.

Kimball acknowledged that although his e-mail advised Little that the sick leave would be restored by the end of August 2006, it actually took until about December 2006. Kimball explained that the Secretary for Offshore Compliance and Asset Management had to retrieve all of the relevant time and attendance files in order to process the changes. He said he told Little the sick leave would be restored, and, after appropriate processing, it was. Kimball denied that the delay was an act of reprisal or retaliation.

The Secretary for Offshore Compliance and Asset Management recalled that he was asked to amend pay periods for Little to credit time back to him. He said the corrections had been completed. The Secretary stated that restoration of the sick leave and amendment of payroll records was a tedious and complicated process. He explained that he had to obtain source documents from Little, retrieve past payroll records, adjust Little's leave balances, amend payroll records, and obtain certification from Kimball in order to complete the changes. The Secretary stated that he proceeded carefully because he wanted to do everything properly and added that the delay in accomplishing the task was not an act of reprisal or an attempt to retaliate against Little.

A Senior Human Resources Specialist, Human Resources Branch, MMS, advised that Little's records in the Federal Personnel Payroll System showed that his sick leave taken between March 19, 2006, and July 8, 2006, was changed to administrative leave. He described administrative leave as an excused absence granted by management. He added that Little's sick leave was restored to his account balance during pay period 2007-02 (ending on January 6, 2007).

Allegation No. 14: *Allegedly, Little and Arnold were not notified in a timely manner regarding detail extensions or locations of details.*

The Senior Human Resources Specialist said MMS extended the detail assignments for Arnold, Little, and Morris several times. He commented that all three contacted the Human Resources Branch shortly before expiration of their details indicating that Kimball had not informed them where they were supposed to report for duty when the details expired. He said the Human Resources Branch answered the inquiries if they knew the answer but generally referred them to Kimball because it was management's responsibility to discuss duties and responsibilities with employees.

The Senior Human Resources Specialist stated that the Human Resources Branch advised Kimball to inform the employees about the extension of the details prior to their expiration. He opined that it was proper courtesy to inform the employees that their details would or would not be extended prior to the expiration of the details.

When questioned, the Chief, Human Resources Branch, MMS, said the manager was responsible for notifying employees about the status of their assignments and added that it was a good management practice to communicate with and inform employees prior to an event. He added that the Human Resources Branch advised managers about personnel matters but did not police managers to ensure they followed advice because the manager was responsible for the action.

The Senior Human Resources Specialist and the Chief provided copies of the Human Resources Branch e-mail messages pertaining to Arnold, Little, and Morris. Examination of the e-mail messages disclosed that MMS and BLM management were confused about who should process the personnel actions to extend the details, that the MMS Human Resources Branch provided Kimball with advanced notification concerning the upcoming expiration of the details, and that both Little and Morris made inquiries about the status of their detail assignments and the associated personnel actions.

Our review of the e-mails contained in Little's BLM e-mail account disclosed the following:

- On July 25, 2006, Kimball sent an e-mail that advised Little that his detail to BLM was extended for another 120 days. In that e-mail, Kimball said he talked to the Field Station Manager, BLM, who said he had plenty of work to keep Little busy. Kimball added that he did not telephone Little because his "phone number in Outlook is not complete." **Note:** *This e-mail was sent after the expiration of Little's initial 120-day detail to BLM, which began on March 19, 2006.*
- On November 17, 2006, an MMS Human Resources Specialist sent an e-mail to Little that included a scanned copy of the extension of his detail. **Note:** *The effective date of the extension was November 15, 2006.*

Our review of e-mails contained in Morris's BLM e-mail account disclosed the following:

- On July 25, 2006, Kimball advised Morris that his detail to BLM was extended for another 120 days. In that e-mail, Kimball said he talked to the BLM Field Station Manager, who said he had plenty of work to keep him busy. He added that he did not telephone Morris because his "phone number in Outlook is not complete."
- On July 28, 2006, a Senior Human Resources Specialist advised Morris that he would be receiving a Notification of Personnel Action (Form SF-50) for the extension of his detail at BLM.

