

# PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

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## **PETITION FOR SUSPENSION OR DEBARMENT**

SUBJECT: Request for the Immediate Suspension or Debarment of ExxonMobil Corporation and the ExxonMobil U.S. Subsidiaries listed in Appendix A

FROM: Waterkeeper Alliance, Inc.

TO: Kathleen Timmins, Director  
EPA Suspension and Debarment Division

DATE: December 14, 2016

### **Introduction**

Waterkeeper Alliance, Inc. (“Petitioner” or “Waterkeeper”) respectfully submits this Petition in support of its request for the suspension or debarment of ExxonMobil Corporation and the related entities listed in Appendix A (collectively referred to as “Respondent” or “ExxonMobil”) as contractors doing business with the United States government. This Petition is based on a pervasive pattern of deceptive and damaging conduct related to environmental issues generally and climate change issues in particular. Such behavior involves willful misrepresentation of climate change facts (by ExxonMobil and through its proxies) and harassment of climate scientists. Through this conduct, ExxonMobil has repeatedly sought to avoid responsibility for how its behavior affects the environment, public health, and the ability of communities to prevent or to survive the present and future impacts of climate change.

Waterkeeper does not submit this Petition lightly. Waterkeeper is well aware of and highly supportive of the principles of free speech. Indeed, the protection of free speech is vital to our country and one of the core founding principles upon which our society is based. The government’s refusal to do business with an entity for supporting or propagating controversial speech is not a step that Waterkeeper suggests should be taken casually.<sup>1</sup> But a sharp contrast

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<sup>1</sup> Note, however, that the government does not infringe the first amendment rights of a person or entity merely for refusal to fund or do business with that entity as a result of its speech. *Cf. Rust v. Sullivan*, 500 U.S. 173, 193 (1991) (government’s decision “not to subsidize the exercise of a fundamental right does not infringe the right”); *see also Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 549 (1983).

exists between speaking freely and loudly on positions that one sincerely believes, whether they be controversial or widely held positions, and speaking falsehoods for the very purpose of misleading others for your own corporate gain, while at the same time seeking to silence or discredit those that challenge those falsehoods. This is the issue that is at stake in this petition. The misinformation spread by ExxonMobil over a period of many years – misinformation that ExxonMobil *knew* to be false or misleading – has contributed to large segments of this country’s population denying the very existence of climate change and man’s role in causing that ongoing crisis. ExxonMobil’s campaign of misinformation has led quite directly to the election of scores of political representatives and the appointment of scores of officials who expressly deny the existence of climate change and its anthropogenic causes and staunchly oppose any efforts to take steps to remedy the problem or mitigate the damage. The propagation and funding of this misinformation, especially when viewed in the context of ExxonMobil’s long history of environmental violations, provides a compelling basis for ExxonMobil’s debarment. In short, ExxonMobil has exhibited a pattern of behavior reflecting a lack of business integrity and honesty, which behavior has had dire consequences for the environment and society generally. As a result, it should no longer be permitted to do business with the government.

### **Applicable Legal Standards**

It is the policy of the federal government to conduct business only with responsible companies or individuals who have a satisfactory record of integrity and business ethics. ExxonMobil has repeatedly and consistently failed to live up to this standard.

Suspension and debarment are actions the federal government may take to prevent an entity that has engaged in misconduct from participating in certain government transactions or obtaining government contracts.<sup>2</sup> A primary goal underlying this program is to protect the government, and therefore the public interest, from business relations with dishonest, unethical, criminal, or otherwise irresponsible contractors or persons.<sup>3</sup> Under its suspension and debarment regime, EPA has the authority to prevent an entity from engaging in *any* government contracts, subcontracts, loans, grants and other federal programs, regardless of which agency administers such benefit.<sup>4</sup>

EPA’s authority to take such an action is derived from the Federal Acquisition Regulation (“FAR”), 48 C.F.R. Subpart 9.4, and the Nonprocurement Common Rule (“NCR”), 2 C.F.R. Part 180. As discussed in more detail below, the FAR provides the grounds for debarment relating to procurement activities, and the NCR provides the grounds and process for debarment related to nonprocurement activities.<sup>5</sup> Although FAR and NCR are similar for the purposes of

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<sup>2</sup> See Federal Acquisition Regulation, 48 C.F.R §§ 2.01; 9.4 (2016).

<sup>3</sup> The government’s authority to debar or suspend an individual exists to “protect the public interest . . . by conducting business only with responsible persons,” “to exclude from Federal programs persons who are not presently responsible. . . .”, but it is not to be used “for the purposes of punishment.” Nonprocurement Common Rule, 2 C.F.R. § 180.125.

<sup>4</sup> 2 C.F.R. § 180.130; 48 C.F.R § 9.405.

<sup>5</sup> 48 C.F.R. § 9.401; 2.C.F.R. § 180.5.

determining what activity could lead the EPA decide to suspend or debar a contractor or entity,<sup>6</sup> the NCR is most commonly used by the EPA.<sup>7</sup>

### ***Suspension vs. Debarment***

Suspension and debarment are distinct administrative actions that can be taken by an agency to protect the government and the public from contractors or companies that engage in criminal, irresponsible, or unethical conduct. A suspension decision is based upon a contractor or entity taking actions such as commission of environmental crimes, contract fraud, or making false statements. Suspension is effective immediately, and typically only lasts for up to one year. Debarment, on the other hand, can be based on similar bad acts, but a company can be debarred for other conduct not specifically listed in regulation, and the duration of debarment is considered on a case by case basis.<sup>8</sup> Statutory debarment occurs “by operation of law” after a criminal conviction under the Clean Water Act or the Clean Air Act.<sup>9</sup> By contrast, discretionary debarment is an administrative tool without a mandate—EPA may debar a company based on certain conduct, but it is not required to do so.<sup>10</sup>

For the purposes of this Petition, for ease of reference, we will use the general term “debarment” to discuss EPA’s discretionary suspension and debarment tools.

### ***Grounds for Suspension and Debarment***

Under the Federal Acquisition Regulation, an official may debar a person or entity contracting with the government for a conviction of, or civil judgment for, a number of violations, including fraud committed in connection with obtaining or performing a public contract, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or “commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the [contractor’s] present responsibility.”<sup>11</sup> Suspension can be based on the same types of offenses, but does not require actual conviction or

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<sup>6</sup> See 48 C.F.R. § 9.406-2; 2 C.F.R. § 180.800.

<sup>7</sup> West et al., *The Environmental Protection Agency’s Suspension and Debarment Program*, Briefing Papers No. 13-12, 3 (Nov. 2013) <http://www.gibsondunn.com/publications/Documents/BriefingPapersNov2013.pdf>. (hereinafter “*EPA Suspension and Debarment Program*”).

<sup>8</sup> See 48 C.F.R. §§ 9.406-2, 9.407-2; 2 C.F.R. §§ 180.800, 180.865(b); *EPA Suspension and Debarment Program* U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/grants/suspension-and-debarment-program> (last visited Dec. 13, 2016). A discretionary debarment is for a fixed period of time—generally not to exceed three years, but the EPA has debarred contractors for 15–20 years. Interagency Suspension and Debarment Comm., Fiscal Year 2009–2010 Report 4 (2011). See <https://isdc.sites.usa.gov/files/2015/04/873ReportFY20092010.pdf> (last visited Dec. 13, 2016).

<sup>9</sup> See 2 C.F.R. §§ 180.935(c), 1532.1110; *EPA Suspension and Debarment Program*, supra note 8 at 15-18. Statutory debarment, although mandatory in nature, can have less severe effects on a bad behaving company since it typically only leads to a prohibition on the specific *facility* where the violation occurred and is not effective company wide. In this way, very large companies and their subsidiaries can go on with business as usual at other facilities or operations. See Justin M. Davidson, *Polluting Without Consequence: How BP and Other Large Government Contractors Evade Suspension and Debarment for Environmental Crime and Misconduct*, 29 PACE ENVTL. L. REV. 257, 264 (2011) (citing CWA § 508(a), 33 U.S.C. § 1368(a) (2012)).

<sup>10</sup> See e.g. 2 C.F.R. §§ 180.110, 180.800; *EPA Suspension and Debarment Program*, supra note 8 at 6-8.

<sup>11</sup> 48 C.F.R. § 9.406-2.

civil judgment and instead can be based on “adequate evidence” of the contractor committing the various described offenses.<sup>12</sup> In addition, based on a preponderance of the evidence, a contractor may be debarred for some conduct related to breaching government contract, commission of certain of unfair trade practices, failure to pay taxes, or criminal convictions.<sup>13</sup> Finally, suspension or debarment is warranted for “any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.”<sup>14</sup>

Similarly, under the Nonprocurement Common Rule an agency may debar a company or person for conviction or civil judgment for fraud, violations of federal or state antitrust statutes, “embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;” or “any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility.”<sup>15</sup> A contractor can be suspended for the same conduct even without a conviction or civil judgment, based on “adequate evidence” of the offence.<sup>16</sup> Suspension or debarment can also occur on other grounds including violating the terms of a public or private agreement “so serious as to affect the integrity of an agency program . . . ,” doing business with a person who has been suspended or debarred, or “[a]ny other cause of so serious or compelling a nature that it affects [the person’s] present responsibility [to the government].”<sup>17</sup> The NCR also provides a long list of mitigating and aggravating factors that a debarring official may consider.<sup>18</sup>

### *Suspension and Debarment Examples*

The government has suspended and/or debarred contractors who have engaged in corporate malfeasance unrelated to any procurement activity. For example, in 2003 the General Services Administration (“GSA”) used the FAR’s catch-all provision to propose MCI WorldCom for debarment after the Government learned of the company’s massive financial fraud. Two GSA offices obtained and collected publicly available information as the basis for their suspension and debarment recommendations, including newspaper, corporate news conferences, and various web site postings.

The GSA suspended Arthur Anderson and Enron for business conduct not directly related to contracts with the Federal Government. According to GSA’s March 15, 2002 press release, GSA suspended Enron:

[B]ased on a finding of adequate evidence that the Enron parties had engaged in misconduct ...that seriously affect their suitability to

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<sup>12</sup> 48 C.F.R. § 9.407-2.

<sup>13</sup> 48 C.F.R. § 9.406-2(b).

<sup>14</sup> 48 C.F.R. §§ 9.406-2(c); 9.407-2(c).

<sup>15</sup> 2 C.F.R. § 180.800(a)(3), (4).

<sup>16</sup> 2 C.F.R. § 180.700(a).

<sup>17</sup> 2 C.F.R. § 180.800(d); *see also* 2 C.F.R. § 180.700.

<sup>18</sup> 2 C.F.R. § 180.860.

receive Government contracts... a company or individual must have a satisfactory record of integrity and business ethics.<sup>19</sup>

In late November 2012, EPA suspended all entities under British Petroleum (“BP”) from engaging in government contracts following the Deepwater Horizon spill.<sup>20</sup> Although the immediate suspension only applied to future contracts, and the matter was eventually resolved through an administrative agreement two years later, officials made strong statements condemning a long history of problems at BP, a “corporate culture of non-compliance,”<sup>21</sup> and a “lack of business integrity as demonstrated by the company's conduct with regard to the Deepwater Horizon blowout, explosion, oil spill, and response . . . .”<sup>22</sup> Because the suspension and debarment investigation examined more spills and safety incidents than just the Deepwater Horizon spill, the suspension was effective across the entire company.<sup>23</sup>

EPA chose to issue a suspension because there existed “an immediate need to protect the public interest,”<sup>24</sup> namely, BP’s intention to participate in Gulf of Mexico lease sales. According to an article by *Frontline*, the EPA had been considering whether to debar BP up to five years before the January 2010 disaster.<sup>25</sup> Prior to the suspension, *ProPublica* interviewed EPA debarment officials considering whether to debar BP and who were weighing this decision based upon “the frequency and pattern of the incidents, corporate attitude both before and after the incidents, changes in policies, procedures, and practices.”<sup>26</sup> At the time BP was suspended, it was one of the largest corporate contractors with the government and provided the military more than \$1 billion worth of fuel a year. It also operated 22,000 oil and gas wells across the United States.<sup>27</sup>

The EPA’s ban on new contracts for BP lasted over a year, ending in March 2014. The administrative agreement reached by BP and EPA<sup>28</sup> resolved all debarment proceedings and contained what EPA described as “strong provisions to improve safety and ethics

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<sup>19</sup> *GSA Suspends Enron and Arthur Andersen and Former Officials*, GENERAL SERVICES ADMINISTRATION (Mar. 15, 2005), <http://www.gsa.gov/portal/content/100538>.

<sup>20</sup> Press Release, EPA Office of Administration and Resource Management, *BP Temporarily Suspended from New Contracts with the Federal Government*, (Nov. 28, 2012) <https://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/2aaf1c1dc80c969885257abf006dafb0!OpenDocument> [hereinafter *BP Suspended*]; see also James Conca, *Is BP Too Big to Punish?*, FORBES (Aug. 31, 2014) <http://www.forbes.com/sites/jamesconca/2014/08/31/is-bp-too-big-to-punish/#62be3b931202>; Abram Lustgarten, *Latest Sanction Against BP Goes Beyond Gulf Spill*, FRONTLINE (Nov. 29, 2012) <http://www.pbs.org/wgbh/frontline/article/latest-sanction-against-bp-goes-beyond-gulf-spill/>.

