

RESPONSE BY MARIA GARZINO

TO: DoDIG REPORT NO. D-2008-TAD-005

What follows is my response to the Department of Defense Inspector General (DoDIG) Report No. D-2008-TAD-005, dated May 14, 2008. This response addresses solely the DoDIG's findings/conclusions about allegations as numbered by them – they have re-characterized what I originally said was wrong. The foundation of their report is based on a misrepresentation of the allegations I brought forward for investigation; composed of incomplete and thus inaccurate factual statements (including a gross overuse of inaccurate characterizations of evidentiary facts); and relied on false and unsubstantiated statements/assurances by others. The best way to understand my allegations is to read them as presented originally, not as misrepresented in the DoDIG report, which was leaked prematurely and improperly to the *Times-Picayune* on or about May 23, 2008, while the Office of Special Counsel (OSC) process is still underway.

In order to avoid confusion, my response will follow the DoDIG Report's "Summary of Evidence and Analysis" section as it is presented in the report. I will then provide my conclusions about the overall Report.

Response: Design – Allegation No. 1

To address specifics in the DoDIG Report:

While the Denison hydraulic pump design was standard, it is documented that it was incorrectly sized, which means it was not used in a standard manner.

For the Denison hydraulic pump configuration chosen by Moving Waters Industries Corp. (MWI), the design of the hydraulic system was proven to be flawed. The inlet pressure at the Denison pumps was calculated to be insufficient, thereby causing the pumps to suck in air and self-destruct.

Quoting briefly from the email showing the calculations that prove a design flaw with the inlet pressure to the Denison hydraulic pump:

In light of our recent problems with at least 9 Denison Hydraulic Pump failures, I have completed an analysis of the hydraulic pump suction design. I acknowledge that the engine/pump start up procedure has been modified since installation at Orleans to minimize the strain on the pumps. However **the calculations show that we continue to run these pumps at less than the required inlet pressure** until the hydraulic fluid warms up to over 80 F. The damage may be done at start up, with complete failures not showing until we have temperature and load.

Email from Ray Newman, U.S. Army Corps of Engineers (USACE) Engineer, to Task Force Guardian (TFG) pump team, June 13, 2006.

After the above-cited evidence was presented to the TFG pump team, I was then able to inspect each and every Denison hydraulic pump for damage. I discovered that over 40% of all the pumps installed and in the field were in a failed or failing state, with their internal components evidencing severe internal damage due to air entrainment (shredded port plates, cams showing "severe wear," etc.). *See also* Response to Allegation Nos. 2 and 3 for pictures.

The start-up procedure in question was not standard, initially. It was added later and, as documented in emails, it was added to remedy an unexpected problem that was created by the unsuitability of the pump design to the project's demands. An excerpt from an email reflects the way the Corps' own managers judged the pumps and the company that assembled and installed them:

It appears to me that MWI is just trying to "make it work" to get by. Everyone agrees that the Denison pumps are operating in a dry run condition. While the priming procedure described below may work as a one time or short term fix. I feel, and I think Steve agrees, it will not hold up over the long term. There will be entrained air that will percolate out and also air leaking in through the tank etc that will get trapped. They need to look more at root causes than quick fixes of the problems. This could be pump sizing or relocating the suction intake to a more suitable location.

Email from Jim Bartek, USACE) Engineer, to Jim St. Germain, USACE TFG, "Issues on Hydraulic Drive Units and Pump" [May 31, 2006].

I personally witnessed MWI deviate from this start-up procedure, or skip it entirely (as documented in pump run data sheets), which suggests that it was not treated as standard, even if it is memorialized on paper as the procedure. This was further documented in a Memorandum for the Record (MFR) I sent to the TFG Resident Engineer of the Closure Structures and the entire TFG pump team:

I have no communiqué regarding MWI addressing a problem with their hydraulic system - the closest I have seen them get to admitting they have a problem with their hydraulic system is derived from what Jim St. Germain passed on to me (email of 5/23) - MWI gave him revised start up procedures meant to minimize the problem of air entraining in the hydraulic oil and entering the Denison pump - the revised procedures included starting the Drive Unit at 1000 RPM for 2 minutes and ramp up 200 RPM every 2 minutes until they get to 1800 RPM (10 minutes total time), and, the installation of check valves on the hydraulic intake line to the Denison hydraulic pumps which would allow an air compressor to be hooked up to it and pressurize the oil in the line . . . from my own observation, MWI does not even believe in their own revised procedures, because, the entire time they have been at the Orleans Ave. Closure Structure, they have not once used the air compressor to hook to the check valve and pressurize the hydraulic line, nor for that matter have they adhered to the ramp up gradually to 1800 RPM procedure - from

my observations, most of the time when they start the Drive Units they at best take 2-4 minutes to get to 1800 RPM, not 10 minutes."-

MFR from Maria Garzino to TFG Pump Team and Resident Engineer, "Implementation of New Corrective Measures to Correct Pumping Equipment Deficiencies," May 29, 2006.

The Contracting Officer (CO) ordered the retrofit flooded suction. That office communicated to me in numerous indirect ways that the Corps generally, and the TFG pump team specifically, considered a retrofit necessary to solve the problem of air entrainment. Documents that support this include the following e-mails:

I have completed an analysis of the hydraulic pump suction design. I acknowledge that the engine/pump start up procedure has been modified since installation at Orleans to minimize the strain on the pumps. However the calculations show that we continue to run these pumps at less than the required inlet pressure...

Recommendations -

...Modify the hydraulic tanks to provide flooded suction to the hydraulic pumps.

Email from Ray Newman, U.S. Army Corps of Engineers (USACE) Engineer, to Task Force Guardian (TFG) pump team, "Analysis of Hydraulic Pump Suction Loss on MWI Power Units" [June 13, 2006].

Further:

MWI has proposed to redesign the hydraulic tank and hoses to form a flooded suction for the two Denison hydraulic pumps. MWI will raise the hydraulic fluid tank and reposition the hoses to the Denison pump. This fix should prevent air from entering the motor . . . We should immediate[ly] have MWI retrofit the engines at 17th that are not installed. Coordinate with the three contractors on swap outs to minimize impacts to buildings. Avoid any impacts to pumping capacity. Have MWI develop a plan to retrofit in place. --Jim St. Germain

Email from Jim St. Germain to TFG Commander Col. Bedey, "MWI Proposal to Retrofit Flooded Suction for Denison Hydraulic Motor," [June 19, 2006].

The TFG pump team again communicated their grave concerns about a design flaw and the hydraulic pumping system's operability:

We believe that the existing design may have caused numerous problems with the hydraulic motor . . . This is unacceptable.....

Attachment to MWI in Email from Jim St. Germain, USACE CO of TFG, June 25, 2006.

Jim St Germain, TFG pump team leader, communicated this to the entire team, upper command of TFG, New Orleans District (NOD) Operation Division, the CO, and field personnel at the gated closure structures. The urgency of the matter is reflected in the language of the SF-30:

Proceed immediately with making these changes.

The DoDIG Report further misrepresents the USACE Mississippi Valley Division (MVD) Independent Team Report (ITR) findings on this issue, and uses this misrepresentation to buttress their position when it in fact rebuts DoDIG's position:

The flooded suction intakes have only been accomplished on the new additional contracted 6 pumps, the original contracted 34 pumps have not been revised to add the flooded suction intake as was agreed upon to be revised in June 2006. MWI has only provided a vacuum type check valve for priming the suction to the Denison Hydraulic Pumps. This is only a façade in addressing the real issue and requires the operation of vacuum equipment to prime the hydraulic pumps. If the vacuum is not drawn properly, then the pumps will aerate and create irreversible damage to the components of the pumps. The bilateral contract modification to change the intakes to a flooded suction at no cost to the Government has been in place since 12 July 2006 and has not been accomplished as of this date on any of the original 34 pumps.

USACE MVN Outfall Canal Pumps Independent Team Report, Released May 24, 2007.

The DoDIG report implies that "operator error" was responsible for the mammoth hydraulic pump failures. **The fact is, all the known failed hydraulic pump components were the result of operation during the time when the pumping equipment manufacturer was in sole possession of the equipment.** If the pump *manufacturer* cannot operate the pumping equipment without causing massive and catastrophic failures of the hydraulic pump components, then it is not reasonable to expect the *user* to do a better job. This, in and of itself, defines a design flaw.

The design flaw in question required an analysis of the hydraulic system at issue; a synthesis, or selection of components to shape a system that meets the original contract requirements; a subsequent appraisal of the modified system performance; and feedback to analyze the synthesis of information obtained in the system evaluation – all in order to mitigate effects of the identified design flaw.

The contract modification that the DoDIG Report cites as a reasonable approach to resolving air entrainment was not implemented by the TFG pump team until a year after it was ordered, and only then when Brigadier General Crear of Mississippi Valley Division (MVN) was informed by the ITR team that not performing the retrofit actions called for in this modification posed a substantial danger to public safety.

The concealment of the design flaw in the hydraulic pumping equipment by the TFG pump team—without measures taken to mitigate its effect on the intended operation of

the hydraulic pumping system at all three outfall closure structures—endangered and continues to endanger (*see* Response - Allegation No.5) the lives of the citizens of New Orleans and impairs the government's ability to hold MWI responsible for the manufacture of defective hydraulic pumping equipment.

No documentation available to me as an engineer and contract administration specialist supports the conclusions of the DoDIG Report. Nor does publicly-available evidence. Nor does evidence cited by DoDIG investigators. In fact, the available documentation points the opposite way.

Response: Design – Allegation No. 2

To address specifics in the DoDIG Report:

Contrary to what the DoDIG Report implies, none of the failures have ever been proven to be pressure-related. Questions have been raised about the ability of the hydraulic system components to safely operate at 3200 psi because the hydraulic components appear to be on the edge of design – however, there has never been any formal finding proffered that I'm aware of that these failures they cite are due to operating pressures of 3200 psi and above. The myriad failures that I witnessed were found, and documented, to be caused in large part by air entrainment, excessive heat caused by internal components self-destructing, foreign matter (metal shavings) running through the pressure plates of the Rineer motor, and internal seals rupturing on the Rineer motor(s) for unknown reasons (excessive pressure being one of the two theories presented).

In addition, I have never stated there has ever been any failure of hydraulic pipe. To be clear, I simply stated that the engineering calculations proved the pipe to be undersized and not meeting industry standards for Schedule 80 hydraulic pipe operating at 3200 psi, and that this posed an unreasonable risk of failure (not that failure had occurred).