An MMS Human Resources Specialist said management was responsible for informing employees about their detail assignments. He said the Human Resources Branch informed Kimball about the status of the details and told him to inform the employees. The Human Resources Specialist commented that based upon the number of calls or e-mails from the auditors concerning their details, he believed notification was not always provided in a timely manner. He said Kimball appeared frustrated with the situation regarding the details and the difficulty of keeping the auditors busy.

Another MMS Human Resources Specialist said the Human Resources Branch received numerous calls from Morris and Little regarding their details. He said he felt that Kimball should have advised the auditors right away about changes to their details, and this lack of communication seemed unprofessional. The Human Resources Specialist said he referred questions from the auditors to Kimball. He said management was responsible for advising the auditors of their detail extensions; the Human Resources Branch only processed the paperwork.

The Field Station Manager, BLM, said he was not responsible for, or actively involved in, extending Little and Morris's details to BLM. He said he relied on Little and Morris to inform him about their detail extensions. He said he did not request and did not receive copies of SF-50s (Notification of Personnel Action) from MMS or Kimball. He said the only copies of SF-50s he received were given to him by Little and Morris as a courtesy.

When asked about the extensions of the details for Arnold, Little, and Morris, Kimball said, "... I don't think that they were given notification by me [about the extensions], and I guess that would have been my responsibility." Kimball added, "I just didn't think it was at the level of importance that they think it should have been. I mean, I had nothing in my plan to fire them the day they didn't show up where they were supposed to be, like they're claiming." Kimball also said the following:

[T]hey kind of blame me for not notifying them of certain things, and probably in some of those cases, and this is one of them, I do accept that. I didn't notify them. But they didn't pick up the phone and call me and

say, 'Is my detail going to be extended?' Now is it their responsibility or is it mine? It was probably mine.

Kimball denied that the failure to notify the auditors about the status of their details in a timely manner was an act of reprisal.

***Allegation No. 15:** Kimball allegedly told the BLM Petroleum Engineering Technician that he wanted Morris and Little to quit and that he detailed them to menial jobs for the purpose of humiliating them. He also allegedly told Morris he was not allowed to assign audit work to Morris. Kimball also allegedly begged the Petroleum Engineering Technician to keep Little and Morris at BLM. He also allegedly had an e-mail from (or including) the BLM Field Station Manager that contained derogatory information regarding Morris and Little.*

The BLM Petroleum Engineering Technician related that Little and Morris were detailed from MMS to BLM from March 2006 through December 2006. He said he would have liked to have Little and Morris assist with BLM inspection and enforcement efforts that involved oil and gas matters. However, he said that when he asked the BLM Field Station Manager if Little and Morris could assist with inspections and evaluations, he would not allow it. The Petroleum Engineering Technician recalled having several conversations with Little and Morris in which they expressed frustration because they were not being allowed to work on BLM oil and gas matters.

When questioned regarding this matter, Kimball said, "We may have given [BLM] some guidance that, you know, [Little and Morris] were not to do any kind of audit verification." He said employees tasked with such work could potentially have contact with oil companies. Kimball said this would have been a verbal instruction to the Field Station Manager.

The Petroleum Engineering Technician said he talked to Kimball in late December 2006 and informed him that, as instructed by the Field Station Manager, BLM had no further work for Little and Morris and that their detail to BLM was to end December 31, 2006. He opined that Kimball was "very upset" at the news that BLM had no further work for Little and Morris.

According to the Petroleum Engineering Technician, Kimball never said he wanted Little and Morris gone or wanted them to quit, and Kimball did not state that he detailed Little and Morris to BLM to work in menial jobs as a means to humiliate them so they would quit. He added that no MMS manager had expressed the aforementioned desires to him. When we asked the Petroleum Engineering Technician if he made these comments to Little and Morris, he responded, "I think that was probably just my opinion. I may have voiced that opinion to Randy [Little] or Lanis [Morris]."