<sup>21</sup> Lustgarten, *supra* note 20.

<sup>22</sup> *BP Suspended*, *supra* note 20.

<sup>23</sup> Lustgarten, *supra* note 20.

<sup>24</sup> Press Release, EPA Office of Administration and Resource Management, *EPA to Lift Suspension and Debarment of BP From Federal Government Contracts*, (Mar. 13, 2014)

<https://yosemite.epa.gov/opa/admpress.nsf/0b66cff708bf894852573590040443b/c6a5be4a1a2db87f85257c9a0071760c!opendocument> [hereinafter *BP Suspension Lifted*].

<sup>25</sup> Lustgarten, *supra* note 20.

<sup>26</sup> Abraham Lustgarten, *EPA Officials Weigh Sanctions Against BP’s U.S. Operations*, PROPUBLICA (May 21, 2010).

<sup>27</sup> Lustgarten, *supra* note 20.

<sup>28</sup> In re BP p.l.c., EPA Case No. 12-0295-00, Administrative Agreement (Mar. 13, 2014), <https://archive.epa.gov/bpspill/web/pdf/bpadmin-agreement-mar-13-2014.pdf>.

improvements.”<sup>29</sup> The Agreement referred to four incidents that provided grounds for suspension or debarment:

- Convictions for violating the Clean Water Act and Migratory Bird Treaty (Deepwater Horizon 2013)
- Securities and Exchange Commission Judgment Order (2012)
- Conviction for violation of the Clean Water Act (*U.S. v. BP Exploration Alaska* (Prudhoe Bay) (2007))
- Conviction for violation of the Clean Air Act (*U.S. v. BP Products North America Inc.* (Texas City Refinery) (2009)).<sup>30</sup>

### ***ExxonMobil Suspension or Debarment***

ExxonMobil should be excluded from federal contracts by EPA and other government agencies because for decades, in addition to knowingly disseminating misinformation to the public on climate change, it has failed to comply with U.S. environmental, worker safety, and other regulatory requirements resulting in injuries to human health and the environment. This threat to human health and the environment continues through today without abatement and has been condoned by ExxonMobil’s management team as reflected in the company’s actions described below.

### **Respondents**

ExxonMobil Corporation is a multinational corporation headquartered in Irving, Texas. ExxonMobil is a leading international energy company whose subsidiaries have operations in approximately 200 countries and territories. In the United States, ExxonMobil has significant exploration, production, refining, marketing, and chemicals operations. ExxonMobil is one of the largest oil and gas producers and reserve holders in the United States, with a portfolio including Alaska, onshore Gulf Coast and deep water Gulf of Mexico. In addition, there are approximately 16,000 Exxon and Mobil branded service stations in the United States, as well as seven refineries, four of which are integrated petrochemical facilities.

### **Petitioner**

Waterkeeper Alliance (“Waterkeeper” or “Petitioner”) is a not-for-profit, member supported, international environmental organization based in New York City. Waterkeeper strengthens and grows a global network of grassroots leaders protecting everyone’s right to clean water. Comprised of over 300 Waterkeeper Organizations and Affiliates around the world, Waterkeeper’s goal is drinkable, swimmable, and fishable water everywhere. Over the past several years, Waterkeeper has become increasingly engaged in public advocacy, administrative proceedings and litigation aimed at reducing the water quality impacts of fossil fuel extraction, transport and combustion. Energy production and use profoundly affect virtually every water body in the world. Whether it is dirty coal, oil or fracked gas, our dependence on fossil fuels is driving changes to the earth’s climate that are already affecting our water and communities.

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<sup>29</sup> *BP Suspension Lifted*, *supra* note 24.

<sup>30</sup> In re BP p.l.c., *supra* note 28 at 1.

Climate change and other impacts from dirty fossil fuels pose the greatest threat to the safety and security of our communities and waterways.

Waterkeeper's Clean and Safe Energy campaign protects waterways and communities by stopping the polluting effects of fossil fuels. In order to protect our planet and all living things that depend on clean water for life, eighty percent of known carbon reserves must stay in the ground. While Waterkeeper fights to keep coal, oil and natural gas in the ground, it also supports a global economic transition to a no-carbon future that utilizes clean, safe, renewable and sustainable energy sources.

### **Summary**

Petitioner respectfully requests the immediate suspension or debarment of ExxonMobil. While funding groups seeking to discredit climate science, fuel public skepticism, and undermine government efforts to prevent the most catastrophic effects of climate change, ExxonMobil had internal knowledge acquired through decades of research about the existence, causes and dangers of climate change. In this way, ExxonMobil's activities and representations to the public belied its knowledge on climate change, displaying a profound lack of business ethics and integrity.

This request for immediate suspension or debarment is also based on Respondent's repeated efforts to improperly influence policy by undermining environmental regulations at all levels of government. Respondent's spread of misinformation was not limited to the public at large. Respondent knowingly misled U.S. and international government officials. Respondent made dubious claims to multiple parties at the United Nations Conference on Climate Change in the time leading up to and during international climate treaty proceedings by representing to world leaders that they should reject a climate treaty because, contrary to ExxonMobil's own knowledge, climate change science was uncertain and, because of this uncertainty, developed countries should not bear the alleged burden of curbing climate change.

This request for immediate suspension or debarment is further based on the fact that Respondent was urged by congressional members to stop funding anti-climate change groups in 2006, yet it continues to do so in order to obscure science and inspire inaction for its own gain.

ExxonMobil's campaign of misinformation must also be viewed in the context of ExxonMobil's other business practices. Respondent has dozens of instances of misconduct since 1995 and many additional instances of misconduct pending resolution as of the date of this request. ExxonMobil's history of continued violations and uncorrected, dishonest, and unethical corporate attitude demonstrates internal institutional problems— rather than isolated incidents— that make ExxonMobil, in its entirety, ripe for suspension and debarment.

## **BACKGROUND AND NARRATIVE**

### **ExxonMobil Was Aware of the Threat Posed by Climate Change and the Anthropogenic Causes of Climate Change for Decades**

A 1977 Exxon interoffice correspondence at Exxon Government Research Laboratories described a meeting of the national study group on global environmental effects of carbon dioxide.<sup>31</sup> The memo summarized the meeting topics which included: (1) the need for finding an acknowledged expert who will take the lead on the carbon dioxide program;<sup>32</sup> (2) the importance of establishing a national “mechanism to weave together the interest and capabilities of the scientific community and the various agencies of the federal government in dealing with climate-related problems;”<sup>33</sup> (3) the anticipated funding for the program;<sup>34</sup> and (4) “the best political moves to alert the administration to the problems that the study group foresees in climate as a result of fossil fuel combustion.”<sup>35</sup>

In 1977, James Black, Scientific Advisor to Exxon’s Products Research Division, gave a presentation to the Exxon Corporation Management Committee.<sup>36</sup> In the presentation Black explained what the “Greenhouse Effect” is and how CO<sub>2</sub> from fossil fuels warms the atmosphere:

Since 1958, CO<sub>2</sub> has been monitored at a number of remote sites that are free from local inputs. . . . The carbon dioxide concentration has been found to be increasing rather uniformly at all locations with the South Pole measurements rather lagging those in the Northern Hemisphere. Atmospheric scientists generally attribute this growth in CO<sub>2</sub> to the combustion of fossil fuel. . . . If this assumption about carbon dioxide is true, it can be calculated that a little over 50% of the CO<sub>2</sub> entering the atmosphere is remaining there and the rest is being absorbed in surface sinks on the continents or in the ocean. . . . It can be seen that the scenario based upon very rapid growth predicts that by 2075 the atmospheric carbon dioxide concentration will be about 4 to 5 times that which existed prior to the industrial revolution.<sup>37</sup>

This statement, and the context of its delivery, establishes Exxon management knew forty years ago that climate change will likely drastically intensify and is most likely caused by fossil fuel combustion *by humans*. Although the paper contemplates areas that, as of 1977, required further investigation and analysis, Exxon recognized even at that early point that “current

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<sup>31</sup> See Exhibit 1.

<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.* at 4.

<sup>35</sup> *Id.*

<sup>36</sup> See Exhibit 2.

<sup>37</sup> *Id.* at 1-2.



scientific opinion overwhelmingly favors attributing atmospheric carbon dioxide increase to fossil fuel combustion.”<sup>38</sup>

A 1978 Exxon interoffice correspondence proposed “that Exxon be the initiator of a worldwide ‘CO<sub>2</sub> in the Atmosphere’ [Research and Development] program...” to deal with the “CO<sub>2</sub> problem.”<sup>39</sup> The correspondence went on to propose that “Exxon sketch the broadest outline of a master plan and a listing of potential participants and the roles of each participant in the overall program.”<sup>40</sup> The author realized that “[o]bviously, governments would have to have the major role in such an undertaking,” but that “Exxon’s role might be that of initiator, management and technical consultant on a worldwide basis, and leader of the private sector in participating with governments.”<sup>41</sup> The memo concluded that:

The object of all this activity would be to extend our scientific knowledge by elucidating the mechanisms of CO<sub>2</sub> diffusion, dispersal, impact on the environment, impact on the albedo, etc. A massive effort over a long period of time, but the key thing would be to determine whether we have a problem with CO<sub>2</sub> or we don't and, if we do, where the problem comes from.<sup>42</sup>

In a 1978 letter from Henry Shaw to Dr. Edward David, Jr., Exxon General Administration, Shaw proposed implementing programs by May 1979 to “help clarify the mechanisms associated with the storage of carbon dioxide, and thus help predict the likelihood of a greenhouse effect.”<sup>43</sup> He emphasized that “[t]he rationale for Exxon’s involvement and commitment of funds and personnel is based on our need to assess the possible impact of the greenhouse effect on Exxon business. Exxon must develop a credible scientific team that can critically evaluate the information generated on the subject and be able to carry bad news, if any, to the corporation.”<sup>44</sup> Shaw acknowledged the importance of assembling a team that is credible in the scientific community and planned to “acquire the necessary reputation [] by attacking one of the major uncertainties in the global CO<sub>2</sub> balance, i.e., the flux to the oceans and providing the necessary data.”<sup>45</sup>

In 1979, Exxon made a presentation to the National Oceanic and Atmospheric Association (NOAA) entitled “Proposed Exxon Research Program to Help Assess the Greenhouse Effect.”<sup>46</sup> Exxon’s rationale for its involvement in the assessment of the Greenhouse Effect was to:

- develop expertise to assess the possible impact of the Greenhouse effect on Exxon Business

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<sup>38</sup> *Id.* at 4.

<sup>39</sup> Exhibit 3 at 1.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 2.

<sup>43</sup> Exhibit 4 at 1.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> *Id.*

<sup>46</sup> See Exhibit 5.

- form responsible team that can credibly carry bad news, if any, to the corporation
- provide the government with high quality information to reduce the business risk of inadequate government policy
- generate important scientific information that will enhance the Exxon image and provide public relations value.<sup>47</sup>

A 1979 Exxon interoffice memo discussed how “[a]tmospheric [s]cience will be of critical importance to Exxon in the next decade.”<sup>48</sup> It is clear from the memo that Exxon was aware that climate change would be bad for business. The memo shows that Exxon felt it needed to assert itself into the legislative process to “influence possible legislation on environmental controls” and “begin to anticipate the strong intervention of environmental groups and be prepared to respond with reliable and credible data.”<sup>49</sup> The memo concluded by reiterating that:

It behooves us to start a very aggressive defensive program in the indicated areas of atmospheric science and climate because there is a good probability that legislation affecting our business will be passed. Clearly, it is in our interest for such legislation to be based on hard scientific data. The data obtained from research on the global damage from pollution, e.g., from coal combustion, will give us the needed focus for further research to avoid or control such pollutants. We should be prepared for, and ahead of the government in making the public aware of pollution problems.<sup>50</sup>

A 1979 letter to R. L. Hirsch from W. L. Ferrall, Exxon Senior Engineer Associate discussed controlling atmospheric CO<sub>2</sub> and presents results on a study conducted by an Exxon employee in the Planning Engineering Division that analyzed “the potential impact of fossil fuel combustion on the CO<sub>2</sub> concentration in the atmosphere.”<sup>51</sup> The letter stated that “it is not obvious whether these changes would be all bad or all good. The major conclusion from [the] report is that, should it be deemed necessary to maintain atmospheric CO<sub>2</sub> levels to prevent significant climatic changes, dramatic changes in patterns of energy use would be required.”<sup>52</sup> The memorandum attached to the letter broke down the study’s findings with the conclusion that “the study demonstrates how present climatic models predict that the present trend of fossil fuel use will lead to dramatic climatic changes within the next 75 years.”<sup>53</sup>

A 1980 letter to M.E. J. O’Loughlin, Exxon Director, from Walt Eckelmann, Exxon Deputy Manager of Science and Technology, discussed “Exxon’s position and activity in connection with the ‘greenhouse effect.’”<sup>54</sup> The letter revealed that “[t]he objective of Exxon’s current research program in this area is to play a prominent role in critical components of the

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<sup>47</sup> *Id.* at 3.

<sup>48</sup> Exhibit 6 at 1.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 2.

<sup>51</sup> *See* Exhibit 7 at 1.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 3.

<sup>54</sup> Exhibit 8 at 1.