The DoDIG investigation appears to be confused – it was the cams I discovered and later reported (during the initial tear-down of 4 hydraulic pumps at the Denison Reps factory in June 2006) that were rated at only 3000 psi. However, this fact does not mean the cams would fail if operated – that would be an unfounded finding. The mere fact the cams were only rated to 3000 psi meant the life expectancy would be less than the manufacturer guaranteed if used, for example, at 3200+ psi. It is even documented that I was not concerned about cams rated at 3000 psi inside the hydraulic pumps:

One thing that did come up was the 066 cam appears to be built to sustain a maximum 3000 psi operating pressure, not the over 3100-3200 psi it has been seeing - however, operating them at 3100-3200 psi would not cause the damage we were looking at, this issue speaks to the longevity of the pump..

Email from Maria Garzino to the head of the TFG pump team, Mr. Jim St Germain, June 2, 2006,

The DoDIG Report also incorrectly identifies the failure issues the pumping equipment experienced. **The most important and serious failure modes are not even mentioned – as if they never existed:** air entrainment causing the Denison hydraulic pumps to “suck” air and destroy themselves; Rineer motor failure(s) due to metal pieces coming off the self-destructing hydraulic pumps and running through the motor; and internal seals rupturing on the Rineer motor(s) (for still unknown reasons). The massive number of known failures due to these omitted failures has been overlooked. These failure issues have been extensively documented – *see* my MFR dated May 3, 2006, my original Declaration, and my follow on Affidavit.

The DoDIG Report then discusses a failure issue that is not only incorrect, but also raises serious questions about the DoDIG's comprehension. The hydraulic oil high pressure lines that were observed failing were on the drive unit (a DU or HPU [Hydraulic Power Unit]), and the hydraulic high pressure line they are talking about that was "fixed" is the hydraulic line on the pump assembly (a PA or WP [Water Pump]). As should be quickly understood from this description, fixing the hydraulic line on the pump assemblies has nothing to do with the observed hydraulic high pressure line failures on the DUs.

The DoDIG Report is also inaccurate when restating and relying on earlier misrepresentations that all the Denison pumps were thoroughly inspected at the sites (the three outfall closure structures) for defective parts in order to uncover and replace *undersized cams*. **This is a false and misleading statement.** All the Denison pumps were thoroughly inspected in the field to uncover and replace *failed or failing port plates and cams*, which were not suitable for, and not capable of, continued operation. In doing so I discovered over **40%** of the pumping equipment installed and in the field required immediate replacement of hydraulic pump components. Their failed or failing state was due to a design flaw – a design flaw that was extensively documented, as discussed above. Again, the undersized cams mentioned by the DoDIG report posed nothing more serious than a *longevity* issue, not an *operability* issue. (See the above discussion and referenced documentation.) Moreover, USACE and MWI have never believed that the cams for the hydraulic pumps were incorrectly installed or had manufacturing defects, and there is no proof of this. All efforts and documentation support the conclusion that a hydraulic system design flaw caused the massive Denison hydraulic pump failures.

Finally, as I will discuss later in this document, the "acceptance testing" performed was not, as DoDIG portrayed, a remedy towards assuring that the pumps will work as intended. In fact, this "acceptance testing" could not have occurred as portrayed at all. See Response - Allegation No. 5.

No documentation available to me as an engineer and contract administration specialist supports the conclusions of the DoDIG Report. Nor does publicly-available evidence. Nor does evidence cited by DoDIG investigators. In fact, the available documentation points the opposite way.

Response: Testing – Allegation No. 3

To address specifics in the DoDIG Report:

The “consultant” referred to was Mr. Dennis Strecker—not a Corps of Engineers employee but a contractor for the Corps. Mr. Strecker was acting with implied authority and was responsible for an unauthorized commitment when he instructed MWI that the Corps would relax and delete the aforementioned testing. This relaxation and elimination of testing requirements was not initiated by MWI. In addition to my own extensive documentation of this, the MVN ITR also discusses Mr. Strecker’s inappropriate and apparently illegal actions:

More than one revision to the testing procedures occurred and changes were made by implied authority by email and verbal communications from both Corps and non Corps of Engineers employees without any Contracting Officer authorities.

USACE MVN Outfall Canal Pumps Independent Team Report, Released May 24, 2007.

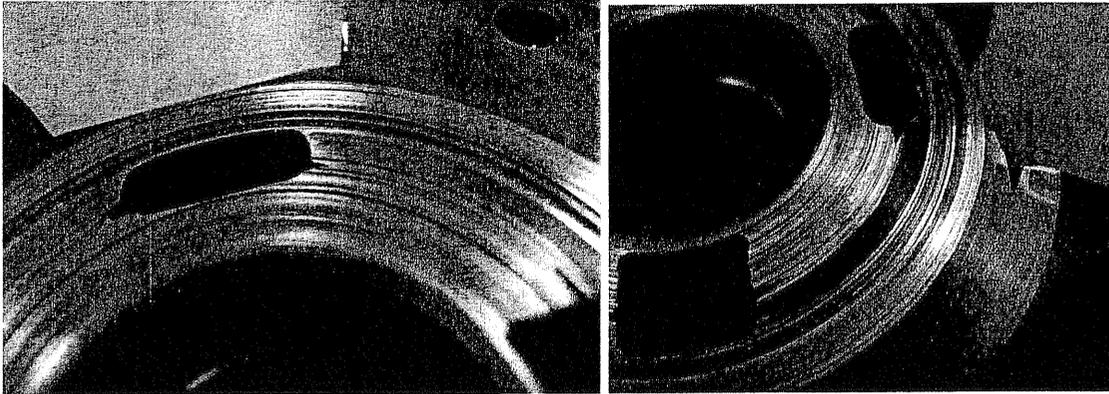
Mr. Strecker’s submitted trip report dated April 24, 2006 (Attachment No. 9 of the ITR), also documents that he, not MWI, initiated the relaxation and deletion of the subject factory testing:

I recommended dropping the pump performance tests and adding an endurance test.

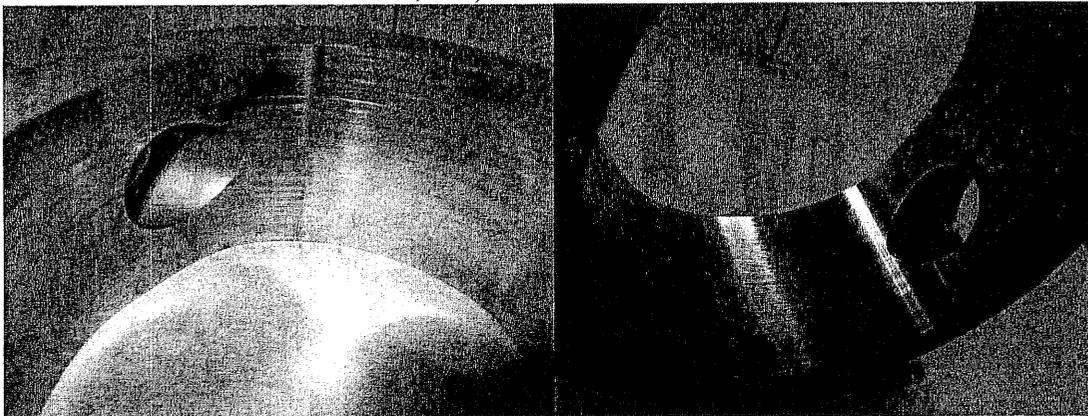
Mr. Strecker instructed MWI to offer this as their own proposal and that the Corps would agree to implement it as stated above (this was witnessed not only by myself, but also by the USACE field engineer in charge of all quality assurance (QA) personnel for the USACE Jacksonville District (JAX)). The CO was not apprised of this change during or after its ordered implementation; rather, it became known to her only when I inquired about it some weeks later (*see* my Original Declaration and Affidavit). Once again, this fact was witnessed not only by myself, but also by the USACE field engineer in charge of all QA personnel for JAX. The reasons for the relaxation and deletion of the above-mentioned testing was not because it was an insightful and appropriate engineering decision, as I have discussed extensively in documentation already on file. **In fact, this bargain is the leading factor in defective hydraulic pumping equipment being delivered to New Orleans.** *See* previous discussions and reference all cited documents.

The following pictures of failed and failing hydraulic pumping equipment components are the direct result of the relaxation and elimination of certain factory testing requirements, which resulted in defective hydraulic pumping equipment being delivered to New Orleans. Contrary to what Colonel Bedey has stated, there was absolutely no plan to “fix the machinery while it was in place.” (*See* previously cited documents).

Failed port plates due to design flaw (as found in the field – New Orleans, LA):



Failed/Failing severely worn cams (unsuitable for further service) due to design flaw (as found in the field - New Orleans, LA):



The DoDIG Report acknowledges that there were “numerous problems” with the DUs during the factory testing. It fails to mention, however, that there were also **numerous problems** with the pump assemblies (PAs) during the factory testing. Of the original 34 PAs, only 8 were performance-tested (actually pumped water): one of those was for minutes at best, and another at 1/3 operating speeds and pressures. Of these 8 PAs actually “performance tested,” 4 PA Rineer motors experienced **catastrophic failure** (requiring complete replacement of the motor). In addition, there were 7 related Denison hydraulic pump failures, 2 related Gear Oil Circulation Motor (GOCM) failures, 3 related Hydraulic oil high pressure line failures, 1 related PA experiencing a loud abnormal noise, 1 related PA experiencing abnormal and violent vibrations, 1 related PA experiencing violent surging hydraulic lines, and 1 PA experiencing overheating of the hydraulic oil. Finally, to clarify, of the original 34 total PAs, **24** were not “performance tested”—nearly three times the 9 cited in the DoDIG Report. These facts are extensively and painstakingly documented in my previously-cited submissions (MFR of May 3, 2006, original Declaration, original Affidavit, MFR “Factory Testing Requirements and Field Testing Requirements of the Pumping Equipment for Contract No. W912P8-06-C-0089, etc.)

The discussion in the DoDIG Report related to MWI's quality control (QC) and their documentation of it makes inaccurate, misleading and often false statements. **The facts are that MWI's QC forms were filed with false representations and assertions.** I reviewed and extensively documented the specifics for the TF, as evidenced by a contemporaneous email I sent the pump team:

After initial review of MWI's submitted QC data for Drive Units 8840 thru 8849 I find they are generally incomplete and do not address the numerous testing and component failures these Drive Units have experienced during their lifetime in the assembly thru testing process. As I discussed with MWI on numerous occasions, the most basic requirement that each Drive Unit and Pump Assembly have documented the various component failures and actions taken to remedy same appears to not have been followed by them. . . In addition, review of the QC data submitted by MWI for Drive Units 8850 thru 8873 reveal the same level of incompleteness.