The Petroleum Engineering Technician stated that all communication he had with the Field Station Manager regarding Little and Morris was related to their duties at BLM. He said the Field Station Manager never made any negative comments about Little or Morris. He recalled seeing an e-mail from the Field Station Manager related to Little and

Morris but claimed he could not remember its subject. He said that on one occasion he related a comment made by the Field Station Manager to Little and Morris “and they got all upset.” However, he claimed he could not recall the subject matter of the comment.

When we asked Kimball if he attempted to keep Little and Morris on detail, he said, “Yes. I probably begged [BLM] to keep [Little and Morris] for – I don’t think I would use the word – I wasn’t on hands and knees, but we didn’t have a place for them at the time.”

After being apprised of the allegation that he had wanted Little and Morris to quit and that he assigned them to BLM to humiliate them with menial tasks, Kimball stated, “That is a pack of lies. That never even entered my mind. I mean, I can’t believe that. I didn’t tell that to anyone at BLM. I didn’t make that comment to anyone.” Kimball said, “No, never. See? I mean, that’s the part I, you know, I really get mad about. They make these allegations and they’re wasting your time, my time.”

The Secretary for Offshore Compliance and Asset Management, MRM, stated that he never heard Kimball say or do anything that he believed could be considered retaliatory against Arnold, Little, or Morris. When questioned, the Secretary said he had never heard Kimball say he wanted to fire Arnold, Little, or Morris, humiliate them, or wanted them gone. He added that Kimball had not done anything that he considered improper toward Arnold, Little, or Morris. Further, the Secretary said he considered Kimball to be honest and fair.

When asked, the Minerals Revenue Specialist (formerly Kimball’s Secretary), MRM, said he never heard Kimball or anyone else say anything that made him believe there was a desire to retaliate against Arnold, Little, or Morris for filing their lawsuits. He commented, “Oh no. That’s not the man he is,” when referring to Kimball. He also said Kimball never said he wanted Arnold, Little, or Morris to quit; that he wanted them to be fired; or that he was attempting to humiliate them.

Allegation No. 16: MMS allegedly failed to compensate Morris for additional commuting distance to BLM. Morris allegedly drove an additional 2,200 miles because of the detail.

A review of the DOI Departmental Manual, 347 DM 1.2, disclosed that DOI adopted the Federal Travel Regulations (41 C.F.R. §§ 301-304) as its basic travel and transportation policy.

Further review of the manual disclosed that the DOI Federal Travel Regulations Implementing Instructions for Special Travel (347 DM 200-201) defined local travel as travel that was performed for official purposes in and around the duty point that did not entitle an employee to per diem or other subsistence allowances. Additionally, a review of 347 DM 201-5 disclosed that employees who were *approved* to use a personally owned vehicle to travel to an alternate work site near their duty station would be

reimbursed for increased costs incurred, not to exceed the mileage allowance plus increased tolls and parking fees.

Note: The Departmental Manual states that in order for employees to qualify for reimbursement, they need to obtain approval from their supervisor to use a personally owned vehicle at an alternate work site and then request reimbursement for any additional mileage. Provided that they have approval to use their personally owned vehicles and request reimbursement, MMS employees are entitled to reimbursement for the additional cost of traveling to a temporary, alternate work site near their original work site.

A Financial Analyst, MMS, Herndon, VA, stated that MMS had adopted the DOI travel rules as its policy. He opined that it was the responsibility of the employee to file a claim if the employee desired reimbursement for local travel. He added that responsibility shifted to the supervisor after the employee submitted the reimbursement request.

Our investigation determined that the mileage from Morris's residence of record [Exemption (b)(6)] to the Oklahoma City MMS office was [Exemption (b)(6)] miles. The mileage from his residence to the Moore, OK, BLM office was [Exemption (b)(6)] miles. Thus, the commute to BLM, rather than MMS, required Morris to drive an additional 7.06 miles each way.