[DOE's] research program, actively follow the results of the overall program and critically evaluate predictions of CO<sub>2</sub> effects as they are developed.”<sup>55</sup> The letter discussed, in part, questions that needed to be answered as to what contribution fossil fuel combustion has on the greenhouse effect. Eckelmann states:

In early 1978, Exxon Research & Engineering considered an independent research program [to understand climate change] but concluded that the amount of effort required and the scope of disciplines involved made it impractical for a single institution to attack this problem alone. Instead, it was decided to use Exxon's unique resources to research critical components of the overall program and to follow research being conducted by others through participation in seminars, steering committees and government research activities. . . . Science and Technology feels that Exxon's active participation in the international research program, plus the services of Professor Broecker, position us to assess the significance of the CO<sub>2</sub> “greenhouse effect” as soon as the required research results become available and to critically evaluate conclusions drawn from the program which might be biased for political or other reasons.<sup>56</sup>

Eckelmann attached a letter to George Piercy, Senior Vice-President of Exxon, from Exxon's Research & Engineering Company (“ER&E”), an ER&E employee, which explained Exxon's efforts to “determine whether the primary cause of atmospheric CO<sub>2</sub> is from fossil fuel or from forest clearing and to estimate the net global CO<sub>2</sub> flux into the oceans.”<sup>57</sup> The ER&E letter set forth the “knowns and unknowns” about the greenhouse effect. It is clear that ER&E accepted that: (1) CO<sub>2</sub> in the atmosphere is increasing; (2) the CO<sub>2</sub> increase coincided with the Industrial Revolution; and (3) fossil fuels and the clearing of virgin forests are potentially responsible for the CO<sub>2</sub> increase.<sup>58</sup>

In 1980, Henry Shaw and P. P. McCall sent a letter to fellow Exxon employee T. K. Kett titled, “Exxon Research and Engineering Company's Technological Forecast – CO<sub>2</sub> Greenhouse Effect.”<sup>59</sup> The letter described the effects of temperature rise and other climatological factors that are expected to occur due to climate change, and the U.S. Government's programs addressing climate change. The letter also stated:

Projections of scientists active in the area indicate that the contribution of deforestation, which may have been substantial in the past, *will diminish in comparison to the expected rate of fossil fuel combustion in the future.* A number of scientists have postulated that a doubling of the amount of carbon dioxide in the

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 2.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 3-5.

<sup>59</sup> See Exhibit 9.

atmosphere could occur as early as 2035. Calculations recently completed at Exxon Research indicate that using the energy projections from the CONAES (Committee on Nuclear and Alternative Energy Systems) study and the World Energy Conference, a doubling of atmospheric CO<sub>2</sub> can occur at about 2060.<sup>60</sup>

A 1980 Exxon interoffice memo to H. N. Weinberg from N. R. Werthamer proposed an ambitious public-relations plan aimed at “achieving national recognition of Exxon’s CO<sub>2</sub> greenhouse research project.”<sup>61</sup> The memo stated that Exxon’s CO<sub>2</sub> public-relations plan was “significant to Exxon since future public decisions aimed at controlling the build-up of atmospheric CO<sub>2</sub> could impose limits on fossil fuel combustion” and that the plan was “significant to all humanity since, although the CO<sub>2</sub> Greenhouse Effect is not today widely perceived as a threat, the popular media are giving increased attention to doom-saying theories about dramatic climate changes and melting polar icecaps.”<sup>62</sup> The memo illustrates how Exxon tried to “establish Exxon’s credibility as a leading authority on CO<sub>2</sub>/greenhouse science, particularly among opinion leaders who are not scientists.”<sup>63</sup> Exxon sought to achieve its credibility in CO<sub>2</sub> science by: (1) host full day briefings with leaders in the field of CO<sub>2</sub> and Greenhouse effect research; (2) prepare non-technical documents that could be used as handouts at media briefings and mailing pieces for the media and government officials; (3) prepare news releases, film clips, and magazine articles to Exxon’s CO<sub>2</sub> research programs and findings; and (4) arrange public mailings and testimonials for distribution.<sup>64</sup>

As the science around climate change continued to evolve and improve in this timeframe, Exxon was keenly aware of, and accepting of, the scientific consensus concerning man’s role in causing and the impacts from CO<sub>2</sub> emissions. A 1982 letter to A.M. Natkin, Exxon Office of Science and Technology from Roger Cohen, Exxon Director in Research, summarized findings from Exxon’s research in climate modeling.<sup>65</sup> The letter recognized that “over the past several years a clear scientific consensus has emerged regarding the expected climatic effects of increased atmospheric CO<sub>2</sub>. The consensus is that a doubling of atmospheric CO<sub>2</sub> from its pre industrial revolution value would result in an average global temperature rise of  $(3.0 \pm 1.5)^{\circ}$  C.”<sup>66</sup> The letter discussed the opinion of Professor Reginald Newell, who believed natural “buffering” mechanisms would reduce the impact of the increased CO<sub>2</sub> on the atmosphere, but ultimately concludes that the buffering Newell suggests will be countered by larger temperature impacts in the polar regions and that “the results of our research *are in accord with the scientific consensus on the effect of atmospheric CO<sub>2</sub> on climate*. Our research appears to reconcile Newell’s observations and proposed mechanism with the consensus opinion.”<sup>67</sup> Cohen went on

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<sup>60</sup> *Id.* at 3 (p. 2 of report) (emphasis added).

<sup>61</sup> Exhibit 10 at 1.

<sup>62</sup> *Id.* at 3 (memo p. 1).

<sup>63</sup> *Id.* at 4 (memo p. 2).

<sup>64</sup> *See Id.* at 5-6 (memo pp. 3-4).

<sup>65</sup> *See* Exhibit 11.

<sup>66</sup> *Id.* at 1.

<sup>67</sup> *Id.* at 2 (emphasis added).

to discuss the ethical responsibilities of the company given its position in the fossil fuel industry. He states:

[T]here is the potential for our research to attract the attention of the popular news media because of the connection between Exxon's major business and the role of fossil fuel combustion in contributing to the increase of atmospheric CO<sub>2</sub>... the consensus position was that Exxon should continue to conduct scientific research in this area... provide Exxon with the credential required to speak with authority in this area. Furthermore, *our ethical responsibility is to permit the publication of our research in the scientific literature; indeed, otherwise would be a breach of Exxon's public position and ethical credo on honesty and integrity.*<sup>68</sup>

Exxon's internal scientists also recognized the magnitude of the threat posed by increased CO<sub>2</sub> concentrations in the atmosphere. A 1981 Exxon interoffice correspondence to Werner Glass, Exxon Scientist from Roger Cohen, Exxon Director of Research, discussed the impact of increased CO<sub>2</sub> on climate change in the year 2030.<sup>69</sup> In the correspondence, Cohen was responding to a draft statement discussing impacts from increasing CO<sub>2</sub> concentrations and proposed the removal of the language "but changes of a magnitude well short of catastrophic."<sup>70</sup> He argued that although he can agree with the statement that "observable effects in the year 2030 are likely to be 'well short of catastrophic,'" he cautioned that "it is distinctly possible" that the projected scenario "will later produce effects which will indeed be catastrophic (at least for a substantial fraction of the earth's population.)"<sup>71</sup> Cohen went on to explain that the effect of increased atmospheric CO<sub>2</sub> will likely be recognized by 2000 due to "advances in climate modeling and the beginning of real experimental confirmation" and that "predictions based solely on our knowledge of availability and economics become hazardous."<sup>72</sup>

Thus, although Exxon recognized that some details of the full extent of climate change were not fully understood, it was unquestionably aware that climate change was occurring, burning of fossil fuels was at least one of the primary causes of this change, that temperatures would likely rise 1.5° to 4.5° Celsius as a result, and that these changes in climate could produce significant adverse effects.

### **ExxonMobil Shifts its Position to Minimize Findings**

Early on, Exxon began taking steps to control the narrative around its findings on climate change. In December 1980, Henry Shaw provided comments on a draft summary of the events at National Commission on Air Quality's CO<sub>2</sub> Workshop Draft Statement of Findings and Recommendations. Most of the comments to the draft included addition of language that would downplay the affects global warming. For example Shaw proposed changing the sentence "a globally-averaged warming of the lower atmosphere, leading to changes in world climate (such

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<sup>68</sup> *Id.* at 3 (emphasis added).

<sup>69</sup> *See* Exhibit 12.

<sup>70</sup> *Id.* at 1.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

as changes in the distribution of precipitation) almost surely will occur” to the text “a globally-averaged warming of the lower atmosphere, *possibly* leading to changes in world climate (such as changes in the distribution of precipitation) *may* occur.”<sup>73</sup> In an attempt to discredit non-Exxon climate scientists and their research findings Shaw also proposed changing the following paragraph:

[A] group of the National Academy of Sciences’ Climate Research Board recently predicted that a global increase in 3 degrees C plus or minus 1.5 degree Celsius in the annual average temperature will probably result from a doubling of the atmospheric concentration of CO<sub>2</sub>.

To this:

[A]n *ad hoc* group of the National Academy of Sciences’ Climate Research Board recently *evaluated the results from a number of climatological models, and indicated that based on the current state-of-the-art (which is quite rudimentary), a global increase in 3 degrees C plus or minus 1.5 degree Celsius in the annual average temperature is the best estimate that can be made for a doubling of the atmospheric concentration of CO<sub>2</sub>.*<sup>74</sup>

A 1984 presentation by A.J. Callegari, entitled: “Corporate Research Program in Climate/CO<sub>2</sub> Greenhouse,” discussed Exxon’s objectives and approaches to its climate change research.<sup>75</sup> As stated, the objectives presented were to:

- Provide Exxon with a source of expertise in an area which could have major impact on future business environment
- Help stimulate and contribute to a broad scientific investigation of CO<sub>2</sub> effects<sup>76</sup>

The presentation emphasized that Exxon should be “selective” of outside activities it would support. The presentation further emphasized that Exxon should support studies that specifically focus on the oceanic role in mitigating future CO<sub>2</sub> buildup and explore physical explanations for climate variations.<sup>77</sup> These studies would aid Exxon in continuing to perpetuate a message counter to its own research: that climate change is not induced from the burning of fossil fuels.

A 1988 Exxon internal document provided a draft on “The Greenhouse Effect.”<sup>78</sup> The document addressed the impact fossil fuels have on global warming:

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<sup>73</sup> See Exhibit 13 at 3 (p. 1 of the Statement) (emphasis added).

<sup>74</sup> *Id.* (emphasis added).

<sup>75</sup> See Exhibit 14.

<sup>76</sup> *Id.* at 2.

<sup>77</sup> *Id.* at 10, 16.

<sup>78</sup> See Exhibit 15.

- The greenhouse effect may be one of the most significant environmental issues for the 1990s
- The principal greenhouse gases are by-products of fossil fuel combustion
- There is scientific agreement on two points:
  - Atmospheric CO<sub>2</sub> is increasing and could double in 100 years.
  - Fossil fuels contribute about five billion tons/year of CO<sub>2</sub>.<sup>79</sup>

The document also stated that Exxon had been conducting research on the impacts of fossil fuels and that “Exxon is providing leadership through API in developing the petroleum industry position.”<sup>80</sup> Despite the fact that Exxon scientists had internally declared there was a scientific consensus regarding the impacts of fossil fuel in the increase of CO<sub>2</sub> in the atmosphere, the company stated that its position was to “[e]mphasize the uncertainties in scientific conclusions regarding the potential enhanced greenhouse effect.”<sup>81</sup> Exxon maintained that it “is not conducting specific impact studies with respect to particular company operations or geographic regions” and that it “has not modified its energy outlook or forecasts to account for possible changes in fossil fuel demand or utilization due to the greenhouse effect.”<sup>82</sup> The document concluded by stating that Exxon will “[r]esist the overstatement and sensationalization of potential greenhouse effect which could lead to noneconomic development of nonfossil fuel resources.”<sup>83</sup>

A 1989 presentation to Exxon Board of Directors, by Duane G. Levine, Exxon’s Manager of Science and Strategy Development, entitled “Potential Enhanced Greenhouse Effects, Status and Outlook,” was given a year after NASA climate scientist James Hansen warned Congress that global warming was already occurring.<sup>84</sup> Levine stated to the board:

In spite of the rush by some participants in the greenhouse debate to declare that the science has demonstrated the existence of [global warming] today... I do not believe such is the case. Enhanced greenhouse is still deeply imbedded in scientific uncertainty, and we will require substantial additional investigation to determine the degree to which its effects might be experienced in the future.<sup>85</sup>

### **ExxonMobil Turns to Denial and Deception**

In subsequent years, Exxon moved further away from its own scientific conclusions, and began denying or discrediting the very conclusions its own scientists had reached or agreed with. A fall 1996 Exxon Corporation publication entitled “Global warming: who’s right?” includes an

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<sup>79</sup> *Id.* at 2-4.

<sup>80</sup> *Id.* at 7.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 8.

<sup>83</sup> *Id.*

<sup>84</sup> *See* Exhibit 16.