Email from Maria Garzino to TFG pump team, June 4, 2006. It goes on to outline specifically the failure issues and problems that were omitted in MWI's submitted QC Reports.

The DoDIG Report further contends that the modification to change factory testing requirements was accomplished as specified. This is an inaccurate statement as evidenced by my previously-cited submitted submissions and also by the ITR. The ITR states clearly that the factory testing was not performed in accordance with the contract requirements:

Modification P00004 revised the static test procedures by clarifying the actual steps to follow but no where did it delete the requirements of the full size water testing for each pump. This testing was not performed in accordance with the contract requirements and a **significant credit** is due to the Government for the nonperformance of it.

Id. (emphasis added). For the record, 3 PAs (PA #4580, PA #4596, and PA #4582) were shown not to have even undergone the "testing" mentioned—referencing for a "static" test—as all performance testing was abolished by that time. The DoDIG Report only cites one DU - #8852 was the DU in question that there is no record of testing.

No documentation available to me as an engineer and contract administration specialist supports the conclusions of the DoDIG report. Nor does publicly-available information. Nor does evidence cited by DoDIG investigators. In fact, all available documentation points in the other direction.

Response: Testing – Allegation No. 4

To address specifics in the DoDIG Report:

As already discussed above, and in my previously-cited documents, the factory testing did not instill confidence in the reliability of the hydraulic pumping equipment, but rather just resulted in defective pumping equipment being delivered to New Orleans. In addition, the DoDIG portrayed 2 hour “acceptance tests” as a remedy towards assuring that the pumps would work as intended. The fact of the matter, however, is that this “acceptance testing” **could not have occurred** as the DoDIG Report portrays (*see* Response - Allegation No. 5). None of the cited testing has been done in a manner that can check the mechanical integrity of the pumping equipment (run at continuous full speeds and operating pressures for a substantive amount of time approximating real-life hurricane conditions).

None of the massive testing trumpeted in the DoDIG Report was for testing the hydraulic pumping equipment at continuous full operating speeds and pressures for substantive amounts of time. There was a single 36-hour run mentioned, **but** of important note, this mentioned test is misleading and falsely represents that one of “our” hydraulic pump assemblies was utilized. It **was not**. The pump assembly used in this 36 hour test run was a “MWI Rental Unit,” not one of “our” hydraulic PAs. This 36 hour run was to “test” the Denison hydraulic pumps on a DU only, nothing else. I was present for this “test” and witnessed over 16 hours of it (including logging data for it personally). I also documented the fact that this was an MWI rental PA that was used:

Our '36 hour endurance test' is done - and no, we did not start yesterday - we got about 4.5 hours into it and we are down for the count as there is something very wrong with the water pump (the MWI rental 60"er) - it has lost a lot of oil

Email from Maria Garzino to TFG Pump Team, July 5, 2006. The subject 36 hour test was “successfully” completed on the morning of July 7, 2006, and an inspection of the Denison hydraulic pumps that ran for 36 hours ensued – this was also documented in an email from my USACE engineering intern to me

The 36 hour duration test at Leon C Simon is complete. I put the data logs on your chair....I met with Daren and crew (including Hydradine Rep) this morning, and they are going to begin their initial inspections of the Denison Pumps today . . . Also, they are going to inspect the Denison's on the drive unit we just ran for 36 hrs.

Email from USACE intern to Maria Garzino, July 7, 2006.

As discussed elaborately in all my previously-cited documents, when run at continuous full operating speeds and pressures the drive units (HPU's) and pump assemblies (Water Pumps) have experienced severe and catastrophic failures of their hydraulic system. Only when run at reduced operating speeds and pressures, for more substantive amounts

of time, do the PAs and drive units experience significantly fewer failures and failure rates. This has been documented by me – it is imperative the reader reviews my Supplemental Affidavit, dated May 15, 2008.

In my Supplemental Affidavit, I reiterate how MWI and TFG learned in **April 2006** that running hydraulic pumping equipment at less than continuous full operational speeds/pressures allowed the equipment to experience a much slower failure rate. I proved and documented this when witnessing the Vero Beach 24-hour test run on April 21-22, 2006, and subsequent field test runs for the same hydraulic pumping equipment when it was shipped to New Orleans and installed at the Orleans Avenue Closure Structure. For the 24-hour Vero Beach run, PA #4588 and DU #8842 were run at 1000 psi (1/3 of full operating pressure) for 24 hours, during which I identified one of the Denison hydraulic pumps on the DU as a strong candidate for failure, with fluctuating high temperatures ranging from 185° - 210° F. As already discussed in my original Declaration, both MWI and TFG refused to investigate and examine the issue and instead deemed the equipment, including DU #8842, as “passed” and shipped and installed it at the Orleans Avenue Closure Structure. A month later (5/24/06), at the Orleans Avenue Closure Structure, when turning on this same pumping equipment (DU #8842) to perform field testing at continuous full operating speeds and pressures, the pumping equipment experienced catastrophic failure. The previously suspect Denison hydraulic pump on DU #8842 failed completely. Later, on 6/01/06, the same DU was again field tested at continuous full operating speeds and pressures, and within a short period of time experienced a loud vibration from the other Denison pump, which was later determined to require replacement.

As will be discussed in the next Response to Allegation No. 5, there has not been a storm event that was utilized by the NOD to test all the hydraulic pumps at continuous full operating speeds and pressures for any substantive period of time. (Also evidenced by rainfall runoff records from NOAA).

None of the hydraulic pumps have been tested to ensure mechanical integrity—including the cited onsite operational tests and maintenance runs. “Exercise” runs and “demonstration” runs (not running hydraulic pumps, but running direct drives only); running hydraulic pumps at lesser speeds/pressures; and running hydraulic pumps for very short periods of time at these lesser speeds/pressures—do not substitute for adequate mechanical integrity testing, nor determine if the pumping equipment’s hydraulic system is functioning properly. For an analogy, it is like turning an Indy 500 car on in the pits and either staying there the entire race idling away, or intermittently taking caution laps before reentering the pits again to continue idling—nothing is proven as to the car’s actual ability to survive racing the 500 mile distance around the track at full speed. Documenting some information, such as the required number of gas fill-ups lends the same value – **none**.

No documentation available to me as an engineer and contract administration specialist supports the conclusions of the DoDIG Report. Nor does any publicly-available

information. Nor does evidence cited by DoDIG investigators. In fact, the available documentation shows otherwise.

Response: Testing – Allegation No. 5

To address specifics in the DoDIG Report:

It is imperative to review my Supplemental Affidavit, dated May 15, 2008, and all previous discussions and cited documents.

The subject acceptance testing cited by the DoDIG could not physically have taken place. A detailed discussion to provide clarification follows:

- **Rebuttal to statement: acceptance testing of all 40 hydraulic pumps, “run for a minimum of 2 hours continuously with engine speeds of 1800 rpm and hydraulic pressure of 3,200 psi ”**

The subject acceptance testing is memorialized in the internal USACE Newsletter of **May 31, 2007** entitled *TASK FORCE HOPE STATUS REPORT*:

As Promised: Corps Delivers All 40 Temporary pumps

New Pumps At Three Outfall Canals Are Tested, Installed And Ready

. . . The Corps of Engineers set a self-imposed deadline of June 1 - the start of hurricane season - to have all 40 of its temporary hydraulic pumps in place at the three outfall canals. That mission has been accomplished.

Id. Citing further from the internal USACE Newsletter:

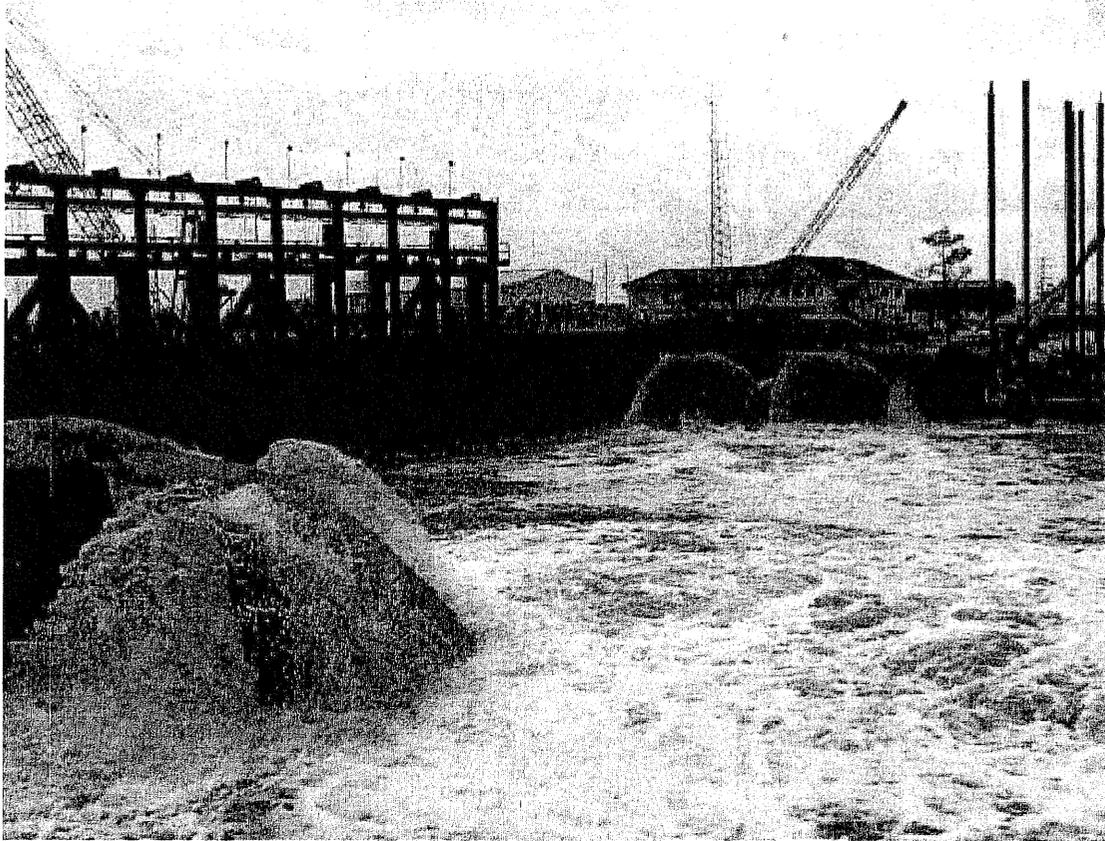
A problem occurred last week with one pump motor during an Orleans Avenue test; that motor was replaced and the new one is working well. Now all 40 of the pumps are installed, they've been successfully tested, and all are ready for service this hurricane season if needed.

