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February 11, 2009

VIA U.S. C.M.R.R.R.# 7002 2410 0003 1883 4025

Mr. Don Magee
McGINNIS, LOCKRIDGE & KILGORE, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701

RE: Kelsey Plant

Dear Mr. Magee:

I write this letter as counsel for Elizabeth Burns (Mrs. Burns) to request that ExxonMobil Corporation and ExxonMobil Production Company (collectively "Exxon") construct an adequate fence around the Kelsey Gas Plant (also known as the Kelsey Gas Compressor Station and hereafter referred to as the "Kelsey Plant").

As you know, the Kelsey Plant was the subject of Exxon's recent lawsuit against Mrs. Burns.¹ Exxon obtained a temporary restraining order against Mrs. Burns in that lawsuit based, in part, on the following allegations, supported by affidavits from Exxon's agents:

1. The Kelsey Plant contains "highly flammable hydrocarbons which are under high pressure.";
2. Persons entering the Kelsey Plant "must have appropriate safety equipment and must follow all the rules and regulations";

¹ *ExxonMobil Corporation and ExxonMobil Production Company vs. Elizabeth Burns*; Cause No. 18-12-14969CV in the 79th District Court of Brooks County, Texas and hereafter referred to as the "Lawsuit". According to the Lawsuit, the Kelsey Plant is situated on approximately 51 acres of land on the Encinitos Ranch. As you know, Mrs. Burns and her family live on the Encinitos Ranch.

3. Mrs. Burns entry on the Kelsey Plant “would jeopardize the health and safety of Burns and others”;
4. Unless Mrs. Burns is enjoined from entering the Kelsey Plant, Exxon will “suffer imminent and irreparable injury, loss and damage”;
5. “The safety of ExxonMobil’s employees, contractors, and any individual on or near ExxonMobil’s operations is its key priority.”; and
6. Mrs. Burns entry onto the Kelsey Plant puts “the safety of Burns, ExxonMobil’s employees and contractors, and others at risk.”

In short, the basis of Exxon’s Lawsuit against Mrs. Burns is that the Kelsey Plant is a powder keg ready to explode and that the presence of a third party is likely to trigger the explosion, resulting in severe injury or death to Exxon’s employees, contractors and anyone else on or near the plant. We take Exxon at their word on this. Logically, however, if Exxon’s concerns are valid, then they apply with even greater force to unsophisticated, untrained third parties who do not have the same personal stake in adjoining properties as Mrs. Burns. Unlike strangers to the property, Mrs. Burns is very much aware of the dangers at the Kelsey Plant and has received safety training. Moreover, she and her family reside near the Kelsey Plant, giving her every reason to exercise extreme caution on or near the plant. Yet, Exxon is aware that the Kelsey Plant is used as a common area for human and drug traffickers trying to circumvent the Border Patrol checkpoints. Needless to say, these traffickers who congregate on and traverse the Kelsey Plant are unlikely to be aware of the risks associated with the plant or have any safety training, certainly do not have any concern for the welfare of adjoining properties or residents, and are likely to engage in hazardous activities such as smoking and lighting fires. Only a good fence will keep them out and keep Exxon’s plant, the adjoining property, and, most important, human life safe.

Exhibit A to this letter consists of Exxon’s original petition in its Lawsuit against Mrs. Burns. Exhibit B to this letter consists of photographs depicting the current condition of the fence around portions of the Kelsey Plant. Almost half of the circumference of the plant has no fence and where there is fence it is in a state of advanced disrepair. Moreover, the design of the fence is such that even in good shape it will not prevent human entry. Exhibit C to this

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letter consists of photographs of more formidable fences around other nearby Exxon facilities, facilities that, ironically, do not involve "highly flammable hydrocarbons under high pressure." Exhibit D to this letter consists of photographs of fences around other plants like the Kelsey Plant operated by other companies. Exhibit E to this letter is a letter from Mr. Urbino B. Martinez, Chief Deputy of the Brooks County Sheriff's Department, attesting to the fact that the Kelsey Plant is a common area for human and drug traffickers. Exhibit F to this letter consists of photos showing evidence of illicit activity in the immediate vicinity of the Kelsey Plant. Finally, Exhibit G to this letter consists of emails notifying Exxon of criminal activity in the vicinity and the need for a fence around the Kelsey Plant to no avail.

In addition to the health and safety concerns that served as the express basis of Exxon's lawsuit against Mrs. Buns and that should, standing alone, serve as sufficient impetus for the construction of an adequate fence, Exxon has a contractual duty to construct such a fence. Both the 80 year fee purchase agreement on 18.365 acres that comprise part of the Kelsey Plant and the surface lease covering the remaining 33.354 acres of the plant provide that Exxon:

"shall keep the above described land fenced by a good and substantial fence, capable of turning and keeping cattle and other livestock therefrom, and shall maintain such fence, including any gates placed therein, in good repair at all times."

Mrs. Burns is not a party to the deed or lease and has no standing to assert breach of contract by reason of Exxon's failure to comply with the quoted provision. Mrs. Burns hopes, however, that if concern for health and safety does not motivate Exxon to construct an adequate fence around the Kelsey plant then its contractual duty will do so. While livestock may have been the primary concern when these agreements were signed in 1948 and 1965, human life is now a much more compelling factor.

Unfortunately, we believe that Exxon's lawsuit against Mrs. Burns was driven less by safety concerns than by a desire on Exxon's part to stymie Mrs. Burns efforts to document Exxon's operational deficiencies at the Kelsey Plant and elsewhere, and to bring these deficiencies to the attention of regulators and the public. Regardless of the motive, Exxon has now admitted that the Kelsey Plant is so dangerous that even a housewife who lives nearby with her family, is fully aware of the dangers at the Plant and has received safety training to deal with those dangers, still must be legally enjoined from entering the Plant. To ensure the safety of all who may come into contact with the Plant, not just Mrs. Burns,

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Exxon must now construct a "good and substantial fence" around the Kelsey Plant. This is particularly so because illegal immigrants, drug dealers and others known to regularly enter and traverse the plant cannot be legally enjoined from entry. Given Exxon's knowledge of the dangers at the Kelsey Plant, its failure to construct an adequate fence around the Kelsey Plant would be irresponsible and grossly negligent.

Very truly yours,

REED, MCLAIN & GUERRERO, L.L.P.

By: 

J. Scott McLain

JSM:mq
Enclosures