<sup>85</sup> *Id.* at 2 (p. 1 of the presentation).

article by Lee Raymond, Chairman of the Exxon corporation.<sup>86</sup> In the article Raymond warned that “a multinational effort, under the auspices of the United Nations, is under way to cut the use of fossil fuels, based on the unproven theory that they affect the earth’s climate.”<sup>87</sup> Raymond further stated that “scientific evidence remains inconclusive as to whether human activities affect global climate.”<sup>88</sup> In regard to Exxon’s position on taking action in the fight against climate change Raymond stated:

Meeting unrealistic targets for reductions in greenhouse gas emissions will require extreme measures involving increased central government control over energy use. Such measures would include higher energy taxes, fuel rationing and other steps designed to limit energy consumption. . . . Taking drastic action immediately is unnecessary since many scientists agree there’s ample time to better understand climate systems.<sup>89</sup>

Thus, far from where Exxon started in the 1970s, where it recognized the reality of climate change, recognized that burning fossil fuels was one of the primary causes of climate change, and recognized the potentially drastic impacts from increased carbon concentrations in the atmosphere, by the late 1990s, Exxon was pushing a new narrative that climate change was uncertain and unproven, that burning fossil fuels may not impact climate change, and that “most scientists agree” that there was no need to take any steps as of 1996 to address the problem.

Mobil Oil was a founding member of the Global Climate Coalition (GCC), an international lobbyist group of businesses opposing action to reduce greenhouse gas emissions. In 1996 Gregory J. Dana, Vice President and Technical Director of GCC, sent the Association of International Automobile Manufacturers’ (AIAM) Technical Committee a primer on global climate change science developed by the GCC for comments.<sup>90</sup> The primer aimed at raising skepticism about the adverse impact humans have on global warming. Included in the package was a note from Lenny Bernstein of Mobil Oil, stating in that the primer had “been revised to more directly address recent statements from IPCC Working Group I.”<sup>91</sup> Shortly before the primer was released, the IPCC took the position that “the balance of evidence suggests that there is a discernable human influence on global climate.”<sup>92</sup>

The GCC disagreed with the IPCC’s position and made clear that it “believes that the IPCC statement goes beyond what can be justified by current scientific knowledge.”<sup>93</sup> The primer went on to state that “it is still not possible to accurately predict the magnitude (if any), timing or impact of climate change as a result of the increase in greenhouse gas concentrations.”<sup>94</sup> Most of the material in the primer revolves around “alternate explanations for

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<sup>86</sup> See Exhibit 17.

<sup>87</sup> *Id.* at 2.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 3.

<sup>90</sup> See Exhibit 18.

<sup>91</sup> *Id.* at 2.

<sup>92</sup> *Id.* at 3 (primer p. 1).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 5 (primer p. 3).



the climate change which has occurred over the last 120 years,” and discussion on whether future climate can be accurately predicted.<sup>95</sup>

This same narrative of uncertainty continued. As he was speaking at the 1997 World Petroleum Congress in China on the topics of fossil fuel, global warming and the Kyoto protocol, Exxon CEO Lee Raymond took the position that proposals to curtail use of fossil fuels “are neither prudent nor practical.”<sup>96</sup> Raymond stated that “[p]roponents of the [Kyoto protocol] agreements say they are necessary because burning fossil fuels causes global warming.”<sup>97</sup> Indeed, through much of his remarks, and contrary to Exxon’s own prior research and beliefs, Raymond stressed that global warming is not occurring and that fluctuations in temperatures are likely the result of natural changes in earth’s climate.<sup>98</sup> He argued that global climate change is not certain and that “[i]t is highly unlikely that the temperature in the middle of the next century will be affected whether policies are enacted now or 20 years from now.”<sup>99</sup> Raymond warned developing countries that the Kyoto Protocol would limit economic growth and that they “will suffer because of their exports as the economies of industrialized nations slows.”<sup>100</sup> Raymond concluded his speech to the World Petroleum Conference by stating:

Before we make choices about global climate policies, we need an open debate on the science, an analysis of the risks, and a careful consideration of the costs and benefits. So far, this had not taken place and until it has, I hope that the governments of this region will work with us to resist policies that could strangle economic growth.<sup>101</sup>

### **ExxonMobil’s Attempts to Influence Policy-Makers Through Front Groups and Public Relations Activities**

At the same time, Exxon sought to effectuate a media strategy to instill widespread doubt and disbelief concerning the impacts and causes of climate change. In April 1998, Exxon took part in the planning of a \$6 million industry public relations offensive – the American Petroleum Institute’s (API) Global Climate Science Communications Action Plan (GCSCAP). The plan aimed to inject uncertainty into the U.S. public’s perception of climate science in the run up to the climate negotiations in Buenos Aires that November. The Exxon representative in the group formulating this plan was Randy Randol, a lobbyist. The GCSCAP stated:

The advocates of global warming have been successful on the basis of skillfully misrepresenting the science and the extent of agreement on the science, while industry and its partners ceded the science and fought on the economic issues. Yet if we can show that the science does not support the Kyoto treaty – which most true climate

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<sup>95</sup> *Id.* at 15 (primer p. 13).

<sup>96</sup> Exhibit 19 at 4.

<sup>97</sup> *Id.* at 8.

<sup>98</sup> *Id.* at 10-11.

<sup>99</sup> *Id.* at 11.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 11-12.

scientists believe to be the case – this puts the US in a stronger moral position and frees its negotiators from the need to make concessions as a defense against perceived selfish economic concerns.<sup>102</sup>

The GCSCAP went on to lay out objectives that, when completed, victory will be achieved:

- Average citizens “understand” (recognize) uncertainties in climate science; recognition of uncertainties becomes “conventional wisdom”
- Media “understands” (recognizes) uncertainties in climate science
- Media coverage reflects balance on climate science and recognition of the validity of viewpoints that challenge the current “conventional wisdom”
- Industry senior leadership understands uncertainties in climate science, making them stronger ambassadors to those who shape climate policy
- Those promoting the Kyoto treaty on the basis of extant science appear to be out of touch with reality<sup>103</sup>

To achieve those “victory goals,” the GCSCAP identified three different strategies. First, the media relations strategy aimed to recruit and train five “independent scientists... without a long history of visibility in the climate debate” to participate in media outreach.<sup>104</sup> Next, the GCSAP also proposed a global science and information source tactic that aimed to “[d]evelop and implement a program to inject credible science and scientific accountability into the global climate debate, thereby raising questions about and undercutting the ‘prevailing scientific wisdom.’”<sup>105</sup> Finally, the GCSCAP outlined an outreach and education program that would “educate members of Congress, state officials, industry leadership, and school teachers/students about uncertainties in climate science,” so that policy makers “will be able to raise such serious questions about the Kyoto treaty’s scientific underpinnings that American policy makers not only will refuse to endorse it, they will seek to prevent progress towards implementation.”<sup>106</sup> The long-term goal of the outreach and education program was to “begin to erect a barrier against further efforts to impose Kyoto-like measures in the future.”<sup>107</sup>

A 2000 letter to Peter Altman, ExxonMobil’s National Coordinator, from Lloyd D. Keigwin, of the Woods Hole Oceanographic Institution provides an example of how ExxonMobil manipulated data to mislead the public on the question of human-induced climate change.<sup>108</sup> Keigwin stated that although climate research was “well-received” by his scientific colleagues, “[a]mong non-scientists with a political agenda, the results have been

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<sup>102</sup> Exhibit 26 at 3 (plan p. 2).

<sup>103</sup> *Id.* at 4 (plan p. 3).

<sup>104</sup> *Id.* at 5 (plan p. 4).

<sup>105</sup> *Id.* at 6 (plan p. 5).

<sup>106</sup> *Id.* at 7 (plan p. 6).

<sup>107</sup> *Id.*

<sup>108</sup> *See* Exhibit 21.

manipulated.”<sup>109</sup> In the spring of 2000, ExxonMobil published an ad in the Washington Post and New York Times titled “Uncertain Science.”<sup>110</sup> In the ad, ExxonMobil used Keigwin’s data about the temperature changes in Sargasso Sea to support their assertion that “climate and greenhouse gas levels experience significant natural variability for reasons having nothing to do with human activity.”<sup>111</sup> In his letter to Peter Altimen, Keigwin addressed how ExxonMobil’s manipulation of his data was irresponsible and misleading, specifically that he:

believe[s] ExxonMobil has been misleading in its use of the Sargasso Sea data. There’s really no way those results bear on the question of human-induced climate warming, and we already knew that there were climate cycles during recent millennia. [He] think[s] the sad thing is that a company with the resources of ExxonMobil is exploiting the data for political purposes when they could actually get much better press by supporting research into the role of the ocean in climate change.<sup>112</sup>

In 2000, ExxonMobil, took out a lengthy newspaper ad responding to the Clinton Administration’s report on the potential effects of climate change on different regions and industries in the United States.<sup>113</sup> The ad stated in part that the Clinton report’s “language and logic appear designed to emphasize selective results to convince people that climate change will adversely impact their lives” and warned that “[t]he report is written as a political document, not an objective summary of the underlying science.”<sup>114</sup>

In 2000 Lee Raymond, ExxonMobil CEO penned an OpEd entitled “The Path Forward on Climate Change,” in which he laid out that ExxonMobil’s belief that the role of government in climate change research “should be to support and encourage research on climate science and private investment in technology, rather than to target programs that support particular views.”<sup>115</sup> Despite Raymond acknowledging that “the potential for climate change caused by increases in atmospheric gases, carbon dioxide and other greenhouse gases may pose a legitimate long-term risk,” he continued to argue that there is not “a sufficient scientific understanding of climate change to make reasonable predictions and/or justify drastic measures.”<sup>116</sup>

In a 2004 newspaper ad, ExxonMobil continued its effort to raise public skepticism regarding the fact that humans play a significant role in climate change. Again, the ad emphasized how “[s]cientific uncertainties continue to limit our ability to make objective,

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<sup>109</sup> *Id.* at 1.

<sup>110</sup> See Thaddeus Herrick, *Exxon Mobil Uses Scientist's Data As Evidence of Natural Warming*, WALL STREET J. (Mar. 2, 2001), <http://www.wsj.com/articles/SB985216362941657854>; see also *Unsettled Science*, EXXONMOBIL, <https://assets.documentcloud.org/documents/705605/xom-nyt-2000-3-23-unsettledscience.pdf>.

<sup>111</sup> See *Unsettled Science*, *supra* note 110.

<sup>112</sup> Exhibit 21 at 2.

<sup>113</sup> See Exhibit 22.

<sup>114</sup> *Id.*

<sup>115</sup> Exhibit 23 at 1.

<sup>116</sup> *Id.* at 2.

quantitative determinations regarding the human role in recent climate change or the degree and consequences of future change.”<sup>117</sup>

Outside groups funded by ExxonMobil also contributed to the efforts to influence policy makers. In a 1999 open letter to President Clinton the George C. Marshall Institute, heavily funded by ExxonMobil, tried to cast doubt on the certainty of climate change and urged the Administration to delay action on global warming:

With such uncertain science, and the serious economic growth and international issues involved, our global policies encompassed in the Kyoto accords need to be reoriented from a response today to a predicted man-made threat ? [sic] to preparing a global energy posture which could effectively respond to future man-made climate changes if they become more certain and significant.<sup>118</sup>

The George C. Marshall Institute argued that “the total cost of responding to man-made global warming would not be increased by a delay of several decades.”<sup>119</sup>

After the election of George W. Bush in 2000, ExxonMobil continued to seek to influence who made policy and how it was made in ways that undermined any effort to legislate climate issues. In a 2001 memo from Randy Randol, ExxonMobil lobbyist, to John Howard, Center for Environmental Quality, Randol outlined issues related to the ongoing IPCC negotiations on the Third Assessment Report.<sup>120</sup> In the memo, Randol recommended that the Administration do the following:

- Restructure the US attendance at upcoming IPCC meetings to assure none of the Clinton/Gore proponents are involved in any decisional activities.
- Appoint Dr. John Christy, University of Alabama-Huntsville (lead author – Working Group I) as science lead for the balance of the IPCC process (replace Bierbaum and MacCracken).
- Appoint Dr. Richard Lindzen, MIT (lead author – Working Group I) as a co-lead to conduct an immediate review of the comments on the working group reports (I, II, and III) and to review the US comments to be submitted (II, III).
- Detail Dr. Joe Friday, National Research Council-Board on Atmospheric Sciences and Climate (coordinated the “Research Pathways for the Next Decade report that

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<sup>117</sup> See, *A Range of Opinions On Climate Change At ExxonMobil*, N.Y. TIMES (Nov. 6, 2015), <http://www.nytimes.com/interactive/2015/11/06/science/exxon-mobil-global-warming-statements-climate-change.html>.

<sup>118</sup> *It is Time to Move Beyond Kyoto*, MARSHALL INSTITUTE (Jan. 4, 1999), <http://marshall.org/climate-change/it-is-time-to-move-beyond-kyoto>.

<sup>119</sup> *Id.*

<sup>120</sup> See Exhibit 24.

the Clinton Admin tried to bury), to work with Christy/Lindzen.”