Id. (emphasis added). Also depicted boldly in the middle of the page is a trophy photo of Col. Bedey with the following quotation and caption:

"We said we'd be there on 1 June. We're there."

Col. Jeffrey Bedey, Commander, Hurricane Protection Office, on having all 40 temporary pumps operational by the start of hurricane season.

Id. Below that is a picture of the 17th Street Canal with the following celebratory caption:



On March 31, the Corps successfully demonstrated all 18 new temporary pumps at the 17th Street Outfall Canal.

There are similar pictures and captions for the London Avenue Canal and the Orleans Avenue Canal – both showing the gates closed and testing underway. Specifically, testing was depicted as being accomplished on March 31, 2007 at the London Avenue Canal, and on May 24, 2007 at Orleans Avenue canal.

The internal USACE Newsletter was presented as a demonstration of the extensive “capabilities” of the New Orleans District to overcome adversity – highlighting their “accomplishments.”

Three days after the March 31, 2007 testing at the 17th Street Canal heralded in the internal USACE Newsletter, Col. Jeff Bedey went on public radio and reported on the state of the hydraulic pumps at that location. Here is what he said to the people of New Orleans:

Col. Bedey: “I’m really, really happy to report that we have all 18 of the pumps reinstalled in at the 17th Street Canal - 16 of which have been fully tested, and in fact this Saturday we had 10 of the pumps operating and it was I would say a thing of beauty. We have multiple pictures of that and videos - very, very pleased with the progress we’ve made to this point . . . for all the listeners, this is a very, very good news story . . . I can tell you we have 18 pumps in at the 17th Street Canal, 16 of them have been tested, the only reason we haven’t tested the last two is we

don't have enough water in the canal, and stored by the Sewage and Water Board to actually test them - we're moving forward . . . in my mind this is a good news story, people should be confident in where we are, where we are going . . ."

Radio Broadcast on "Big 870 WWL 1053," April 3, 2007.

What follows is an analysis of the 17th Street Canal and the likelihood 10 hydraulic pumps, not the 18 reported in the internal USACE Newsletter, were "fully tested" on March 31, 2007, or any time before May 31, 2007 - fully tested being what the Corps has reported to the DoDIG investigative team as merely a 2-hour acceptance test run, continuously, at full operating speeds and pressures.

The following analysis will utilize very conservative assumptions in order to give the benefit of the doubt to the statements made by the DoDIG Report, apparently by Col. Bedey and the TFG pump team.

Known: In order to perform acceptance testing on 10 hydraulic pumps at the 17th Street Canal, there had to have been a very large volume of water stored by the Sewage and Water Board.

Known: The volume of water the hydraulic pumps would need on their own to pump for two hours at full operating speeds and pressures is simply calculated to be their discharge rate multiplied by the time they ran - 200 cfs (cubic feet per second) times 2 hours - this would be roughly 115 million gallons of water.

Known: Next, in order to run the hydraulic pumps at something other than zero elevation, at which they cannot be run, there must be additional water stored to raise the canal level to a sufficient elevation in order to turn the pumps on. Conservatively, assuming that the test is run at high tide, this would bring the water elevation to about a 1-foot elevation. Next, in order to raise the water level an additional foot (for a turn-on elevation of 2 feet) - probably too low to work, but assumed for the sake of argument, there would have to be an additional volume of water conservatively estimated at 28 million gallons.

Known: What we know at this point is we need, conservatively, roughly 140 million gallons of water to perform these tests successfully.

In reality, this is the amount of water available on March 31, 2007 to run these tests:

<p>On 03/01/07 there was 0.12" of rain in and around the affected drainage basin. On 03/14/07 there was 0.32" of rain in and around the affected drainage basin. On 03/15/07 there was 1.29" of rain in and around the affected drainage basin. On 03/21/07 there was 0.01" of rain in and around the affected drainage basin. On 03/31/07 there was 0.35" of rain in and around the affected drainage basin.</p>

Even under the best case scenario, in the month prior to the much-lauded "testing," only 2.09 inches of water fell in and around the affected drainage basin. Assuming for the

sake of argument the Sewage and Water Board collected it all – every drop of it that made its way to their basin.

Known: Looking at the resultant amount of water actually collected in the collection system, the 2.09 inches of rain equates to less than 0.5 inches of water that is collected in the canals (as taken from a SCS Rainfall – Runoff Solution graph using Soil Type B (moderate infiltration rates) and medium density residential classification – giving a resultant curve number of 75).

Known: Calculating the affected drainage basin at the most to be 15 square miles, yields an estimated volume of water collected to be only 17.5 million gallons.

In sum, as it has been described to the DoDIG, 140 million gallons of water were needed to perform the acceptance testing successfully and we had approximately 17.5 million gallons of water available to do so. These facts are in direct conflict with the statements, analysis and conclusion reached by the DoDIG Report.

Further, no more than a single hydraulic pump could have actually been tested.

Known: Assuming each pump being tested is at full operating speeds and pressures, the discharge rate is then 200 cfs. Running the pump for 2 hours requires 10.8 million gallons of water. If there were 17.5 million gallons of water available, and one pump requires 10.8 million gallons of water, that that means 1.62 hydraulic pumps could be run. Since a fraction of a pump cannot be run when trying to get true testing done, this means only 1 pump was capable of being successfully tested on March 31, 2007. **One pump, not 10 pumps.**

Finally, with 17.5 million gallons of water available, 10 hydraulic pumps could really run only 20 minutes. With 200 cfs for each pump, 10 pumps, gives 2000 cfs, which is equal to roughly 875,000 gallons of water per minute. This yields less than 20 minutes of run time—not 2 hours.

There have not been actual or simulated storm events (as evidenced by documentation of testing that has taken place and NOAA rainfall runoff records) that NOD could have used to test all of the hydraulic pumps at continuous, full operating speeds and pressures for any substantive period of time.

My analysis proves it is physically and mathematically impossible to have conducted acceptance testing for a single hydraulic pump, much less 10 hydraulic pumps, run continuously at full operating speeds and pressures for 2 hours on March 31, 2007.

In addition, given a review of the status of the hydraulic pumps (in various states of repair, installation, etc.), and given the rainfall records for the area surrounding the three outfall canals, it is not physically and mathematically possible to have completed this testing, as reported in the DoDIG Report, at any point during the time period in question (August 2006 through May 2007).

Next, Col. Bedey's statement that "we don't have enough water in the canal" when testing hydraulic pumps, and why such acceptance testing could not have taken place, is really because there is a design flaw. **The Corps' own design flaw is what precludes effective testing of the installed hydraulic pumps** (a review of my Supplemental Affidavit, dated March 15, 2008, is imperative). The contractually-specified Maximum Head Operating Design Point, with a design discharge flow rate of 85,000 gpm, against Total Dynamic Head (TDH) for the hydraulic pumps, was off by two feet (it was 16.8 feet rather than 18.8 feet.). This results in the currently-installed hydraulic pumping equipment being 2 feet less submerged than the original design criteria specified, and pumping at a TDH greater than originally specified.

At normal canal water levels (zero elevation), the original "pump on" design submergence (if no design flaw existed) left the pumping equipment operating at over 5 feet below that required by the Hydraulic Institute Standards (HIS) for submergence (about 10 $\frac{3}{4}$ feet, using the HIS 1994 Edition; 13 feet using the HIS 1998 Edition – for purposes herein, using the lesser value). To clarify further, the pump design specified by the Corps defined the "pump on" elevation as 4 feet, and a "bottom of bell" elevation of 6 feet, bringing total submergence to 10 feet – about 1 foot less than that required by the HIS. Adding this 1 foot to the lacking 4 feet of water (there were no storm/hurricane conditions) required for "pump on" during "normal canal water levels" (zero elevation) results in a 5-foot deficit. Accordingly, it is reasonable to state, significantly beyond the edge of the pump design, it is difficult, but not impossible (wait for high tide, store water from rain events prior to testing, etc.), to operate pumps at anything but storm conditions. The design flaw has now subjected the pumping equipment to submergences over 7 feet below that required by HIS requirements during normal canal water levels, less than half that required by the HIS. Operation of the pumping equipment, to facilitate testing in place (installed), is not possible at zero water elevation and below without severe and likely catastrophic damage to the pumping equipment. This explains why testing at continuous full operating speeds and pressures, for limited minutes, not hours, is the reality of what has been accomplished to date for all the hydraulic pumps.

The DoDIG Report makes further mention of the 36-hour test run as somehow relevant to their conclusions in this allegation. This issue has already been addressed, above. The subject test was done using a MWI rental pump, not one of "our" hydraulic pumps.

The DoDIG's conclusions as to what constitutes a reasonable duration of time for acceptance testing to be run are incorrect due to the facts upon which they relied. As has already been discussed, the subject 2-hour acceptance testing could not have taken place. Regardless, **that the DoDIG Report would find a 2-hour acceptance test (mechanical integrity test) sufficient is without any basis given the documentation that exists.** Documentation from May through July 2006, from the USACE, delineated TFG's own concepts as to an acceptable period of time the subject hydraulic pumps should be run during acceptance testing. An email dated **May 17, 2006** from Jim Bartek (USACE, MVR) sent to Steve Farkus (USACE, MVS)—in the ITR, Jim St Germain explains that Steve Farkus was brought in to assist TFG with analysis and recommendations for the

pumping equipment—reflects the way the Corps' own pump experts evaluated a suitable duration of time such acceptance testing should be run:

[T]hey are looking for input for field testing of the pumps. I would agree with Ms. Garzino's recommendations below. I believe we recommended a duration of 8 hrs for a test run. . .

Email from Jim Bartek to Steve Farkus, May 17, 2006. The reply to this states:

For the field testing one thought might be to test each individual pump for a period of time (6 hours?) and then test each set of 3 pumps at the same time for a short period (1 hour). The second test would allow for a check of the discharge header for possible leaks under full flow conditions . . .

Email from Steve Farkus to Jim Bartek, May 18, 2006.

Further, email from MWI to TFG pump team states:

Jim and Dan...

For the London Ave. East Platform, we are requested to perform the following:

Remove Denison pumps from 6 drive units on Friday June 7th

On Saturday, we will have a representative from Hydra-Dyne/Denison present to inspect the cams and record condition. Then the Denison units will be reinstalled.

On Sunday, at 7am, we plan to start the 6 water pumps for a 6 hr test.

Upon conclusion of testing, we will again remove and inspect the Denison cams and record condition with a Hydra-Dyne/Denison representative present.

Id. (emphasis added). Email from Dana Eller, MWI, to Mr. Jim St Germain, July 7, 2006.

Also, in **June 2006**, the follow-on contract solicitation from the USACE TFG for the additional 6 hydraulic pumps cites in the specifications a 5-hour testing duration.

