TEXAS GENERAL LAND OFFICE

JERRY PATTERSON, COMMISSIONER

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August 4, 2009

The Honorable Victor Carrillo
Chairman, Railroad Commission
1701 North Congress
Austin, Texas 78701

The Honorable Michael Williams
Commissioner, Railroad Commission
1701 North Congress
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The Honorable Elizabeth Ames Jones
Commissioner, Railroad Commission
1701 North Congress
Austin, Texas 78701

Re: *Exxon Corporation and Exxon Texas v. Emerald Oil & Gas Co., and Laurie T. Miesch, et al.*, No. 05-1076, and *Exxon Corp., et al v, Emerald Oil & Gas Co., et al.*, No. 05-0729, in the Supreme Court of Texas, March 2009

Dear Commissioners:

I received a copy of the letter from Tim George, attorney for Exxon Mobil, responding to my assertions about the fraudulent W-3 and W-3A filings as well as the maliciously improper well plugging procedures in the *Emerald Oil* and *Miesch* cases. My assertions are based on the jury's findings in the trial court. I urge you to read the opinion of the Corpus Christi Court of Appeals, which I have attached to this letter. *Exxon Corp., et al. v. Miesch, et al.*, 180 S.W.3d 299 (Tex.App.__Corpus Christi 2005). The opinion describes the facts of the case in the trial court, including evidence from both sides. The selected anthology of Exxon's trial evidence provided with Mr. George's letter is a far cry from the jury's findings. I appreciate your prompt attention to my request, and I continue to urge the Railroad Commission to initiate a show cause hearing.

Exxon's letter is nothing more than a rehash of claims that the *Emerald Oil* and *Miesch* jury rejected. In support of its arguments, Exxon selectively quotes from the lengthy four-week trial record. **After taking extensive testimony and documentary evidence, the jury found that Exxon failed to plug the wells in the manner specified in its Forms W-3 and W-3A filings, acted unreasonably, and did so maliciously.** Furthermore, the court of appeals found that the evidence indicated that Exxon's RRC filings were fraudulent:

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> Exxon made material misrepresentations on its W-3 reports regarding many of the wells at issue in this proceeding. There was substantial testimony from the trial witnesses, including Exxon's own witnesses, that Exxon knew that subsequent lessees and operators would rely on such filings to make business decisions regarding the wells. *Exxon Corp., et al. v. Miesch, et al.*, 180 S.W.3d 299, 337 (Tex.App.—Corpus Christi 2005, pet. granted).

**Mr. George is wrong** when he says that I misrepresented the findings in *Emerald Oil* and *Miesch* lawsuits. It is a matter of public record. **This is what the jury found: (1) Exxon committed waste; (2) Exxon did so with malice; and (3) Exxon did not act as a reasonably prudent operator**. The jury awarded millions in actual and punitive damages based on these findings. All of these findings were based on allegations and proof that Exxon intentionally damaged the wells. The jury's findings were adopted by the trial court and upheld by the Corpus Christi Court of Appeals

**Although it reversed the court of appeals on technical legal issues, the Supreme Court did nothing to discredit these jury findings.** The Court reversed and dismissed the royalty owners' case on the basis of the Court's interpretation of the statute of limitations. The Court also held that Emerald Oil was not a "person" who could pursue a statutory action for waste under Texas Natural Resources Code Section 85.321. The Supreme Court reversed the trial court's decision that the royalty owners and Emerald could not sue for fraud claims and sent those claims back for trial.

In the Texas Supreme Court opinion delivered on March 27, 2009, Justice Wainwright wrote, "Exxon's internal records differed substantially from the Railroad Commission's filings regarding the plugging of the wells in the O'Connor lease." *Exxon Corp. v. Emerald Oil & Gas Co., L.C.*, 2009 WL 795668, 52 Tex. Sup. Ct. J. 467 (Tex. Mar 27, 2009) (No. 05-1076), petition for rehearing filed (May 28, 2009). Justice Wainwright got it right. **Exxon's letter offers no defense of its false W-3's and W-3A's because there is none.**

Also in its response letter, Exxon makes the **grossly misleading statement** that the Supreme Court analyzed and disposed of the royalty owners' claims, other than fraud, *on their merits*. This is wrong. The royalty owners had their case reversed and dismissed by the Supreme Court on the basis of **the statute of limitations**. The **Supreme Court did not reach the merits** of royalty owners' claims, which were substantial based on the jury's findings, because the Court found that the lawsuit was not timely filed. This is **not** a disposition of the case *on the merits*.

Exxon's response concentrates on matters that do not concern the Railroad Commission. Moreover, Exxon's response attempts to misdirect the Commission from the judicially determined facts proving that it violated RRC rules.

Mr. George describes at length the plugging methods that were used – **which were *not* the plugging methods that were described in Forms W-3 and W-3A.** In many of the wells, Exxon cut casings without perforating them and did not pull the casings. This activity is more expensive than perforating, and makes the wells almost impossible to re-enter because the casings shift and make the wellbore impassable. While Exxon now argues that cutting casing without perforating or pulling was a purposeful plugging method, the jury found that it was deliberate damage done to the wellbores with malice.