- Detail someone from the State Department to work under the direction of Christy/Lindzen for the “consensus negotiations.”
- Request that the April 4-6 full IPCC meeting be deferred at least 30 days until a reassessment of the US input can be made
- Request that all action related to the Third Assessment Report is deferred until the IPCC process is completed (30-45 days), [including] the Watson release of the draft Synthesis Report<sup>121</sup>

In a 2002 letter from Michael MacCracken, retiring Senior Scientist from the Office of the U.S. Global Change Research Program, to Lee Raymond, ExxonMobil CEO, MacCracken addressed a number of “criticisms” in the 2001 memo from Randol to Howard as well as addressing other ExxonMobil attacks on the National Assessment.<sup>122</sup> MacCracken stated:

On August 10, 2000, ExxonMobil ran an advertisement in the Washington Post entitled ‘Political cart before a scientific horse’ that was severely critical of the draft synthesis report. Without having participated in the Federal Register review process that had led up to the draft report being made available for public comment (after two rounds of technical review), nor having participated in the public meetings discussing the draft report and its contents until the very end, ExxonMobil proceeded to make a number of charges in the advertisement, generally based on rather poor understanding of what was being done and why the National Assessment was being undertaken.<sup>123</sup>

Specifically addressing the 2001 Randol memo to the Administration:

In February 2001 Dr. A. G. Randol of ExxonMobil sent a facsimile to the new Administration urging the termination of the involvement of four individuals involved in climate change activities. . . . With the conclusion of the overall assessment activities, my assignment with the USGCRP will be ending at the end of September; at that point, the last of the “ExxonMobil Four” will be out of the Administration.<sup>124</sup>

MacCracken concluded stating:

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<sup>121</sup> *Id.* at 5 (p. 4 of memo).

<sup>122</sup> *See* Exhibit 25.

<sup>123</sup> *Id.* at 1.

<sup>124</sup> *Id.* at 5, 6.

ExxonMobil is on the wrong side of the international scientific community, the wrong side of the findings of all the world's leading academies of science, and the wrong side of virtually all of the world's countries as expressed, without dissent, in the IPCC reports. As well, ExxonMobil may well find itself having to comply with the Kyoto Protocol in its international operations even if it has discouraged movement on the issue here in the US. To call ExxonMobil's position out of the mainstream is thus a gross understatement. There can be all kinds of perspectives about what one might or might not do to start to limit the extent of the change, but to be in opposition to the key scientific findings is rather appalling for such an established and scientific organization.<sup>125</sup>

In a 2002 fax from Randy Randol to Phil Cooney, Center for Environmental Quality, Randol attached a 2002 letter from Brian P. Flannery, ExxonMobil, Science, Strategy and Programs Manager to Dr. John H. Marburger, Assistant to the President for Science and Technology, telling Howard that he (Randol) will call to discuss the attached letter.<sup>126</sup> In the letter, ExxonMobil provided recommendations to the administration on ways to "improve the US approach to scientific research on climate change."<sup>127</sup> ExxonMobil's proposal contained three elements: (1) Focused research to address known key areas of scientific uncertainty with quantitative deliverables and an assessment process if their policy relevance; (2) a US assessment process that would augment and contribute to the IPCC; and (3) increased US capacity in climate modelling and monitoring.<sup>128</sup>

Attached to the letter was a document entitled "Recommendations to Improve US Global Climate Change Research and Assessment Capabilities (June 15, 2001)." The attachment discussed the IPCC and how:

Anyone who has been involved with the [IPCC] recognizes its limitations and politicization. . . . A major frustration to many is the all-too-apparent bias of IPCC to downplay the significance of scientific uncertainty and gaps, and the role that future research might or might not play in resolving them.<sup>129</sup>

ExxonMobil also attempted to hide its attempts to influence policy makers. In November 2005, at a joint hearing of the Senate Energy and Commerce committees, Lee Raymond, ExxonMobil's Chief Executive, testified that its firm did not participate in Vice President Cheney's energy task force in 2001.<sup>130</sup> The task force's activities attracted complaints from

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<sup>125</sup> *Id.* at 6.

<sup>126</sup> *See* Exhibit 26.

<sup>127</sup> *Id.* at 2 (p. 1 of letter).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 5 (p. 4 of letter).

<sup>130</sup> *See Energy Prices and Profits: Joint Hearing Before the S. Comm. On Commerce, Science, and Transportation and the S. Comm. On Energy and Natural Resources*, 109th Congress at 95 (2005), <https://www.gpo.gov/fdsys/pkg/CHRG-109shrg26108/pdf/CHRG-109shrg26108.pdf> ("Senator LAUTENBERG. ...

environmentalists, who said they were shut out of the task force discussions while corporate interests were present. The meetings were held in secret and the White House refused to release a list of participants.<sup>131</sup> The task force was made up primarily of Cabinet-level officials. However, a White House document obtained by The Washington Post the following week shows that officials from ExxonMobil met in the White House complex with Cheney aids who were developing a national energy policy, parts of which became law and parts of which were still being debated.<sup>132</sup>

### **ExxonMobil's Funding of Climate Change Denying Organizations**

In ExxonMobil's 2005 Foundation IRS 990 Report, the company noted that of the \$151,500 contributed to the American Legislative Exchange Council (ALEC), \$80,000 was earmarked for "Energy Sustainability Project (Climate Change)" and \$21,500 was earmarked for "Climate Change Environmental Outreach." That \$101,500 was just a fraction of ExxonMobil's 2005 contributions to organizations tagged as a climate specific grant.<sup>133</sup>

ALEC is a nonprofit organization of conservative state legislators and corporate representatives that drafts and shares model state-level legislation for elected officials to introduce.<sup>134</sup> ALEC has proposed model legislation that states that there is a "great deal of scientific uncertainty" around climate change, that there could be "beneficial climatic changes," and promotes research into the beneficial effects of climate change.<sup>135</sup> ExxonMobil contributions to ALEC from 2006 to 2014 total over \$500,000.<sup>136</sup>

After 2006 ExxonMobil stopped noting on its 990 forms whether a grant was climate specific, but it continued to provide grants to ALEC and other climate change denying organizations such as the American Enterprise Institute (AEI), the George C. Marshall Institute (now called the CO<sub>2</sub> Coalition), the National Black Chamber of Commerce (NBCC), the Texas Public Policy Foundation (TPPF), and the Heartland Institute. ExxonMobil's contributions to these groups alone totaled more than \$4 million through 2014.<sup>137</sup>

AEI has a long track-record of distorting the science and solutions of climate change which continues today.<sup>138</sup> In publications and statements, AEI deemphasizes the environmental

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Did your company or any representative of your companies participate in Vice President Cheney's energy task force in 2001? Mr. RAYMOND. No.").

<sup>131</sup> See Joseph Kahn, *Cheney Refuses to Release Energy Task Force Records*, N.Y. TIMES (Aug. 4, 2001), <http://www.nytimes.com/2001/08/04/us/cheney-refuses-to-release-energy-task-force-records.html>.

<sup>132</sup> See Dana Milbank & Justin Blum, *Document Says Oil Chiefs Met With Cheney Task Force*, WASH. POST (Nov. 16, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/15/AR2005111501842.html>.

<sup>133</sup> See <https://www.documentcloud.org/documents/1019882-2005-exxonmobil-foundation-form-990.html>.

<sup>134</sup> See generally ALEC, <https://www.alec.org>.

<sup>135</sup> See ALEC, *Interstate Research Commission On Climatic Change Act* §§ 2(D), 2(C), 3(1), 4(2), <https://www.alec.org/model-policy/interstate-research-commission-on-climatic-change-act/> (emphasis added).

<sup>136</sup> See Exhibit 27.

<sup>137</sup> *Id.*

<sup>138</sup> See Jeffrey Sachs, *How the AEI Distorts the Climate Debate*, HUFF. POST (Apr. 10, 2014), [http://www.huffingtonpost.com/jeffrey-sachs/how-the-aei-distorts-the\\_b\\_4751680.html](http://www.huffingtonpost.com/jeffrey-sachs/how-the-aei-distorts-the_b_4751680.html).

and economic risks of climate change and exaggerates the costs of addressing the problem.<sup>139</sup> AEI's tactics also undermine scientific integrity around climate change research.<sup>140</sup> In 2007, letters sent by AEI to scientists around the globe offered payments of \$10,000 for articles to undermine the United Nations Intergovernmental Panel on Climate Change's report.<sup>141</sup> ExxonMobil contributions to AEI from 2006 to 2014 total more than \$2 million.<sup>142</sup>

The George Marshall Institute (GMI), since its founding 1984, has been one of the leading think tanks to dispute anthropogenic climate change. GMI publishes papers and holds "roundtables" featuring controversial climate change skeptics.<sup>143</sup> At the end of 2015, chairman Will Happer and CEO William O'Keefe rebranded GMI's climate denial effort as the CO<sub>2</sub> Coalition for the purpose of: "educating thought leaders, policy makers, and the public about the important contribution made by carbon dioxide and fossil fuels to our lives and the economy."<sup>144</sup> ExxonMobil contributions to the George C. Marshall Institute and the rebranded CO<sub>2</sub> Coalition from 2006 to 2011 total \$235,000.<sup>145</sup>

On June 12, 1996 in a Wall Street Journal editorial entitled "A Major Deception on Global Warming," the founding chairman of the Exxon-funded GMI and prominent climate denier, Fred Seitz, attempts to undermine the credibility of the IPCC.<sup>146</sup>

In my more than 60 years as a member of the American scientific community, including service as president of both the National Academy of Sciences and the American Physical Society, I have never witnessed a more disturbing corruption of the peer-review process than the events that led to this IPCC report.

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<sup>139</sup> See Kenneth Green, *Clouds of Global-Warming Hysteria*, NATIONAL REVIEW ONLINE (May 8, 2006), <https://www.aei.org/publication/clouds-of-global-warming-hysteria/>; James Glassman, *Kyoto Is Still Doomed*, WALL ST. J. (Jul 24, 2001), <http://www.wsj.com/articles/SB995927796905808336>; Steven Hayward, *Acclimatizing: How to Think Sensibly, or Ridiculously, about Global Warming*, AMERICAN ENTERPRISE INSTITUTE (May 15, 2006), [https://web.archive.org/web/20081226012342/http://www.aei.org/publications/filter.all.pubID.24401/pub\\_detail.asp](https://web.archive.org/web/20081226012342/http://www.aei.org/publications/filter.all.pubID.24401/pub_detail.asp), (Archived from the original on December 26, 2008, Retrieved December 6, 2016); Michael Rubin, *Kerry's wasteful South Pole Trip*, AEI IDEAS (Dec. 5, 2016), <http://www.aei.org/publication/kerrys-wasteful-south-pole-trip/>

<sup>140</sup> See Sachs, *supra*, note 138. In 2014, AEI and the head of its energy studies department, Benjamin Zycher, faced criticism for distorting findings on global warming from Jeffrey Sachs, a leading environmental studies scholar, Columbia University professor, economist, and United Nations advisor. *Id.*

<sup>141</sup> See Ian Sample, *Scientists offered cash to dispute climate study*, THE GUARDIAN (Feb. 2, 2007), <http://www.theguardian.com/environment/2007/feb/02/frontpagenews.climatechange>; Juliet Elperin, *AEI Critiques of Warming Questioned*, WASH. POST (Feb. 5, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/04/AR2007020401213.html>. "Andrew Dessler, a Texas A&M atmospheric science professor... said the move represents an effort by climate skeptics to create 'reasonable doubt' in the minds of policymakers who are debating whether to limit greenhouse gases . . ." *Id.*

<sup>142</sup> See Exhibit 27.

<sup>143</sup> See *Roundtable Speakers*, GEORGE MARSHALL INSTITUTE, <https://web.archive.org/web/20100706072622/http://www.marshall.org/speakers.php> (Archived from the original on July 6, 2010, Retrieved December 6, 2016). George Marshall Institute have included prominent climate deniers such as Roger Bate, Willie Soon, Patrick Michaels, Margo Thorning, and Sallie Baliunas. *Id.*

<sup>144</sup> See *About*, CO<sub>2</sub> COALITION, <http://co2coalition.org/about>. (last visited December 6, 2016).

<sup>145</sup> See Exhibit 27.

<sup>146</sup> Fred Seitz, *A Major Deception On 'Global Warming,'* WALL ST. J., A 16 (June 12, 1996), [http://stephenschneider.stanford.edu/Publications/PDF\\_Papers/WSJ\\_June12.pdf](http://stephenschneider.stanford.edu/Publications/PDF_Papers/WSJ_June12.pdf).



In his editorial, Seitz makes accusations aimed at IPCC scientists:

I am in no position to know who made the major changes in Chapter 8; but the report's lead author, Benjamin D. Santer, must presumably take the major responsibility. . . . Whatever the intent was of those who made these significant changes, their effect is to deceive policy makers and the public into believing that the scientific evidence shows human activities are causing global warming.

In the editorial, Seitz also advocates for abandoning the IPCC process.

If the IPCC is incapable of following its most basic procedures, it would be best to abandon the entire IPCC process, or at least that part that is concerned with the scientific evidence on climate change, and look for more reliable sources of advice to governments on this important question.