No documentation available to me as an engineer and contract administration specialist supports the conclusions of the DoDIG Report. Nor does publicly-available evidence. Nor does evidence cited by DoDIG investigators. All available documentation points in the opposite direction.

Response: Installation – Allegation No. 6

In this allegation, the DoDIG Report mainly restates issues previously addressed in response to Allegation #3 and elsewhere. Please review my Response to Allegation No. 3.

The DoDIG Report restates incorrect information. The fact is that 24 PAs were not performance-tested at the factory, **not the smaller number of 9 they admit to failing to test.**

In addition, when the DoDIG report identifies the hydraulic pumping equipment failures experienced at the factory, there now appears to be a complete omission of all Denison hydraulic pump failures (20 counting only those “seen” by government employees); all hydraulic high pressure hose failures (7 counting only those “seen” by government employees); and all PA failures (4). These omitted failures constitute over 90% of the serious failure issues (experienced during factory testing) I brought forward – issues that, if they were to have happened in the field during a hurricane or tropical storm event, would mean irreversible and catastrophic failure of the pumping system. The DoDIG Report fails to address these massive and potentially catastrophic failures.

As discussed in my Response to Allegation No. 3, failed and failing hydraulic pumping equipment components were delivered and installed at all three closure structures, with absolutely no remedial measures taken. Sadly, the TFG pump team provided public and internal statements that the pumping equipment was not defective and would operate as required by the contract—statements that were blatantly false.

Additionally, as discussed in my Response to Allegation No. 5, none of the mentioned testing has been done in a manner that can check the mechanical integrity of the pumping equipment - run continuously at full speeds and operating pressures for a substantive amount of time.

No documentation available to me via USACE, publicly-available information, or evidence cited by DoDIG investigators supports the conclusions of the DoDIG Report. What is available is quite to the contrary.

Response: Operational Capability – Allegation No. 7

It appears the DoDIG lacks a good understanding of the engineering associated with pumps and pump tests to determine discharge and head; instead, they have instituted their own “adjustment” to the values report by the USACE ERDC (Engineer Research Development Center) team—an “accuracy factor” that, when applied, decreases the actual values reported by ERDC. In point of fact, the values arrived at by ERDC already contain an “adjustment for accuracy” embedded in the assumptions and calculations used to arrive at the values obtained. The DoDIG’s fuzzy math is just a way to get the answers they seek.

I also think the DoDIG was likely confused. The error factor of plus-or-minus 5% that they applied to all the testing done was to be applied only to the factory testing that MWI performed in April through May 2006 – not the testing conducted by ERDC (see Page 8 of the ITR, Attachment entitled “Data Report on Factory Tests of Discharge . . . Dr. Stephen T. Maynard”). Again, DoDIG relies on phony calculations to obtain the result desired.

Contrary to what is presented in the DoDIG Report, this is not an Allegation, or issue, I have ever brought forward with regards to operational functionality. My concern has always been the operability of the pumping equipment (i.e. if these pumps are turned on during a hurricane will they **STAY** turned on), not whether they pump 5-10% less than the contract dictates. That is a monetary issue – and one that I do not feel warrants the attention it has received (when looking at a cost-benefit analysis). In the realm of what is important in this investigation, this issue does not even register for me. It appears to be a straw-man that has been put forth by DoDIG so that it can be easily knocked down. It is important only for how it was investigated and the results presented.

Response: Contract Issues – Allegation No. 8

The DoDIG report states the CO was in constant contact with the USACE pump team – this is a true statement, from my own personal knowledge. However, the DoDIG Report fails to mention that the TFG pump team was coordinating dozens and dozens of other outstanding actions completely unrelated to the pumping equipment contract. This fact, which I know from my own personal knowledge, minimizes the seeming importance of the daily contact.

Furthermore, I know from first-hand knowledge the CO was kept in the dark as to the true status and disposition of the hydraulic pump contract. That the CO kept in constant contact with the TFG pump team during testing and delivery of the pumping equipment is irrelevant if she was not informed of the actual ongoing status of the hydraulic pumping equipment contract. I know of no documentation that exists that supports the contention made by the DoDIG Report; in fact, the opposite is more likely true: no such documentation exists. As the lead person in the field for the pumps (during testing and installation), I would have been copied on any emails pertaining to this matter. I was not. In addition, I was informed by the COs contact specialist that neither of them were aware of any contractual changes to the required factory testing prior to my bringing it to their attention. Please refer to my original Declaration and Affidavit with all cited references.

Regardless, constant contact, no matter the content, does not substitute for Federal Regulations as to what information must be reflected in the contracting documents – the content of the supposed “contact” must be reflected in these contract documents.

For example, with regards to factory testing, it is not proper to revise testing procedures 10 times and not exercise any contract modification, save a single time, almost three weeks after the fact (for the last “revision”), and then only because I brought it to the CO’s attention by raising it with her Contract Specialist. If factory testing requirements changed 10 times, then there should have been contracting documentation that acknowledged this fact and accounted for it in any final, acceptable disposition of factory testing requirements. I know for a fact that the CO knew absolutely nothing about testing requirements changing as they did. There is a mountain of email and redundant eyewitness accounts that substantiate this fact. Further, the ITR states clearly that after a review of all the contracting documents surrounding the factory testing, they found that the TFG USACE team violated Federal procurement regulations, citing unauthorized commitments and acting with implied authority without the knowledge or consent of the CO – excerpt as follows:

No official contract changes were made to relax testing requirements... More than one revision to the testing procedures occurred and changes were made by implied authority by email and verbal communications from both Corps and non Corps of Engineers employees without any Contracting Officer authorities. Testing was not performed in accordance with the contract documents . . . The original testing performed at MWI was not in accordance with

HI standards nor was full-size factory performance testing of each pump performed as required by the contract.

USACE MVN Outfall Canal Pumps Independent Team Report, Released May 24, 2007.

In addition, as I describe later in this document when I respond to Allegation No. 12, the contract modification for hydraulic pipe flushing/cleaning was not done in accordance with Federal Regulations. I will prove that the TFG CO did not enforce the terms and conditions of MWI's contract, and in effect knowingly issued a contract modification to MWI to remain at the site and perform work that was not initially done, and work already required by the terms and conditions of MWI's original contract award, and work that cost the American taxpayers and additional\$683K.

The DoDIG reports inference that by USACE somehow performing adequate QA functions in the field during factory testing can alevate or lessen the need for adequate contract administration is confusing and misguided. The QA functions performed in the field by USACE do not substitute for contract administrative functions by the TFG pump team – especially when the QA reports and associate documents (my trip reports, MFRs, emails, etc. during this same period) point to serious and substantial operational problems with the hydraulic pumping equipment.

Any further comment by me regarding this issue is not possible without seeing the documents the DoDIG relied on to arrive at their conclusion, and without a copy of the documents cited in the ITR with regard to the contract administration issues.

No publicly-available documentation, documents provided to me as an engineer and contract administration specialist, or evidence cited by DoDIG investigators support their conclusion; if anything, it counsels the opposite.

Response: Contract Issues – Allegation No. 9

As an initial matter, I find this to be a confusing characterization of my Allegation – from the way it is stated, to the “facts” presented, to the analysis offered.

Various statements made in the DoDIG Report are false, to wit:

- The process for “sign-off on the factory testing and designation of who had the authority to approve that the equipment was ready for shipment” is easily understood—unlike DoDIG’s statement that it was “not formalized.” To the contrary, there was no need for government sign-off at the factory, as MWI was solely responsible for QC. In fact, it would be a deviation from usual and customary practice *if* the government did perform sign-off at the factory. Such a requirement would be clearly delineated in the contract documents. In addition, the need for government sign-off was worded such that it was at the discretion of the government, and it did so per directives from the TFG pump team. Given the emergency nature of this procurement, it was imperative that problems/issues be “seen” and addressed at the earliest possible moment; therefore, the government opted to be 100% present (in presence only, not in participation) to protect its interests as best as possible.
- Contrary to the citation from the June 4, 2007, MFR, the USACE “team of engineers” did NOT work with MWI in the factory to adjust/retrofit/improve the pumps. To do so would have constructively relieved MWI of their contractual responsibilities. Our USACE “team of engineers” performed only observations and QA functions, constantly reporting forward problems/issues so the TFG pump team would hopefully take action to hold MWI accountable for required contract deliverables through proper contract administration – this never happened as the TFG pump team abdicated usual and customary Corps of Engineers project oversight. The results of this was the TFG pump team engaged in numerous violations of Federal Regulations and committed gross mismanagement and gross waste of public funds.
- A Contracting Officer Representative (COR) at the factory is **NOT** necessary – CORs are for the contract, not individual portions of the deliverables of the contract. The COR for the contract can preside over any needed action required at the factory testing. Why the DoDIG finds a need to muddle, confuse, and imply some deficiency with regards to this matter eludes me.

Interestingly, however, the conclusory Analysis somehow finds a way to state that, even though inadequate documentation was substantiated, they found that there was still ample project oversight at the factory and the installation sites. If adequate contract administrative functions were not performed, what substituted for insuring the government’s interests were protected? The reports and submitted assurances from the field personnel? This appears to be the logic used. If so, then why does the Analysis not account for the voluminous documentation of there being serious problems regarding the government’s interests being violated?

None of the publicly-available information, DoDIG information, or information provided to me as an engineer and contract administration specialist supports the conclusions of the DoDIG Report.

Response: Contract Issues – Allegation No. 10

The DoDIG Report's conclusion appears to hinge on the premise that factory testing and/or test facilities were not a factor in selecting a winning bidder. Nothing could be further from the truth. In order to meet the requirements of the contract, it was necessary for a successful bidder to provide full factory performance testing (dynamic testing) and hydrostatic testing (static testing) for all pump assemblies and drive units.

The DoDIG report does not acknowledge the fact that full performance testing was *required* by the contract, not just a "nice thing to have" that was merely left in because the winning bidder put it in their bid proposal.

It is imperative to review my MFR on "Factory Testing Requirements and Field Testing Requirements of the Pumping Equipment for Contract No. W912P8-06-C-0089."

This MFR will make it very clear that dynamic testing and static testing were integral to the contract in question.

Further, if DoDIG had done any research, they would have ascertained the following additional pieces of evidence I would like to bring to light, which relate directly to this allegation and which show appearance of impropriety with regards to how this contract was awarded.

First: The ITR states the following:

The procurement for the emergency pumps was a source selection and three competitive offers were submitted. At the initial visit in September 2006, each of the offerers and their proprietary information was intact in the contract files. At the follow-up visit in April 07, only MWI's proposal was part of the contract files. The other two offerers were missing. The source selection board's recommendation for award and the basis of it to MWI was intact in the contract files. One of the noted technical approach strengths by the SSB for awarding to MWI was MWI's full scale test of all major components . . .