Lonnie Vickery, Jr., hired by Exxon to assist in plugging the wells, testified that he asked Joe Gilpin, a field superintendent, why they were cutting instead of perforating the casing, and he said it was a deterrent: "He told me that Exxon felt like they drilled these wells, they bought the casing that ran in these wells, these were their wells, and they would plug them any way they wanted to, and they didn't want anybody going back into them." Reporter's Record (RR) Vol. 10, p. 115. Vickery was instructed to inject tank bottoms into a producing well, and Schave, another superintendent, told him to not to wait any longer to plug a producing well that was still flowing because, "We're sitting there flowing that well, it's making oil. I tell you what, go ahead and start that [blank] plugging procedure, because the [blank] O'Connors is getting half of everything that well is sittin' there making." RR Vol. 10, p. 131, 132-

Mr. George's letter touts the virtuosity of Exxon's highly unusual plugging procedures in the O'Connor field at the lease's termination. But the RRC should take note of what the other experts had to say about whether cutting casings without perforating or pulling them was an accepted method of plugging wells in this region. The Exxon employee who wrote these plugging procedures testified that Exxon's policy was to cut, rather than perforate, casing in South Texas. RR Vol. 13, p. 52-53. Yet every current and former Exxon employee who testified at trial contradicted him.

Joel Wylie, an Exxon reservoir engineer who became involved with this field in 1989, testified that he was not aware of any special practice for plugging wells in South Texas. RR Vol. 7, p. 90.

Matt Soulant, Exxon's Division Operations Manager for South Texas, testified that he was not aware of any policy to cut and not recover casing in South Texas and he would have known of such a policy if it existed. RR Vol. 7, p. 63.

Paul Bezoni, a retired Exxon employee who worked for Exxon for forty years, including as a field foreman for the O'Connor tract, testified that the normal procedure was to perforate the casing; he never received an instruction to cut casing without first attempting to perforate it. RR Vol. 7, p. 221-222.

Jerry Schave, a retired Exxon employee of thirty-one years who worked in this field in the 1980's had no idea why an operator would cut and leave, rather than perforate, casing. RR Vol. 8, p. 10.

Malcomb Tudor, who worked for Exxon from 1948 to 1983 and was Exxon's District Operations Superintendent in Corpus Christi with responsibilities for this field, testified that he did not recall ever cutting casing except when he was going to pull it. RR Vol. 8, p. 31-32.

Frank Upton, an Exxon employee for 27 years who was a relief foreman for and did workovers in this field, testified that he did not ever recall cutting casing. RR Vol. 7, p. 205.

The **Form W-3** certificate includes the following statement: **"I declare under penalties prescribed under Section 92.143, Texas Natural Resources Code, that I am authorized to make this report; that this report was prepared by me or under my supervision and direction; and that data and facts stated herein are true, correct, and complete to the best of my knowledge."** RR Vol. 7, p. 192-93. Yet the Exxon employee who signed the Forms W-3s for the O'Connor field pluggings, Ms. Annin, admitted at trial that she had no knowledge about the wells when she signed the forms. When asked whether she had any personal knowledge of any of the information on the Forms W-3s other than her

signature, Ms. Annin replied: "No, I can't tell you that, that I do." RR Vol. 7, p. 17. Johnny Cortez, Exxon's corporate representative for trial, admitted that Ms. Annin did not prepare or supervise the preparation of the W-3s she signed, but when asked if that was a violation of the certificate on the form, he said, "I don't know what it is." Vol. 7, p. 192-93.

The trial court found, the appellate court affirmed, and the Supreme Court did not discredit, that a substantial number of wells in the O'Connor field were improperly and maliciously plugged, and that the required documents filed with the Railroad Commission were inaccurate and fraudulent.

While the final outcome of the legal dispute between Exxon, the O'Connor family, and Emerald Oil is pending a ruling by the Texas Supreme Court on a motion for rehearing, facts that should be of great interest to the Railroad Commission are well established. The jury findings have eliminated the need for an extensive Railroad Commission investigation. These findings are also sufficient for the Railroad Commission to determine whether to impose an administrative penalty. Exxon can then make its plea for leniency in the proper forum. Based on these irrefutable findings, I continue to request the Railroad Commission issue notice to Exxon to appear at a hearing and show cause why it should not be assessed an administrative penalty for violations of RRC SWR14 and for violations of Chapter 85 of the Texas Natural Resources Code.

If these intentional false filings and improper pluggings do not result in substantial penalties by the Railroad Commission, then the oil & gas industry in Texas will be on notice that Railroad Commission's rules and forms are optional, not mandatory. In other words, if the Railroad Commission fails to punish those who deliberately violate its rules, those rules are meaningless.

Respectfully,

JERRY E. PATTERSON
Commissioner, General Land Office

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