Seitz was previously employed by RJR Reynolds, a company that spread doubt about the health effects of tobacco.<sup>147</sup> Later, Seitz would be involved in a controversial petition calling for rejection of any international global warming agreement.<sup>148</sup>

NBCC is a nonprofit organization that uses its contributions to “[f]ormulate positions on issues of commonality such as Global Warming Treaty, . . . National Air Ambient Quality, OSHA laws, . . . and regulatory affairs.”<sup>149</sup> The organization’s website states:

Actually, there is no sound science to support the claims of Global Warming. If you look at the last ten years, there has been a sizeable drop in hurricanes/cyclones around the world. . . . Certainly the climate changes as time goes on – sometimes for the better and sometimes for the worse. So far, there is no pattern that seems to be very detrimental to our earth.<sup>150</sup>

ExxonMobil contributions to NBCC from 2006 to 2014 total \$850,000.<sup>151</sup>

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<sup>147</sup> See Dennis Hevesi, *Frederick Seitz, Physicist Who Led Skeptics of Global Warming, Dies at 96*, N.Y. TIMES (Mar. 6, 2008), <http://www.nytimes.com/2008/03/06/us/06seitz.html>; Osha Gray Davidson, *From Tobacco to Climate Change, ‘Merchants of Doubt’ Undermined the Science*, GRIST (Apr. 17, 2010), <http://grist.org/article/from-tobacco-to-climate-change-merchants-of-doubt-undermined-the-science/full/>.

<sup>148</sup> See Hevesi, *supra* note 147; see also Joe Brown, *700 Club Anchor Touted Global Warming Skeptics’ Petition Reportedly Signed by Non-Scientists, Fictitious Characters*, MEDIA MATTERS (Feb. 14, 2006), <http://mediamatters.org/research/2006/02/14/700-club-anchor-touted-global-warming-skeptics/134878>.

<sup>149</sup> See National Black Chamber of Commerce, ENERGY AND POLICY INSTITUTE, <http://www.energyandpolicy.org/national-black-chamber-of-commerce/> (last visited Dec. 6, 2016).

<sup>150</sup> See Harry Alford, *Environmental Racism, Global Warming and Climate Change*, NATIONAL BLACK CHAMBER OF COMMERCE, <http://www.nationalbcc.org/news/beyond-the-rhetoric/1623-environmental-racism-global-warming-and-climate-change> (last visited Dec. 6, 2016).

<sup>151</sup> See Exhibit 27.

TPPF is a conservative think tank nonprofit guided by “liberty, personal responsibility, and free enterprise.”<sup>152</sup> The TPPF advocates for deregulation and has been the subject of criticism as many of its donors are members of the energy industry that would benefit from its advocacy.<sup>153</sup> Senior Fellow at TPPF, Kathleen White, writes:

Blaming fossil fuel-based energy for horrific natural disasters is akin to ancient cultures blaming extreme weather on the wrath of the gods... The growing divergence between actual temperatures and the climate models of the IPCC show that the science is not – as is so stridently asserted – “settled.” Let sound science admit the uncertainty, answer the questions and not vilify the questioner.<sup>154</sup>

ExxonMobil contributions to TPPF from 2006 – 2011 total \$85,000.<sup>155</sup>

The Heartland Institute, another nonprofit think tank, is at the forefront of denying the scientific evidence for man-made climate change.<sup>156</sup> In 1998, a memo leaked to *The New York Times* revealed ExxonMobil and other corporations convened by the American Petroleum Institute (API) planned to confuse the public about the scientific certainty of global warming using the media, science community, and education system.<sup>157</sup> Heartland Institute has since implemented the “strategies and tactics” outlined in the API memo, such as their “Climate Change Reconsidered II” report distributed to K-12 and college teachers nationally, asking educators:

Will you tell your students the “science is settled” on global warming, as the United Nations’ Intergovernmental Panel on

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<sup>152</sup> See *Mission*, Texas Public Policy Foundation, <http://www.texaspolicy.com/about/mission>, (last visited December 6, 2016).

<sup>153</sup> See Forrest Wilder, *Revealed: The Corporations and Billionaires that Fund the Texas Public Policy Foundation*, TEXAS OBSERVER (Aug. 24, 2012) <https://www.texasobserver.org/revealed-the-corporations-and-billionaires-that-fund-the-texas-public-policy-foundation/>; Kathleen Hartnett White, “*Here’s What Will Not Be Discussed at the Upcoming U.N. Climate Conference in Paris*,” THE DAILY SIGNAL (Nov. 18, 2015), <http://dailysignal.com/2015/11/18/heres-what-will-not-be-discussed-at-the-upcoming-u-n-climate-conference-in-paris/>; Bud Brigham, *Clean Power Plan Allows Government to Control Our Lives*, TEXAS PUBLIC POLICY FOUNDATION, (Nov. 30, 2015), <http://www.webcitation.org/6dSfJ4B8Z>, (Archived from the original on December 1, 2015, Retrieved December 6, 2016).

<sup>154</sup> See Kathleen Hartnett White, *A Gathering Storm*, NAT’L REVIEW (Jan. 29, 2014), <http://www.nationalreview.com/article/369772/gathering-storm-kathleen-hartnett-white>; Kathleen Hartnett White, Texas Public Policy Foundation, *Bundle up: The climate is changing*, (Jun. 9, 2013), <http://old.texaspolicy.com/center/energy-environment/opinions/bundle-climate-changing>.

<sup>155</sup> See Exhibit 27.

<sup>156</sup> See *Climate Change*, THE HEARTLAND INSTITUTE, <https://www.heartland.org/topics/climate-change/index.html>, (last visited Dec. 6, 2016); Russell Cook, *The ‘Non-smoking Gun’ Leaked Memos Pattern*, THE HEARTLAND INSTITUTE, (Nov. 25, 2014) <http://blog.heartland.org/2014/11/the-non-smoking-gun-leaked-memos-pattern/>; Joseph Bast, *Global Warming Madness and How to Stop It*, THE HEARTLAND INSTITUTE, (Feb. 1, 2007) <http://www.webcitation.org/6dHrIYgGD>; see also Global Warming Skeptic Organizations, UNION OF CONCERNED SCIENTISTS, [http://www.ucsus.org/global\\_warming/solutions/fight-misinformation/global-warming-skeptic.html#.WEcaM-YrI2x](http://www.ucsus.org/global_warming/solutions/fight-misinformation/global-warming-skeptic.html#.WEcaM-YrI2x), (last visited Dec. 6, 2016).

<sup>157</sup> See John Cushman Jr., *Industrial Group Plans to Battle Climate Treaty*, N.Y. TIMES (Apr. 26, 1998) <http://www.nytimes.com/1998/04/26/us/industrial-group-plans-to-battle-climate-treaty.html>.

Climate Change (IPCC) claims it is? Or will you explain to them that real science is never settled—that the essence of science is skepticism...?<sup>158</sup>

Since 2008, Heartland Institute has hosted an annual International Conference on Climate Change (ICCC) where dozens of climate change skeptics converge to discuss issues and strategies to oppose climate action.<sup>159</sup> As recently as 2015, in a fundraising letter to donors, President Joseph Bast lauds:

You may also know us from our work exposing the shoddy science and missing economics behind the global warming delusion. Our videos, books, studies, and international conferences changed the debate and led to the defeat of 'cap and trade'.<sup>160</sup>

ExxonMobil contributions to the Heartland Institute in 2006 totaled \$115,000.<sup>161</sup>

In 2002, after intensive lobbying from ExxonMobil to reject the Kyoto Protocol, Bob B. Peterson, Chief Executive of Imperial Oil, ExxonMobil's Subsidiary in Canada, insisted that the Kyoto protocol "has nothing to do with the environment" and that it was "a wealth-transfer scheme between developed and developing nations. And it's been couched and clothed in some kind of environmental movement."<sup>162</sup>

This funding has continued despite commitments made by ExxonMobil to cease such activities. For example, in July 2005, ExxonMobil stated to the Royal Society that it would no longer fund groups that propagated climate-change misinformation. Yet, in a 2006 letter from Bob Ward, Senior Manager of Policy Communications at the Royal Society, to Nick Thomas, Director of Corporate Affairs for ExxonMobil in the United Kingdom, Ward expressed his disdain for Exxon's corporate reports and feels that they leave "readers with such an inaccurate and misleading impression of the evidence on the causes of climate change that is documented in the scientific literature."<sup>163</sup> Ward felt that "[i]t is very very difficult to reconcile the misrepresentations of climate change science in [the corporate reports] with ExxonMobil's claim to be an industry leader."<sup>164</sup>

Ward confronted Exxon for its continued funding of "organizations that have been misinforming the public about the science of climate change." In regard to the commitment ExxonMobil made to the Royal Society in July 2005, Ward requested that he be notified when "ExxonMobil plans to carry out this pledge, and if [Exxon] could provide [him] with a list of

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<sup>158</sup> See *Debunking the Heartland Institute's Efforts to Deny Climate Science*, NATIONAL CENTER FOR SCIENCE EDUCATION, <https://ncse.com/files/nipcc.pdf> (last visited December 6, 2016).

<sup>159</sup> See *The Heartland Institute's International Conferences on Climate Change: The Full Archive of 11 #ICCC Events*, THE HEARTLAND INSTITUTE, <http://climateconferences.heartland.org/> (last visited Dec. 6, 2016).

<sup>160</sup> See Joseph Bast, *Giving: A message from the President* (2013), THE HEARTLAND INSTITUTE, <http://www.webcitation.org/6dHrecCkT>.

<sup>161</sup> See Exhibit 27.

<sup>162</sup> Exhibit 28 at 2.

<sup>163</sup> Exhibit 29 at 2.

<sup>164</sup> *Id.*

which organizations will no longer be receiving funding.”<sup>165</sup> Ward went on to inform Thomas that he has done research into Exxon’s contributions to different organization and “found that 25 offered views that are consistent with scientific literature.”<sup>166</sup> He also discovered that about 19 organizations that Exxon was funding:

[W]ere featuring information on their websites that misrepresented the science of climate change, by outright denial of the evidence that greenhouse gasses are driving climate change or by overstating the amount and significance of uncertainty in knowledge, or by conveying a misleading impression of the potential impacts of anthropogenic climate change.<sup>167</sup>

In a 2006 reply to the Royal Society, Kenneth Cohen, ExxonMobil Vice President of Public Affairs characterizes the claims and public statements made by Bob Ward as incorrect and unfair. Cohen states:

ExxonMobil has undertaken climate change research for 25 years and our work has produced more than 40 papers in peer-reviewed literature... Our scientists serve on the United Nations Intergovernmental Panel On Climate Change (IPCC) and numerous related scientific bodies. In addition, we have conducted and supported scientific, economic and technological research on climate change for more than two decades.<sup>168</sup>

In October 2006, Senators Olympia Snowe (R-ME) and John (Jay) Rockefeller (D-WV) wrote ExxonMobil Chairman and Chief Executive Officer Rex Tillerson insisting that ExxonMobil stop funding the climate change denial campaign being waged by the Competitive Enterprise Institute (CEI) and other organizations.<sup>169</sup> In their letter to ExxonMobil, Senators Rockefeller and Snowe emphasized that ExxonMobil’s extensive funding of an “echo chamber” of non-peer reviewed pseudo-science had succeeded in undermining the scientific community’s findings about the detrimental effects of global warming.<sup>170</sup> The Senators point out that “a casual review of available literature . . . reveals that ExxonMobil is or has been the primary funding source for the ‘skepticism’ of not only CEI, but for dozens of other overlapping and interlocking front groups sharing the same obfuscation agenda.”<sup>171</sup>

Snowe and Rockefeller likened ExxonMobil’s efforts to the tobacco industry’s denial campaign regarding the health effects of cigarettes, and they claimed that ExxonMobil’s work did extensive damage to the credibility of the United States:

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<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 4 (letter p. 1).

<sup>169</sup> *See* Exhibit 30.

<sup>170</sup> *Id.* at 4.

<sup>171</sup> *Id.* at 3-4.

ExxonMobil and its partners in denial have manufactured controversy, sown doubt, and impeded progress with strategies all-too reminiscent of those used by the tobacco industry for so many years. The net result of this unfortunate campaign has been a diminution of this nation's ability to act internationally, and not only in environmental matters.<sup>172</sup>

Despite the existence of climate change specific grants to the climate denying organizations, in a November 2006 response to Senators Snowe and Rockefeller, Kenneth Cohen, ExxonMobil Vice President of Public Affairs, insisted that ExxonMobil does not have control or responsibility over these groups while endorsing the “value in the debate they prompt if it can lead to better informed and more optimal public policy decisions.”<sup>173</sup>

In a 2007 Statement to Subcommittee on Investigations and Oversight – House Science Committee, James McCarthy, Professor of the Biological Oceanography at Harvard University and co-chair of Working Group II for the IPCC testified about ExxonMobil's efforts to distort the science of climate change.<sup>174</sup> McCarthy testified that:

[B]oth Bush administration political appointees and a network of organizations funded by the world's largest private energy company, ExxonMobil, have sought to distort, manipulate and suppress climate science, so as to confuse the American public about the reality and urgency of the global problem.<sup>175</sup>

This Petition will not detail all of the groups or individuals funded by ExxonMobil to alter or distort climate science. For further reference, McCarthy's presentation sets forth a more exhaustive list of such activities.<sup>176</sup> Suffice it to say that this misinformation knowingly propagated and disseminated for many years by ExxonMobil and groups it funded has had dire consequences.

### **The Threat Posed by Climate Change**

ExxonMobil's campaign of misinformation and influence is particularly egregious given the current climate trends and threat posed by climate change. On May 18, 2016, NOAA announced that “Human activity has increased the direct warming effect of carbon dioxide in the atmosphere by 50 percent above pre-industrial levels during the past 25 years, according to NOAA's 10th Annual Greenhouse Gas Index.”<sup>177</sup> NOAA further stated:

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<sup>172</sup> *Id.* at 5.