We determined that the mileage from Little's residence of record [Exemption (b)(6)] to the Oklahoma City MMS office was [Exemption (b)(6)] miles. The mileage from his residence to the Moore, OK, BLM office was [Exemption (b)(6)] miles. Thus, the commute to BLM, rather than MMS, required Little to drive an additional 8.18 miles each way.

The former Compliance and Asset Management Director recalled discussions with Kimball about the additional commuting distance that Little and Morris would be required to drive as a result of their detail to BLM. The former Compliance and Asset Management Director did not recall the details of the conversation but said he probably told Kimball to authorize any extra mileage. He added that he would have suggested to Kimball to allow Little and Morris to have whatever the rules allowed. The former Compliance and Asset Management Director explained that he relied on his administrative staff for the local commuting rules and stated, "[I]t's the same as if they're going to an audit site as far as I was concerned."

The former Compliance and Asset Management Director said the decision was ultimately up to Kimball and that he did not follow up with Kimball about the matter. He summarized by saying, "We found a place for them that was reasonably close to the type of work that they were doing, it was outside of oil and gas, we felt like they could be productively used, and that's where I left it with Lonnie."

Kimball said he discussed Little and Morris's detail to BLM with the Compliance and Asset Management Director and they decided to wait to see if Little and Morris asked for

reimbursement rather than volunteer to reimburse them for any additional mileage needed to commute to BLM.

Kimball said he never researched the distance from Morris and Little's residences to their permanent duty stations and to their detail assignments, so he did not know if their commuting distance to BLM was farther than their commuting distance to their permanent MMS office. Kimball added that neither Little nor Morris had asked for travel reimbursement. He said MMS would probably have paid for the additional mileage if Little or Morris had made a request.

When asked, Kimball said he did not offer to allow Morris or Little to use a government-owned vehicle to commute from their permanent duty location to BLM. He said that although it did not occur to him to offer the use of a government owned vehicle, he speculated it would have been complicated because he believed Morris and Little worked different hours.

We asked Kimball whether Morris and Little were given permission or were authorized to use their personally owned vehicles (and claim reimbursement for mileage) in lieu of a government-owned vehicle to travel to their detail assignments at BLM. According to Kimball, Morris and Little were not expressly given permission to use their personally owned vehicles but this was implied because they were not directed to use a government-owned vehicle.

Kimball said he did not believe reimbursement in this situation was a requirement. However, he noted that it was normal MMS policy to reimburse employees for mileage to a duty site that was over and above the commuting distance from the residence to the permanent duty location.

When asked, Kimball agreed that he should have volunteered to reimburse Little and Morris for any additional mileage. He claimed that he would have processed a claim for reimbursement if one had been submitted. Kimball denied that he was retaliating against Little and Morris when he decided to wait for them to request reimbursement for local travel.

After being contacted by the OIG regarding this matter on July 26, 2007, Morris replied in an e-mail that he and Randy Little had submitted claims that same day for reimbursement of additional travel expenses from the detail assignment at BLM (from March 2006 through December 2006).

Allegation No. 17: *E-mail messages were allegedly transmitted between MMS offices joking about Morris and Little being detailed to BLM.*

During an interview of Morris on September 22, 2006, the Attorney representing Arnold and Little said, "We've got an e-mail that says, I mean, it came from like, Dallas, Denver; it bounced all over MMS, 'ha ha ha, these guys are excile [sic]. We're not supposed to even talk to them' kind of thing." Morris said the e-mail was indicative of a hostile work environment. **Note:** *The Attorney for Little and Arnold was present during the*

September 22, 2006 interview of Morris because Morris and his Attorney were being interviewed at the offices of Little and Arnold's Attorney's law firm immediately following interviews of Arnold and Little (who jointly filed a lawsuit with Morris).