[C]ertain key elements of the solicitation process are missing from the contract files, namely: the emails notifying the offerers their weaknesses as alluded in the amendment and the documentation pertaining to the oral presentations conducted on 20 January 2006 (no meeting notes, no sign-in sheets confirming the participants, etc). At the follow-up visit, a videotape of the oral presentations was included in the contract files along with the selection panel's technical evaluations of each offerer. The written clarification on the offerer's weaknesses along with their written responses is still missing for 2 out of the 3 offerers from the contract files. . .

The ITR states clearly that, after a complete review of the source selection contract files, MWI's full-scale test of all major components *was* a noted technical strength in determining the contract award. In addition, the fact that key contract documents that delineate the offer's weaknesses (also providing where they met or were strong) is missing. This shows that the DoDIG relied on a verbal assurance of certain award/non-award criteria—criteria that appear to change during different times of this pumping equipment contract.

Next, the Audio tape of FPI's (one of the bidders) debriefing was made available to me and I have listened to it. It contains the verbal debriefing Dan Bradley and the CO had with FPI once they were informed that they had not won the bid. In this verbal debrief, Dan Bradley and the CO state clearly that the primary reason FPI was not awarded the contract was that their delivery schedule conflicted with regard to suppliers' letters of commitment, and FPI could not give the Corps uniform components (FPI offered diesel drives from two sources). FPI is heard to inform the CO that they could not offer a single source for the diesel drives because MWI had placed an order for a full complement of Diesel Drives from Caterpillar (apparently the only diesel drive manufacturer large enough to commit to supplying 37 diesel drives in a short period of time) prior to the bid presentations, thereby undermining the ability for another contractor to offer diesel drives and probably violating antitrust laws.

Interestingly, a review of MWI's bid proposal shows that they were offering letters of commitment from 1) Rineer (the pump motor) for delivery of the 34 units with a 12-week lead time and 2) Caterpillar for the 37 diesel drives, also with a 12-week lead time. Both of these components are critical path items; however, they are shown on MWI's bid proposal schedule as arriving on or before February 10, 2006. In addition, on MWI's bid proposal schedule, the completion of the installation of the Rineer motors is April 7, 2006, and the completion of the installation of the Caterpillar diesel drives is that same day.

The actual delivery dates, if relying on the letters of commitment, would give the following actual start delivery dates (assuming no contractor risks a significant financial penalty by placing an order for components prior to contract award:

Rineer: 12 weeks after award of contract (01/27/2006) yields 4/27/2006.

Caterpillar: 12 weeks, therefore same start delivery date, 04/27/2006.

There appears to be an almost (2 ½ month delivery schedule conflict imbedded into MWI's bid proposal – and, for 2 of the most important hydraulic pumping equipment components.

The Source Selection Panel appears not to hold MWI to the same criteria of delivery schedule conflicts that they imposed on FPI. Without knowing what FPI's delivery schedule conflicts are, I would still characterize MWI's bid proposal as unacceptable due to the schedule bust and their bid proposal would have been ranked as such (I have

extensive experience in this area as I have served on numerous Source Selection Panels – contract values ranging from \$10-50 million).

Next, while I was in Vicksburg, Mississippi, to participate on an advisory board for the ITR, I was provided a copy of a report to J.P. Woodley, Jr., Assistant Secretary of the Army (ASA) entitled “Project Assessment for 17th Street, London Avenue, and Orleans Avenue Flood Control Pump Stations Project.” The Scope of this report centers around the difficulties the pumping equipment was experiencing with regards to schedule delays from pumping equipment defects as well as other logistical problems. In this report, the author states the following:

the commitment to the impeller foundry (critical path item) was issued on the 20th. The diesel engines were ordered in the 18th On(sic) January 20,(sic) MWI produced a project schedule timeline that showed shipment of the pump systems during April 12 to May 4. . .

It should be noted that MWI appears to have *ordered* the Caterpillar engines a week and a half before they were awarded the contract—a fact that was lamented by FPI when they were told a single source for diesel engines was an important factor when deciding award of the contract.

I believe there exists a *prima facie* case for looking much closer into the award of the contract in question—at best, there is a definite appearance of impropriety.

There is no evidence available to me in my work capacity, or publicly-available, to suggest otherwise.

Response: Contract Issues – Allegation No. 11

The DoDIG report cites facts that are inaccurate and mischaracterizes the facts.

Actual Facts Regarding Inspection Requirements, Quality Control, and Quality Assurance:

It is imperative to review of my MFR - Acceptance Criteria, Inspection, and Warranty of the Pumping Equipment for Contract No. W912P8-06-C-0089.

First, the contract required that the contractor fulfill their obligation to perform Inspection (QC). Specifically, with regards to QC, the contractor was obligated to comply with FAR 52.246-2 which provides for the following:

- Provide & maintain inspection system acceptable to the government.
- Keep records of inspection work available during contract performance.
- Tender only supplies inspected in accordance with inspection system and found to be in conformity with contract requirements.
- Prepare records evidencing all inspections made under the system.

Second, any QA performed, or records the government was able to provide, is simply to help provide some assurance that the contractor has complied with the contract requirements—this is done by comparing the government's QA reports to the contractor's QC reports. On the whole, QA reports usually impart significantly less information regarding the quality of the work being done than QC reports (sometimes 10 to 100 times less). The government has one to two people watching only a small portion of the actual ongoing work, whereas the contractor has possible legions of employees that are part of the QC process. On the whole, the government usually chooses an aspect of the work that they are concerned about to observe (in our case, factory testing) or the government can do random spot checks (or combinations . . .). The whole purpose for government QA reports is to compare and contrast with the contractor's QC reports to assure the government that things are on track.

The idea here is that the government cannot be expected to take over the QC function of the contractor.

To address specifics in the DoDIG Report:

In the DoDIG Report, the overall approach appears to be addressing the state of the QA/QC reports. The DoDIG Report seems to imply that USACE was informed of the missing and substandard QC provided by MWI and took action to have MWI submit proper QC reports in order for USACE to have some assurance that pumping system problems were being addressed. For such a scenario, nothing could be further from the truth.

Subsequent to my repeated reporting of substandard, and complete omission of QC on MWI's part (all during **April 2006**), the CO issued a Unilateral Modification (P00005) on **May 06, 2006**, which ordered MWI to attend a meeting where QC would be discussed.

Subsequent to that meeting, MWI turned in QC reports on **May 10, 2006** to the TFG pump team.

This appears to be where the DoDIG Report stops in their investigation and analysis.

On **May 11, 2006**, I received an e-mail from Jim St. Germain with MWI's attached QC reports. Shortly after receipt of this e-mail I verbally informed Jim StGermain that after cursory review, I found MWI's QC reports to be incomplete, full of false statements, and generally unsuitable. I also informed him that, due to the ongoing installation work (and my 14+ hour work days), unless he had another person to review and comment, there would be quite some time before any feedback could happen. No assistance was forthcoming, and on **June 04, 2006**, I submitted an e-mail where I reviewed and extensively documented for the TFG the reality of MWI's submitted QC reports as being nothing more than a collection of false representations and assertions. The following is an excerpt from the e-mail I sent to Jim St. Germain:

Jim, After initial review of MWI's submitted QC data for Drive Units 8840 thru 8849 I find they are generally incomplete and do not address the numerous testing and component failures these Drive Units have experienced during their lifetime in the assembly thru testing process. As I discussed with MWI on numerous occasions, the most basic requirement that each Drive Unit and Pump Assembly have documented the various component failures and actions taken to remedy same appears to not have been followed by them . . . In addition, review of the QC data submitted by MWI for Drive Units 8850 thru 8873 reveal the same level of incompleteness. . .

Email from Maria Garzino to Jim St. Germain, June 04, 2006. In the body of this same email, I went on further to delineate specifics of what was missing.

At no time after receipt of my analysis of MWI's submitted QC reports did the TFG pump team, or the CO, take action to remedy the incomplete, inaccurate, and missing QC data.

Treating the documentation for the pumping systems as suitable, when it clearly was not, lent the false impression that all was well with the pumps.

This created a very real problem. It appears that, since the government accepted MWI's false representations and false assertions made in their QC reports, and subsequently accepted the pumping equipment with no measures taken to correct or memorialize (by the CO) the false representations from MWI having to do with the actual history and condition of the pumping equipment, then there is a very good probability that these

actions on the part of the TFG pump team have laid the burden for defective pumping equipment solely with the government.

This represents gross mismanagement and a gross waste of public funds and should have been addressed by the DoDIG Report.

In addition, the conclusion of the DoDIG Report—that QC reports can be filed after-the-fact (they still have not been addressed 2 years later), or not at all, with government QA reports used to substitute where deficiencies in QC reports is apparent—is not allowed by the contract requirements or Federal Regulations.

No publicly-available or internal documentation available to me as an engineer and contract administration specialist shows otherwise.

Response: Contract Issues – Allegation No. 12

The DoDIG Report provides a narrative that is severely flawed in its timeline of events and actual facts associated with these events.

The “actual” story and associated timeline:

The contract deliverables required MWI to “furnish the required length of black steel supply and return pipe and hydraulic hose to install and operate all furnished pumps and diesel engine drive units.” Basically, MWI was to supply all the material necessary to construct the required high pressure hydraulic pipe, and each site closure structure contractor was simply responsible for fabricating (constructing) the entire length of hydraulic pipe and installing it on the hydraulic pipe support structures.

MWI provided to each site closure structure contractor the required piping materials, and the pipe that was supplied was shipped with the usual pickling solution found in steel pipe.

MWI was responsible for instructing each closure structure contractor how they wanted the pipe cleaned out before it was presented to them to make the final connections (connect the DUs and PAs to the hydraulic pipe) and then do their own flush and fill procedure (flush and fill all hydraulic lines with hydraulic fluid). MWI provided these pump procedures to the TFG pump team and a preparatory meeting was held with each site closure structure contractor with MWI in attendance to provide all direction and answer all questions.

The site closure structure contractors followed the instructions given to them by MWI for air blowing the piping out. All three site closure structure contractors successfully performed this air blowing pipe cleaning (with MWI personnel either present or able to be present). At the conclusion of the air blow procedure, MWI inspected the pipes prior to their commencing with their flush and fill procedure.

MWI developed and provided the TFG pump team their flushing and filling procedures prior to actually conducting them. These procedures were detailed and were also provided to the DoDIG investigation team. At both Orleans Avenue and London Avenue, these flush and fill procedures were carried out by MWI.