<sup>173</sup> Exhibit 31 at 4.

<sup>174</sup> *See* Exhibit 32.

<sup>175</sup> *Id.* at 1.

<sup>176</sup> *See Id.* at Attachment A.

<sup>177</sup> *Warming Due to Carbon Dioxide Jumped by Half in 25 Years*, NOAA (May 18, 2016), <http://www.noaa.gov/news/warming-due-to-carbon-dioxide-jumped-by-half-in-25-years>.

In 2015, the global average carbon dioxide (CO<sub>2</sub>) concentration reached 399 parts per million (ppm), increasing by a record amount of almost 3 ppm. From the end of the Ice Age to the beginning of the industrial era, atmospheric carbon dioxide remained remarkably stable at 278 ppm.

We're dialing up Earth's thermostat in a way that will lock more heat into the ocean and atmosphere for thousands of years," said Jim Butler, director of NOAA's Global Monitoring Division.

Overall, emissions of all heat-trapping greenhouse gases have amplified the warming impact on the planet by more than one third since 1990, scientists at NOAA's Global Monitoring Division report.<sup>178</sup>

This year, 2016 may become the hottest year on record.<sup>179</sup> This summer, National Oceanic and Atmospheric Association (NOAA) reported that June marked 14 consecutive months of record heat for the globe.<sup>180</sup> Even more concerning is the record lows for sea ice in the Arctic for June 2016, 11.4 percent (40,000 square miles) below the 1981–2010 average and the smallest June sea ice extent since records began in 1979.<sup>181</sup> This warming trend continued through the summer and fall. From the beginning of 2016 through October, "the average global temperature was 1.75 degrees F above average, surpassing the heat record set in 2015 by 0.18 degrees."<sup>182</sup>

According to NOAA's National Centers for Environmental Information April 2016 Global Analysis,

The combined average temperature over global land and ocean surfaces for April 2016 was 1.10°C (1.98°F) above the 20th century average of 13.7°C (56.7°F)—the highest temperature departure for April since global records began in 1880. This value surpassed the previous record set in 2010 by 0.28°C (0.50°F). This was also the fourth highest monthly temperature departure among all 1,636 months on record, behind March 2016 (1.23°C/2.21°F), February 2016 (1.19°C/2.14°F), and December 2015 (1.12°C/2.02°F). Overall, 13 out of the 15 highest monthly temperature departures in the record have all occurred since February 2015, with February 1998 and January 2007 among the

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<sup>178</sup> *Id.*

<sup>179</sup> *Last month tied as 3rd warmest October on record for the globe*, NOAA (Nov. 17, 2016), <http://www.noaa.gov/news/last-month-tied-as-3rd-warmest-october-on-record-for-globe>.

<sup>180</sup> *June marks 14 consecutive months of record heat for the globe*, NOAA (July 19, 2016), blog <http://www.noaa.gov/news/june-marks-14-consecutive-months-of-record-heat-for-globe>

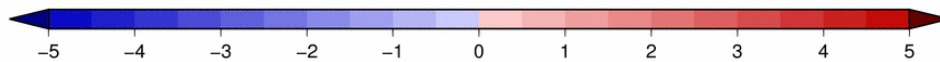
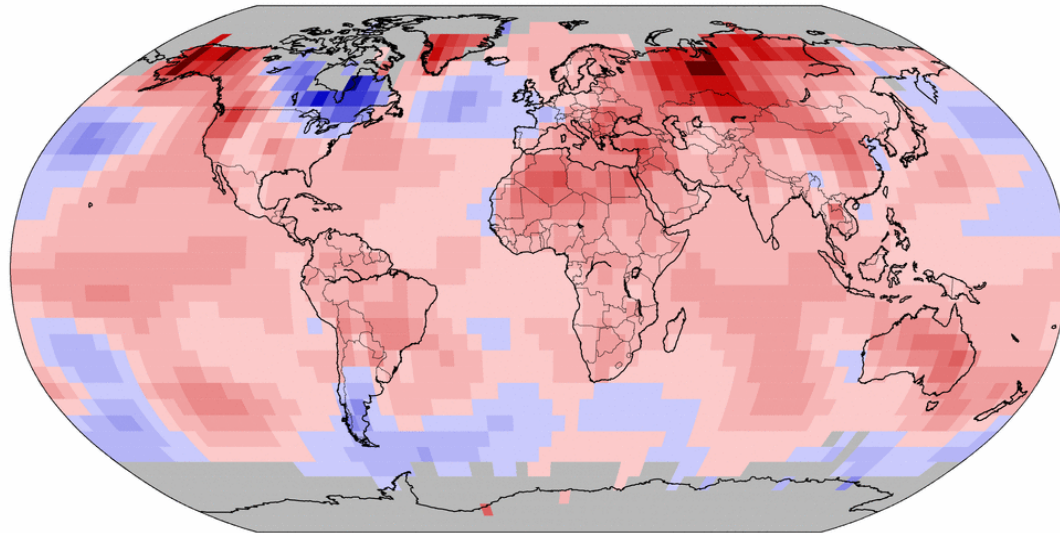
<sup>181</sup> *Id.*

<sup>182</sup> *Last month tied as 3rd warmest October on record for the globe*, NOAA (Nov. 17, 2016), <http://www.noaa.gov/news/last-month-tied-as-3rd-warmest-october-on-record-for-globe>

15 highest monthly temperature departures. April 2016 also marked the fifth consecutive month (since December 2015) that the global monthly temperature departure from average has surpassed 1.0°C (1.8°F) and it was the 12th consecutive month a monthly global temperature record had been broken, the longest such streak in NOAA's 137 years of record keeping.<sup>183</sup>

### Land & Ocean Temperature Departure from Average Apr 2016 (with respect to a 1981–2010 base period)

Data Source: GHCN–M version 3.3.0 & ERSST version 4.0.0



National Centers for Environmental Information  
Fri May 13 07:05:47 EDT 2016

Degrees Celsius

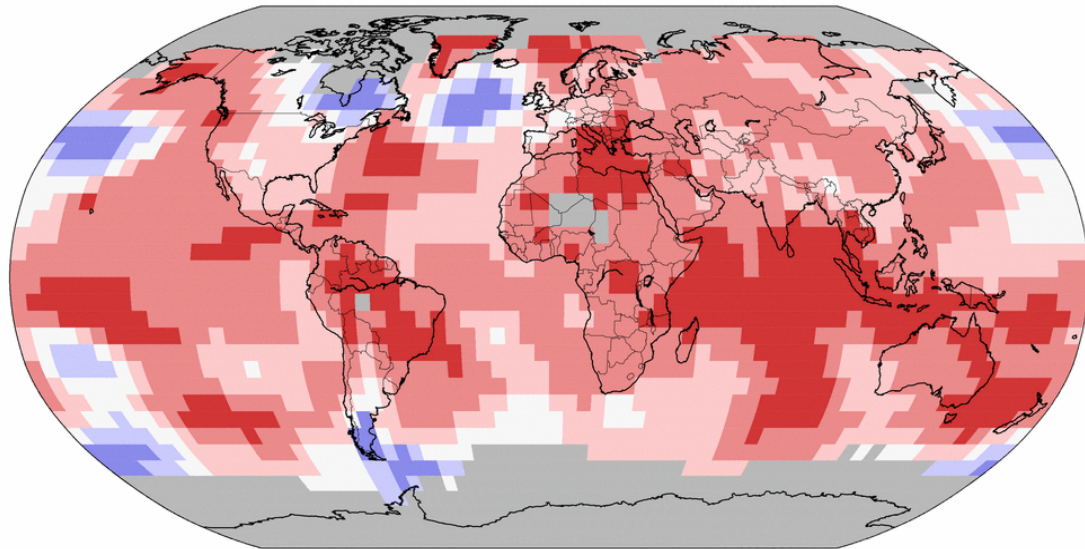
Please Note: Gray areas represent missing data  
Map Projection: Robinson

<sup>183</sup> *State of the Climate: Global Analysis for April 2016*, NOAA NATIONAL CENTERS FOR ENVIRONMENTAL INFORMATION, <http://www.ncdc.noaa.gov/sotc/global/201604> (emphasis added) [hereinafter *NOAA April 2016 Global Analysis*].

## Land & Ocean Temperature Percentiles Apr 2016

NOAA's National Centers for Environmental Information

Data Source: GHCN-M version 3.3.0 & ERSST version 4.0.0

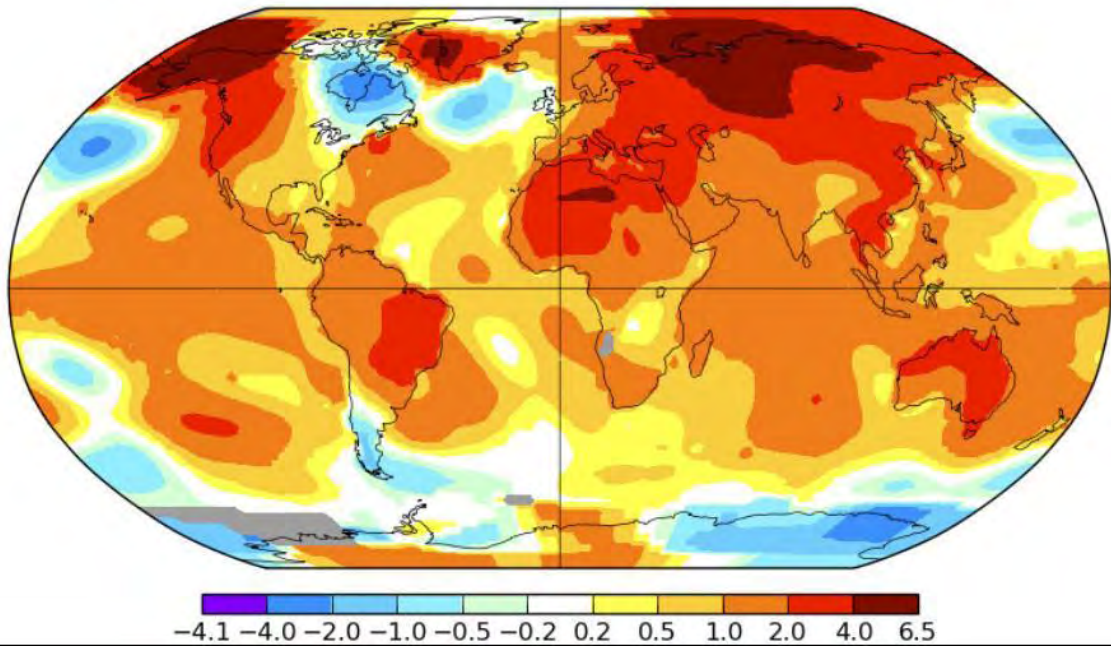


Fri May 13 07:05:57 EDT 2016

When the string of record-smashing months started in February 2016, scientists began talking about a climate emergency. “The interesting thing is the scale at which we’re breaking records,” said Andy Pitman, director of the ARC Centre of Excellence for Climate System Science at the University of New South Wales in Australia, “[i]t’s clearly all heading in the wrong direction.”<sup>184</sup>

<sup>184</sup> Michael Slezak, *April Breaks Global Temperature Record, Marking Seven Months Of New Highs*, THE GUARDIAN, (May 15, 2016), <https://www.theguardian.com/environment/2016/may/16/april-third-month-in-row-to-break-global-temperature-records>.





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“Climate scientists have been warning about this since at least the 1980s. And it’s been bloody obvious since the 2000s. So where’s the surprise?” said Pitman. Pitman said the recent figures put the recent goal agreed in Paris of just 1.5C warming in doubt. “The 1.5C target, it’s wishful thinking. I don’t know if you’d get 1.5C if you stopped emissions today. There’s inertia in the system. It’s putting intense pressure on 2C,” he said.<sup>186</sup>

The record temperatures are adversely affecting ecosystems globally, and significantly. According to NOAA’s Global Analysis:

Record warmth was observed in various areas around the globe, including Alaska, northern and central South America, central and southern Africa, southeastern Europe, the Mediterranean Sea, North Indian Ocean, northern and southern Australia, and parts of north-central Russia, the southwest Pacific Ocean, the North Atlantic, and central and eastern equatorial Pacific Ocean. According to NCEI’s Global Regional analysis, all six continents had a top five warm January–April, with North America, South America, and Oceania observing a record high average temperature for the year-to-date, and Africa and Asia having their

<sup>185</sup> April 2016 temperature departures from average, in degrees Celsius, relative to 1951-1980 average. Brown/blue contours correspond to temperatures most above/below April averages. (NASA/GISS) (emphasis added).

<sup>186</sup> Slezak, *supra* note 184184.

second highest January–April average temperature, behind 2010 and 2002, respectively.<sup>187</sup>

Given these trends, the overwhelming scientific consensus of the causes of these trends, and ExxonMobil’s knowing dissemination of false and misleading information regarding the very existence, anthropogenic causes and devastating effects of climate change, grounds exist on this basis alone for suspension or debarment. ExxonMobil’s actions reflect a distinct lack of business integrity and ethics, the results of which have been highly detrimental to the government and to the public interest. But this misinformation campaign does not exist alone, and should also be viewed in the context of ExxonMobil’s attitudes toward the environment and public health.