We found an e-mail string beginning and ending on August 2, 2006, that included the following comments made by non-supervisory MRM auditors:

- “Isn’t he one of [the] guys exiled by Lonnie for filing a *qui tam*?”
- “He’s one of the guys exiled. I think he’s suppose [sic] to be dead to us.”
- “Who exactly was in charge of their deportation?”
- “Lonnie deported Lanis and Randy Little to the BLM. Rumor has it that MMS wants neither to come back Ahahahahahahahahahahahahahahahahahahaha”
- “I think this is funny”

An Auditor, Indian Compliance and Asset Management, MRM, said he and other Indian Compliance and Asset Management employees joked about Little and Morris being exiled to BLM for “bucking” management decisions. He said he felt badly for Little and Morris. In reference to the e-mail identified by the Attorney for Little and Arnold, the Auditor said he “was making fun of the situation.” He claimed his comments that “Lonnie deported Lanis and Randy Little to BLM. Rumor has it that MMS wants neither to come back. I have no idea whom [an Auditor, Audit Services and Mid-Continent Region] should contact...maybe he should try Lonnie. Ahahahahahahahahahahahahahahahahahahaha” were not directed at any one person.

The Auditor opined that management created a hostile work environment for Little and Morris by assigning them on detail to BLM. He also opined that Little and Morris were being retaliated against for filing *qui tam* lawsuits.

Another Auditor, Indian Compliance and Asset Management, MRM, said the e-mail string was not intended to “make fun” of Little and Morris but was intended to “sting” management and that it was “like ridiculing management.” He said none of the auditors in the Oklahoma City office had any malice toward Little or Morris. He said he was not aware of any other e-mails concerning the reassignment of Little and Morris.

This Auditor opined that management wanted Little and Morris out of the office. He said he believed Kimball reassigned them to BLM out of “sheer spite” based upon a conversation he had with Little and Morris. The Auditor opined that MMS used the *qui tam* lawsuits filed by Little and Morris as an excuse to reassign them to BLM because, in her opinion, they could have been reassigned to Indian Compliance and Asset Management instead. He commented that once a person became a member of management, the person developed a different attitude toward the “underlings” and added, “I don’t know if you become subhuman or what.”

A third Auditor for Indian Compliance and Asset Management, MRM, opined that the e-mail string was not intended to “make fun” of Little and Morris but was written from the perspective of “can you believe [management] did that to them?”

We informed Kimball that Morris claimed to have been subjected to a hostile work environment because of an e-mail circulated by MRM personnel about his detail to BLM. Kimball said he was not aware of the e-mail. He stated that he would not encourage that type of banter or communication and he would not condone that sort of behavior.

We asked Kimball if he told anyone that he wanted to get rid of the relators or humiliate them. Kimball replied, "No." In response to a question about what he would have done if he had become aware of the e-mail string described above, Kimball said, "I'd probably call that person in and talk to them ... [t]ell them they had no right doing this and, you know, why did they do it? What's the purpose of doing this?" Kimball said, "We've got problems there, and I think the people feed on each other."

OTHER ISSUES

During our investigation, we became aware of other allegations and issues pertaining to MMS employees and programs regarding potential criminal conduct, ethical violations, and mismanagement. After reviewing these additional allegations, obtained through interviews and other investigative efforts, we conducted multiple preliminary investigations to determine whether further in-depth investigations were warranted. Some of the allegations were ultimately determined to be unfounded; however, we initiated investigations into the following four issues:

- The acquisition, contract management, and performance of the MRM Support System, which has cost approximately \$149 million since the contract was awarded on September 23, 1999.
- The involvement of three senior MMS employees to create a consulting contract that led to the post employment of two of the employees, in potential violation of procurement laws and regulations.
- The potential criminal misconduct and ethical violations of a senior RIK manager.
- The potential criminal and ethical violations of MRM employees assigned to the RIK Program.