At the manufacturing facility, MWI filled the hydraulic oil reservoir on each DU with 200 gallons of hydraulic oil (the hydraulic reservoirs were shipped to New Orleans with a full hydraulic oil reservoir).

At the site closure structures, when performing their flush and fill procedure, MWI supplied and introduced hydraulic oil that was a different brand than that used in their hydraulic reservoirs.

When the two different types of hydraulic oil were mixed, and then came in contact with trace amounts of Calcium left on the inside of the pipe (from the pickling compound) and trace amounts of water (from condensation), an emulsion formed that later turned to a gelatinous consistency (very rubbery and bouncy).

A lab test was conducted to identify this substance:

From: Floyd Friloux [mailto:ffriloux@lubriport.com]
Sent: Monday, July 24, 2006 1:38 PM
To: Floyd Friloux; Newman, Raymond C MVN
Cc: Pereira, Albert D MVN; joyray130@charter.net
Subject: Re: Filter problems at London Avenue

Anticipated reaction confirmed by weekend study.

Mixing of Mobil Excel and Texaco Rando hydraulic fluids, and homogenizing in 2% deionized water leads to additive separation.

Lab blends of of the two oils and small amount of water were whipped into a creamy emulsion. One portion was placed in glass cylinder in 90C oven, another into a steel bomb charged with 15 atmospheres of oxygen. Calcium and phosphorus additives are found to precipitate in both conditions, slightly more in the oxygen bomb.

A denser, more viscous liquid could be expected to form at bottom of hydraulic reservoir if contamination with small amount of water occurs in a system that contains the Mobil Excel mixed with some competitive product.

	Excel	Rando	mix/top	mix/bottom	Bottom
bomb					
		Metals in PPM			
calcium	40	1	8	291	340
phosphorus	538	295	400	900	938

It cannot be stressed enough, MWI was in sole possession and had 100% control of the materials used, the flushing/cleaning procedures followed, and the results that ensued.

Next, in early **July 2006**, I was present for the meetings that took place to have the Jell-O like hydraulic oil removed from the *entire* hydraulic system, not just the reservoir (the Jell-O like hydraulic oil was found in the Denison hydraulic pumps and it was known to be in *all* parts of the hydraulic system). It was determined, prior to my leaving, that MWI was responsible for performing this work (as evidenced in a meeting I attended with MWI, Jim St. Germain and Randy Persica, and follow-up emails). However, I was also present when the owner of MWI, David Eller, stated very clearly and emphatically (in this same meeting), that MWI was not about to perform the work as they felt it unnecessary and too expensive. I asked Mr. Eller if his hydraulic pumps and motors were specified to run on Jell-O like hydraulic oil. Mr. Eller did not answer me.

By the time I left, I was told MWI was to perform the work. I assumed MWI was ordered by the CO, given their earlier refusal. I did not know the particulars: that they were being paid \$683,000 to do the work that was already required to be done at no cost to the government.

On **July 14, 2006** MWI sent an e-mail to Jim St. Germain, outlining MWI's "proposed procedure for conducting additional cleaning of the hydraulic tanks and lines."

On **July 15, 2006** Jim St. Germain sent Col. Bedey an email stating the following:

We have issues with the hydraulic fluid at London and Orleans. Test on metal particles found on the suction strainer show slag and metal shavings from the hydraulic piping. Additionally we found a jelly like substance in the hydraulic fluid tank. Test on this fluid indicates that the substance is caused by a reaction of Calcium and water. The Calcium may have come from the oil in the pipe pickling process. Metal is residual from the pipe welding. Discussions with MWI have not gotten very far. They propose to clean the system the same way they clean it before (will provide details but not needed for this message). This problem is beyond their capacity and their solution will be to keep trying to clean the system as they did before. We have been in contact with two companies that are experienced in flushing hydraulic lines. They recommend procedures much more rigorous than those used by MWI. A third company is meeting with us Monday. These new procedures will cost about \$100,000 per outfall canal and will take 12 days per canal. I want to move on these new procedures ASAP. I will draft a letter to MWI giving them 48 hours to develop a committee to a quality flushing procedure or turn it over to our construction contractors to perform and deduct it from their pay. Bottom line is this system is beyond MWI's capability, they need more motivation and I have no confidence in their ability to figure this problem out. MWI will continue with their flushing procedure tomorrow but after what I witnessed today, they are doing this on the cheap and with little insight.

--Jim St. Germain

On **July 16, 2006** Col. Bedey replied to this email stating the following:

Need you to personally engage Mr. Eller, the president of MWI - I met with him Friday. He needs to understand that we are not going to half-step this.... I fully agree with the team's approach - **either they perform or we will move out in a different direction.** Contracting/legal make sure we are straight in our direction. **TIME is of the essence in gaining reliable pumping capacity...**

COL Bedey

On **July 20, 2006**, TFG issued a modification (Undefinitized – scheduled to be definitized in the next two weeks) to MWI to perform “new” flushing procedures at the 17th Street Canal. In this modification, the CO states:

The method of flushing the hydraulic piping is being changed. The contract did not specify a specific procedure for flushing the hydraulic lines. The contractor’s proposed method has produced a minimally acceptable clean fluid, but for long term reliability, the system requires a more thorough cleaning.

This was a day or two after I left New Orleans to return home. On **July 21, 2006** TFG issued an identical modification to MWI to perform the same new procedures at London Avenue Canal and Orleans Avenue Canal.

On **July 21, 2006**, MWI provided the TFG pump team their “cost proposal” for the “flushing procedures” for the 17th Street Canal.

In the submitted “cost proposal” MWI asks for, and I later learned obtained (in reality, not in contract format), a **time and materials** contract. In other words, whatever cost escalation they expect they will experience, they pass along for reimbursement. In other words, all “risk” is passed to the government.

On **July 21, 2006**, MWI issued a purchase order to the **subcontractor that will perform the actual cleaning/flushing** of the hydraulic system at the 17th Street Canal (and subsequently for all three outfall canals).

On **August 9, 2006**, MWI provided the TFG CO a “revised” cost estimate for the flushing at London Avenue Canal and Orleans Avenue Canal.

On **September 5, 2006**, the subcontractor performing the cleaning/flushing instructed MWI that they the sub had completed all flushing of the hydraulic systems and, before they commenced refilling the hydraulic systems with filtered hydraulic oil, they needed additional compensation as their contract with MWI appears not to cover this aspect of “additional” work.

On **September 5, 2006**, MWI responded to this subcontractor and informed the sub that MWI just spoke to the TFG CO, and, following her advice, MWI instructed the sub to wait for her to issue a modification to MWI to cover this portion of the work.

On **November 6, 2006**, the HPO performed a “technical analysis” of MWI’s submitted invoices from August 7, 2006 through September 16, 2006 for a total amount of \$188,000. Of note, this “technical analysis” is not in accordance with the Federal Acquisition Regulations (FAR).

On **November 6, 2006** the HPO performed a “technical analysis” of MWI’s submitted invoices (August 15, 2006, August 21, 2006, August 28, 2006 and September 17, 2006

for a total amount of \$420,000. This “technical analysis” was also not in accordance with the Federal Acquisition Regulations (FAR).

On **December 5, 2006** the TFG CO issued a definitization modification in the amount of \$682,956.50 for the cleaning/flushing performed at all three outfall canals (17th Street Canal, Orleans Avenue, and London Avenue). Of important note, this modification does not contain an Independent Government Estimate, a Prenegotiation Objective – Business Clearance Memorandum (required for actions greater than \$650,000), Cost or Pricing Data (also required for actions greater than \$650,000), nor a Price Negotiation Memorandum. Even if this was a legitimate modification to MWI’s contract, **which it is not**, there was no cost analysis or price analysis done for this very expensive contracting action. It should also be noted that the contract modification amount is simply a total of all the invoices submitted by MWI to the TFG pump team – there is no evidence that “negotiations” were conducted to verify and/or determine if the price adjustment was “fair and reasonable.” If there had been negotiations, then surely hourly labor rates of \$300.00 would have been addressed. I would assume—especially as “deductive” work calculated by MWI (a credit due to the government) used labor rates of \$91.00 per hour. Additionally, included in the “submitted invoicing” were costs associated with delays due to MWI (\$21,000), which the government also appears to have borne. However, it should be stressed that the issuance of this modification was an unnecessary action on the CO’s part and constitutes fraud, waste and abuse on the part of the TFG pump team, as it provides for payment of work that was already covered by the original contract terms and conditions at no additional cost to the government.

What becomes very clear from this chronology and compilation of fact statements is that the TFG pump team, with the support of the TFG CO, did not enforce the terms and conditions of MWI’s contract, and effectively compensated MWI to remain at the site and perform the work that was required—a \$683,000 compensation to perform work MWI was contractually-obligated to do in the first place at no additional cost to the government —and then issuing revisionist paperwork to cover up the true facts of what occurred.

No documentation available to me as an engineer and contract administration specialist supports the conclusions of the DoDIG report. Nor does publicly-available evidence or evidence cited by DoDIG investigators. What is available points the other way.

Response: Contract Issues – Allegation No. 13

The DoDIG Report fails to address my allegation and facts statement, and instead responds to a follow-on examination of this issue by the ITR—dismissing the ITR’s findings by implying that they were invalidated because they were not doing calculations in accordance with ASME B31.3 process piping guide (the ITR used the ASME B31.1 power piping instead).

For the record, I did my calculations using ASME B31.3, DoDIG’s preferred method.

It should also be noted that the site closure structure contract also states clearly: “*Section 15060-2. Piping installation shall be in accordance with ANSI B31.3*” – as the closure structure contractors were responsible for manufacturing the pipe that MWI provided, this specification was enforced (and I followed it).

It appears the DoDIG did not review the documents I gave them – my calculation sheet was included (attached in emails).

For clarification, I’ll cut-and-paste it here:

3” ‘High’ Pressure Pipe Design Sheet

Calculations to determine appropriate pipe schedule (using t_{total}) for the high pressure side of the hydraulic pipe used in the pumping system:

Operating Pressure: 3000 psi
Operating Temperature: 160 F
Pipe Material Spec.: ASTM A106
Pipe Size: 3” NPS
Corrosion Allowance (CA): 0.125” (required by B31.3)

Design Pressure – for this calculation, design pressure is set to equal operating pressure – this is not advisable, this is only being done to provide a “best” case scenario. Therefore, for this calculation, P = design pressure = operating pressure.

