

July 15, 2009

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

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

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:

By this letter, I respectfully request that the Commission initiate a “show cause” hearing to require Exxon Corporation and Exxon Texas, Inc., to demonstrate that they should not be penalized for irrefutable, intentional and flagrant violations of the Commission’s rules in connection with events that resulted in the lawsuits styled *Exxon Corporation et al., v. Emerald Oil & Gas Co., Inc., and Laurie T. Miesch, et al.* The actions that triggered the lawsuits began almost twenty years ago, but the Texas Supreme Court issued rulings only last March in these cases. *Exxon Corp., et al. v. Emerald Oil & Gas Co., et al.*, No. 05-1076, and *Exxon Corp., et al v, Emerald Oil & Gas Co., et al.*, No. 05-0729 (Tex. 2009), *opinion available online at* HYPERLINK "<http://www.supreme.courts.state.tx.us/historical/2009/mar/051076.htm>" <http://www.supreme.courts.state.tx.us/historical/2009/mar/051076.htm>. The Supreme Court’s rulings, based on legal interpretations unrelated to the wrongdoing addressed in this letter, underscore the importance of the Railroad Commission's ability and duty to enforce its rules.

As steward of millions of dollars’ worth of mineral lands leased for the benefit of the Permanent School Fund, I, as Land Commissioner, cannot allow this pernicious behavior to stand without comment.

Briefly, the *Exxon v. Emerald Oil* case involved a dispute between the O'Connor family and Exxon, who negotiated a lease from the O'Connors that contained an unusually high (50 percent) royalty. Exxon operated this lease from the 1950s through the 1980s. Exxon also owned an interest in the adjacent lease with a much lower royalty. Wells drilled on this adjacent lease were completed in the same reservoir as the O'Connor lease and capable of draining oil and gas from the O'Connor lease. Exxon sought to lower the O'Connor royalty rate but negotiations with the O'Connors were unsuccessful. In the early 1990s, Exxon terminated the lease and plugged the wells on the O'Connor tract.

Before plugging each well, Exxon filed an application (Form W-3A) with the Railroad Commission outlining its procedures and, after plugging, filed sworn Forms W-3 plugging reports showing the final condition of the wells. Exxon did not use the procedures identified in the applications. Exxon's sworn Forms W-3 were purposefully inaccurate.

Emerald Oil, a subsequent operator of the O'Connor tract, discovered that Exxon had deliberately sabotaged the wells by leaving cut casings in the wellbores, throwing junk in the wells, and pumping tank bottoms into the wellbores. These actions rendered the remaining reserves irrevocably unrecoverable. Thus, Exxon's filing of false reports with the Railroad Commission about plugging methods (on which Emerald Oil relied) had the effect of concealing the deliberate destruction of the wellbores from Emerald or any other subsequent operator.

Emerald Oil and the lessors sued Exxon. The trial court found, among other things, that Exxon had indeed intentionally, systematically, and secretly damaged the wellbores and lied about it in public plugging documents filed with the Railroad Commission. The Corpus Christi Court of Appeals affirmed. *Exxon Corp., et al. v. Miesch, et al.*, 180 S.W.3d 299 (Tex.App_Corpus Christi 2005).

The Texas Supreme Court reversed the Court of Appeals on the key issues of the case, on what a layman would call a "technicality" – despite the deliberate, egregious, and malicious acts of Exxon against Emerald and the lessors.

It was proven in the trial court (and not disputed by the appellate courts) that Exxon intentionally filed false documents with the Railroad Commission about its illegal plugging operations. The Court of Appeals' opinion recites evidence from the trial showing that Emerald Oil reviewed Exxon's Form W-3 plugging reports prior to leasing the O'Connor tract. 180 S.W.3d at 312. Upon starting the re-entry process, Emerald encountered numerous unexpected obstacles, including "cut casings, unidentified plugs, or plugs located at intervals differing from those identified on the Forms W-3, and other obstructions in the wells." *Id.* One Emerald official testified that "eighty to ninety percent of the Forms W-3 failed to accurately describe the plugging methodology utilized for the wells and failed to accurately describe the physical status of the wells." *Id.*

Emerald Oil and the lessors have filed motions for rehearing in the Texas Supreme Court,

asking the Court to rehear the cases. Thus, the Court has an opportunity to right this wrong. The Railroad Commission should take this opportunity to fully investigate this matter as chief regulator and protector of the oil and gas reserves of the State of Texas.

It is vitally important to the development of energy resources in the State of Texas that filings with the Railroad Commission be truthful and reliable. This particular set of facts demonstrates what can go wrong when the forms are falsified. Total disregard and disdain for Railroad Commission rules and regulations allowed Exxon to perpetrate a deliberate and malicious plan of waste and destruction of natural resources. The Railroad Commission must not allow its obligation to protect correlative rights and prevent waste to be so flagrantly and intentionally compromised.

Respectfully,

JERRY E. PATTERSON
Commissioner, General Land Office

cc: Service List