To find wall thickness:

From ASME B31.3-202, Chapter II, Design, Part 2, Pressure Design of Piping Components, Section 304, Pressure Design of Components, Paragraph 304.1, Straight Pipe, Sub Paragraph 304.1.2 Straight Pipe Under Internal Pressure:

$$t_{min} = \frac{PD}{2(SE + PY)} \quad (\text{for } t_{min} < D/6)$$

S = 16,000 psi *Stress value for material* from Table A-1, Basic Allowable Stresses in Tension for Metals, ASTM B31.3 (16ksi for this temperature range)

E = 1.0 *Quality factor* from Table A-1, Basic Allowable Stresses in Tension for Metals, ASTM B31.3 (seamless pipe)

D = 3.5" *Outside diameter of pipe*

Y = 0.4 *Coefficient* from Table 304.1.1 (valid for $t < D/6$) - temp < 900 F

Therefore, $t_{\min} = 0.3052326''$

Add Corrosion Allowance (CA):

$$t_{\text{corr}} = t_{\min} + \text{CA} = 0.3052326'' + 0.125'' = \mathbf{0.430233''}$$

Adjust For Mill Tolerance:

$$t_{\text{total}} = t_{\text{corr}} / 0.875 = 0.430233'' / 0.875 = \mathbf{0.4917''}$$

Determine the appropriate Pipe Schedule from table: for 0.492" wall thickness, **XX Strong** (0.600") – (Schedule 160 = 0.438" wall thickness; Schedule 80 = 0.300 "...)

To further clarify, if we calculate we need a minimum 0.4917" wall thickness for our pipe, yet we used pipe (Schedule 80) that has a wall thickness of 0.300", this will not work well. Even a layperson can understand if you subject a high pressure pipe to pressures that greatly exceed its design capacity, it presents significant concerns for longevity and the lives and welfare of the people who are in and around the high pressure piping system when operations are under way – especially when our hydraulic pumping equipment experiences cavitations, vortexing, and shockwaves within the hydraulic piping system—which it has had a history of experiencing. Therefore, there is even more about which to worry.

In addition, and of significant importance, USACE's high pressure hydraulic pipe was fabricated using the materials MWI provided – this resulted in the pipe being fabricated utilizing **socket weld fitting and welding**. Per the ASTM Code, **socket welds cannot be used for high pressure piping** (to determine if high pressure ASME B31.3 references ASTM B16.5 where high pressure equates to 2500 psi and over). USACE's pipe experiences were in excess of 3200 psi. Therefore, the hydraulic pipe as fabricated using the materials MWI provided violates the Code.

The ITR's recommendations are similar to what I have asked for all along on this issue. My recommendations are as follows::

Recommend that a certified hydraulic systems inspector, per ASME B31.3 Process Piping, inspect the piping system and certify that the hydraulic piping system is safe to operate for the intended use. The inspector may add operating requirements due to the reduced factor of safety. Any additional operating requirements must be included in the training of, and provided to any pump system operators.

Finally, if in fact TFG found a registered or licensed Professional Engineer (P.E.) to certify that the hydraulic system is safe to operate for the intended use (a fit-for-service analysis), and this person came to the conclusions cited in the DoDIG Report, then this P.E.'s name, Professional License Number, the State(s) in which they are licensed, and their analysis with findings need to be forwarded to the respective **Engineering Licensing Board**.

No available internal or external documentation supports the conclusions of the DoDIG report.

Response: Contract Issues – Allegation No. 14

This Allegation as presented in the DoDIG Report is an affront to me professionally. Ending the DoDIG Report on such a note is unfortunate.

This “Allegation” was **not** an issue I ever brought forward for investigation. The quote they took from my submitted documents is nothing more than background information as to the conduct of MWI at that time and their unwillingness to cooperate and allow government oversight as the contract clearly states USACE had the right to do (contrary to what the DoDIG reports). It is like the sage brush covering the approach to the mountain, with the mountain being the object of focus. I can only conclude that I did not make the mountain big enough. I thought bribery was a pretty big mountain, especially since it headlined as the opening and closing act of my second Declaration.

The DoDIG Report is seriously flawed by a plethora of misleading statements. For instance, the contract for the pumping equipment clearly calls for government oversight of factory tests:

2.5.4 Full size factory testing shall be witnessed by the Government prior to shipment of the pumps.

The need for government oversight was worded such that it was at the discretion of the government to do so, and it did. There is no ambiguity as the DoDIG Report implies—if comprehensive factory testing is happening, then the government has the right to be there, period. The “extent” that is implied would be if the government *interfered* with the ongoing testing. I, along with the leader of the JAX QA team, never condoned or allowed any oversight activities by government personnel that violated Corps of Engineers QA oversight requirements. MWI was **never** delayed or impaired due to any government oversight activities. There is extensive documentation to prove this.

Given the emergency nature of this procurement, it was imperative that problems/issues be “seen” and addressed at the earliest moment; accordingly, the government opted to be 100% present (in presence only, not in participation) to protect its interests as best it could.

In addition, 100% government oversight of all factory testing was known by all parties (myself, the JAX QA crew, and MWI) to have been agreed to and signed off on by Jim St. Germain before any testing even began. Once testing began—the massive number of hydraulic component failures, the subsequent failure of MWI to meet their schedule, and the reality of MWI’s efforts to delete and relax testing requirements in an effort to quicken the pace of anticipated delivery of the pumping equipment—became apparent. During this period, MWI also sought to have government personnel stop the practice of witnessing their ongoing testing – this was known by all parties and the issue was discussed in detail. Jim St. Germain provided assurances to myself and the leader of the JAX QA team that he had not changed his position on 100% government oversight—even though we soon learned that Jim St. Germain was attempting to enlist the help of a

junior engineer on the JAX QA team to institute government testing oversight more in line with what MWI was proposing.

I followed and enforced contract testing requirements that were provided to me by my superior, Jim St. Germain. At no time did I ever act unilaterally or make decisions and carry them out without the concurrence and direction of either Jim St. Germain or Dan Bradley. *Every single time* there was question as to what new idea triggered testing requirements (whether promoted by the contractor, MWI, or others), I sought the direction of my superiors. *Every single time* I was given the direction I sought from my superiors, **I followed that direction with absolute precision**. I wish to communicate very strongly here, even when my own professional counsel to my superiors was contrary to the direction/orders they issued (which happened a great deal of the time), I always demonstrated the loyalty, dedication to service, and teamwork required by me as a USACE engineer, and **always** followed my orders to the letter. There is **extensive** documentation of this.

I also will state for the record, there is no documentation that exists that shows I have been directed to act and have failed to do so, or have done so contrary to orders—all email, phone calls, and in-person conversations I have been party to with Jim St. Germain, Dan Bradley, and the CO will demonstrate this fact.

Further, I want to correct the record on the following: The CO did **not** modify the contract to curtail my “rigorous oversight activities”—**the contract was modified (early May, 2006) because MWI was implementing the practice of starting testing without notifying the government a test was about to begin – a practice we (myself and the USACE JAX QA Team Leader) asked the TFG pump team to help stop**. This is documented by me and persons other than myself at the sight (USACE JAX QA).

In fact here is an excerpt from the USACE JAX QA Team Leader’s Shop Inspection Report #14, dated **April 21, 2006**:

Mr. Gary Allen came into the warehouse after a static pressure test had already begun on pump #4590. Mr. Allen was never notified that this pressure test was going to begin. He then contacted Ms. Gross to have her ask New Orleans whether these two units needed to be retested or not. New Orleans said that both pump #4587 and pump #4590 did not need to be retested, but that the Contractor must now give adequate notification and opportunity to the Government to witness ALL tests. [see e-mail from Dan Bradley stating such to the Contractor]

The wording in the modification was to imply a **minimum** requirement, not reset the boundaries as implied in the DoDIG Report.

The DoDIG Report fails to mention where it obtained this statement they quoted. It came from my TFG-2 Declaration submitted in April 2007, in which I give a thorough account of the attempted **bribery**.

The statement the DoDIG Report quotes was simply commentary on my part, not allegations of wrongdoing. It is interesting that nowhere does the DoDIG Report address the actual subject matter of the TFG-2 Declaration - **bribery**. DoDIG chooses instead to focus on an issue MWI tried to bring about, namely having me replaced by a lower-level USACE engineer MWI had wrapped around their finger (who was offered the bribe by the TFG pump team leader to “look the other way”—institute QA oversight that helped MWI get more pump equipment through the “testing phase,” including no longer performing full government oversight - only observing when the contractor invited the government to do so). The DoDIG chose to spin this event in an attempt to impugn my conduct during this time. An interview with the head USACE Engineer in the field for the QA’s (who was with me day and night everyday) can put to rest any doubts as to my conduct during this time. In fact, I would demand that occur now.

Attempts to try and sully the conduct of the “complainant”, rather than address the real allegations, is a classic response to a “whistleblower”, but not a sufficient investigatory response.

No documentation available to me as an engineer and contract administration specialist supports the conclusions of the DoDIG report. Nor does publicly-available evidence. Nor does evidence cited by DoDIG investigators. In fact, the available documentation points the opposite way.

Conclusion:

The conclusions drawn by the DoDIG Report are severely flawed and erroneous, and represent a whitewash according to the available evidence and documentation. Evidence and documentation as presented in this Response have been provided to OSC in furtherance of the DoDIG investigation.

Moreover, the DoDIG report is devoid of engineering and mathematical interpretation, upon which the engineering profession is based. An analysis of what conclusions will follow logically from given premises using engineering knowledge and skill, and mathematical descriptive interpretation of the relationships discovered, is paramount in any investigation of this sort. Merely transcribing without question and adequate scrutiny what others put forth, no matter how illogical, unsubstantiated, or void of fact, is unsuitable in any investigatory effort.

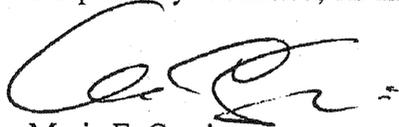
And now, unfortunately, not only are there reasonable grounds to believe that the New Orleans District Task Force Guardian pump team committed gross mismanagement, facilitated gross waste of public funds, violated Federal criminal law ("bribery"), and endangered the safety and welfare of the citizens of New Orleans, but there are reasonable grounds to believe that federal investigators have been misled and/or lied to in violation numerous laws.

It remains imperative that there be a vehicle in place that can provide a truthful, competent, and fair investigation of the evidence and documentation that exists in this matter—imperative because the most important public charge we serve is at stake—the safety, health, and welfare of the citizens of New Orleans.

I remain profoundly grateful to USACE for the opportunity to protect and serve our nation and the people of New Orleans, and submit this Response in furtherance of that mission.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted, on this day, June 21, 2008,



Maria E. Garzino
Civil/Mechanical Engineer
USACE, Los Angeles District

cc: The Honorable Henry A. Waxman
United States House of Representatives
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