### **ExxonMobil’s History of Corporate Malfeasance: Decades of Violating Federal and State Environmental, Health, and Safety Regulatory Requirements**

ExxonMobil is a leading global player in the oil and gas industry and an energy industry leader. ExxonMobil is the largest publicly traded oil and gas company (as of 2016) by market value.<sup>188</sup> As of March 31, 2016, ExxonMobil had a market value of 347 billion U.S. dollars, ranking first on a list of top ten oil and gas companies worldwide by market value.<sup>189</sup> ExxonMobil is the ninth largest publicly held company in the world in terms of revenue, profits, assets, and market value.<sup>190</sup> It was ranked seventh in 2015.<sup>191</sup> In 2015, ExxonMobil ranked sixth in a list of the top companies worldwide by revenue, earning 259.5 billion dollars, down from 467.03 billion dollars in 2011.<sup>192</sup>

According to Exxon’s website, it is devoted to worker health and safety while complying with U.S. laws and requirements:

Sound corporate governance requires clear expectations of high ethical standards and integrity in all business activities and investment decisions.

ExxonMobil’s ethics and high standards of business conduct allow us to operate in an economic climate where large-scale investments support our long-term business and contribute to the communities where we operate. . . . ExxonMobil complies with all applicable laws and regulations, and where laws and regulations do not exist, we maintain the use of our high standards. Our commitment to high ethical standards, legal compliance, and integrity is reflected

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<sup>187</sup> NOAA April 2016 Global Analysis, *supra* note 183.

<sup>188</sup> ExxonMobil, FORTUNE, <http://beta.fortune.com/fortune500/exxon-mobil-2> (last visited Dec. 7, 2016).

<sup>189</sup> *Id.*

<sup>190</sup> *The World’s Largest Companies*, FORBES, (May 25, 2016),

<http://www.forbes.com/sites/steveschaefer/2016/05/25/the-worlds-largest-companies-2016/#5620bbdd37eb>.

<sup>191</sup> *Id.*

<sup>192</sup> Revenue/EPS Summary, NASDAQ, <http://www.nasdaq.com/symbol/xom/revenue-eps> (last visited Dec. 7, 2016); Global 500, FORTUNE, <http://beta.fortune.com/global500> (last visited Dec. 7, 2016).

in our global policies and practices. The metrics we track and report demonstrate how effective our management systems are at guiding our performance. Our management systems enable us to comply with new regulations efficiently, providing us with a competitive advantage.<sup>193</sup>

As stated on its website, ExxonMobil has an “environmental policy” through which “[t]he Corporation is committed to continuous efforts to improve environmental performance throughout its operations.”<sup>194</sup> Accordingly, the Corporation's policy is to:

- comply with all applicable environmental laws and regulations and apply responsible standards where laws and regulations do not exist;
- encourage concern and respect for the environment, emphasize every employee’s responsibility in environmental performance, and foster appropriate operating practices and training
- work with government and industry groups to foster timely development of effective environmental laws and regulations based on sound science and considering risks, costs, and benefits, including effects on energy and product supply;
- manage its business with the goal of preventing incidents and controlling emissions and wastes to below harmful levels; design, operate, and maintain facilities to this end;
- respond quickly and effectively to incidents resulting from operations, in cooperation with industry organizations and authorized government agencies;
- conduct and support research to improve understanding of the impact of its business on the environment, to improve methods of environmental protection, and to enhance its capability to make operations and products compatible with the environment;
- communicate with the public on environmental matters and share its experience with others to facilitate improvements in industry performance.
- undertake appropriate reviews and evaluations of its operations to measure progress and to foster compliance with this policy.<sup>195</sup>

As detailed below, ExxonMobil does not live up to its own corporate policies as evidenced by its lengthy record of environmental and worker-safety violations, many of these incidents involve serious if not egregious violations of the nation’s environmental laws. The Project on Government Oversight’s Federal Contractor Misconduct Database<sup>196</sup> has compiled 89

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<sup>193</sup> *Safety In Our Operation*, EXXONMOBIL, <http://corporate.exxonmobil.com/en/company/about-us/safety-and-health/operations-safety?parentId=ee28cf94-6de3-4964-9ff3-e67a0b5074cb> (last visited Dec. 8, 2016).

<sup>194</sup> *Environmental Drilling Initiatives*, EXXONMOBIL, <http://corporate.exxonmobil.com/en/environment/environmental-performance/environmental-drilling-initiatives/overview> (last visited Dec. 8, 2016).

<sup>195</sup> *Id.*

<sup>196</sup> The Project on Government Oversight’s (“POGO”) Federal Contractor Misconduct Database is a compilation of misconduct and alleged misconduct committed by federal government contractors from 1995 to present day, and Acts occurring earlier are included only if they were resolved after January 1, 1995, or are still pending. POGO utilizes sources like Federal agency press releases and reports (including reports and releases from Inspectors

instances of misconduct committed by ExxonMobil since 1995.<sup>197</sup> Despite only being ranked 79th in receiving the most government contracts (\$770.8M in 2015),<sup>198</sup> ExxonMobil's record of misconduct even outpaces the company at the top of the list, Lockheed Martin, which was awarded over 47 times the contract dollars that ExxonMobil was (\$36,259M in 2015).<sup>199</sup> The database also reveals that compared to similarly situated oil companies, ExxonMobil has a higher rate of violations. For instance, ranked at #68 Royal Dutch Shell receives more federal awards (\$889.3M in 2015) yet has fewer instances of misconduct (51) compared to ExxonMobil (89).<sup>200</sup> BP, which was being considered for debarment even before the Deepwater Horizon Disaster,<sup>201</sup> even has fewer recorded misconduct instances (73 since 1995).<sup>202</sup> Bad acts by ExxonMobil listed in the database include Clean Water Act violations, safety violations, and submitting false claims. Just to take one example, in 2013 Exxon and other oil companies received money from the State of Minnesota's clean-up fund after failing to disclose they those costs had already been covered through insurance.<sup>203</sup> Further illustrative examples of ExxonMobil's corporate culture are detailed below.

Prior to 2010, the 1989 Exxon Valdez super tanker crash and subsequent oil spill in Prince William Sound was the worst oil spill in United States history. On March 24, 1989, the supertanker Exxon Valdez spilled at least 11 million gallons of crude oil into the Prince William Sound, polluting more than 700 miles of shoreline.<sup>204</sup> Although much of the guilt was laid upon the captain of the vessel, who was intoxicated and away from his post at the time of the accident, Exxon was also blamed. Among the charges were that the company did not act quickly enough in dealing with the spill and that it did not adequately cooperate with state and federal officials.

Despite claiming that it "took immediate responsibility for the spill,"<sup>205</sup> ExxonMobil has fought paying the full award won by affected Alaskans. When the trial against ExxonMobil first began, a jury awarded the plaintiff fishermen and affected residents \$287 million in

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General, U.S. Attorneys, Department of Justice (DOJ), Securities and Exchange Commission (SEC), and the Government Accountability Office (GAO)), state agency press releases and reports, Federal and state court documents and pleadings, company press releases, law firm press releases, Freedom Of Information Act (FOIA) requests, and media reports. See *About FCMD*, PROJECT ON GOVERNMENT OVERSIGHT, <http://www.contractormisconduct.org/about-fcmd> (last visited Nov. 27, 2016).

<sup>197</sup> *Federal Contractor Misconduct Database (FCMD)*, search "ExxonMobil," PROJECT ON GOVERNMENT OVERSIGHT, <http://www.contractormisconduct.org/contractors/23/exxon-mobil> (last visited Nov. 27, 2016).

<sup>198</sup> See *Exxon Mobil*, PROJECT ON GOVERNMENT OVERSIGHT, <http://www.contractormisconduct.org/contractors/23/exxon-mobil>.

<sup>199</sup> See *Lockheed Martin*, PROJECT ON GOVERNMENT OVERSIGHT, <http://www.contractormisconduct.org/contractors/38/lockheed-martin>

<sup>200</sup> *Federal Contractor Misconduct Database (FCMD)*, search "Royal Dutch Shell PLC," PROJECT ON GOVERNMENT OVERSIGHT, <http://www.contractormisconduct.org/contractors/71/royal-dutch-shell-plc> (last visited Nov. 27, 2016).

<sup>201</sup> Lustgarten, *supra* note 20.

<sup>202</sup> Project on Government Oversight, *Federal Contractor Misconduct Database (FCMD)*, BP P.L.C. <http://www.contractormisconduct.org/contractors/61/bp-p-l-c> (last visited Nov. 27, 2016).

<sup>203</sup> Mike Schoemer, *Minnesota Gets Millions from Oil Companies for Cleanup Bill*, PATCH (July 9, 2013), <http://patch.com/minnesota/invergroveheights/minnesota-gets-millions-from-oil-companies-for-cleanup-bill>.

<sup>204</sup> *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 478 (2008).

<sup>205</sup> *The Valdez Oil Spill*, EXXONMOBIL, <http://corporate.exxonmobil.com/en/environment/emergency-preparedness/spill-prevention-and-response/valdez-oil-spill?parentId=ef7252d1-7929-4f5c-9fa2-05404bde2a0f> (last visited Dec. 11, 2016).

compensatory damages and an additional \$5 billion in punitive damages.<sup>206</sup> In 2008, almost 20 years since the Valdez spill, ExxonMobil successfully fought to have their initial \$5.3 billion award reduced to a mere \$507.5 million.<sup>207</sup>

Despite the disappointing final award, at one point in the trial, a federal judge held that individuals involved had “been part of an ‘astonishing ruse’ [by Exxon] to attempt to manipulate the jury that awarded \$5 billion in damages to pay the victims of the...spill.”<sup>208</sup> The judge compared Exxon to Dr. Jekyll and Mr. Hyde because of Exxon’s apparent concerned misdemeanor in public but deplorable behavior behind closed doors. He “criticized a secret agreement Exxon lawyers made with seven seafood processors in 1991 that, he said, had been intended to let the oil company, in effect, share in any future damages it would be forced to pay.”<sup>209</sup>

A federal grand jury in Anchorage, Alaska indicted Exxon on five criminal counts in February 1990 for the Valdez spill.<sup>210</sup> On October 9, 1991, the State of Alaska, the U.S. Government, and Exxon settled to pay \$100 million as restitution in the criminal case “for the injuries caused to the fish, wildlife, and lands of the spill region.”<sup>211</sup>

In addition to the criminal charges involved with the Exxon Valdez spill, civil penalties were sought. In response to these claims, Exxon engaged in a protracted appeals process ending 19 years after the spill. In 2002, scientists estimated that 10,000 gallons of oil from the spill remained under the shoreline of Prince William Sound.<sup>212</sup> Although the reward was reduced, Justice Stevens recognized Exxon’s disregard for the safety of others, supported the larger penalty amount, and condemned Exxon’s decision “to permit a lapsed alcoholic to command a supertanker carrying tens of millions of gallons of crude oil through the treacherous waters of Prince William Sound, thereby endangering all of the individuals who depended upon the sound for their livelihoods.”<sup>213</sup>

ExxonMobil promised to make changes in their practices that led to the Valdez spill, but fell short in a number of ways.<sup>214</sup> For instance, Exxon failed to change their single hull ship fleet to the safer, and more reliable double hull tankers until legally required to do so.<sup>215</sup> In 2009, Bloomberg News reported that ExxonMobil was still using the single hull ship design, even

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<sup>206</sup> *Baker*, 554 U.S. at 474.

<sup>207</sup> *In re Exxon Valdez*, 236 F. Supp.2d 1043, 1063 (D. Alaska 2002).

<sup>208</sup> *In re Exxon Valdez*, No. A89-0095-CV, 1996 WL 384623, at \*13 (D. Alaska 1996); Agis Salpukas, *Exxon Is Accused of ‘Astonishing Ruse’ in Oil-Spill Trial*, N.Y. TIMES (Jun. 19, 1996), <http://www.nytimes.com/1996/06/14/business/exxon-is-accused-of-astonishing-ruse-in-oil-spill-trial.html>.

<sup>209</sup> Salpukas, *supra* note 208.

<sup>210</sup> *In re Exxon Valdez*, 17 Media L. Rep. 1509, (D. Alaska 1990).

<sup>211</sup> *Exxon Valdez Oil Spill Trustee Council*, “Settlement,” (visited May 20, 2016)

<http://www.evostc.state.ak.us/index.cfm?FA=facts.settlement>.

<sup>212</sup> *Id.*

<sup>213</sup> *Baker*, 554 U.S. at 522.

<sup>214</sup> *The Valdez Oil Spill*, *supra* note 205.

<sup>215</sup> In response to the Valdez spill, Congress passed the 1990 Oil Pollution Act and as of January 1, 2015 single-hull oil tankers are no longer allowed in U.S. waters. *A Final Farewell to Oil Tankers with Single Hulls*, NOAA OFFICE OF RESPONSE AND RESTORATION (Dec. 11, 2014), <http://response.restoration.noaa.gov/about/media/final-farewell-oil-tankers-single-hulls.html>.

though 79% of the other super tankers globally had begun using the double hull system after the Valdez spill.<sup>216</sup> ExxonMobil's rival refining companies such as Sunoco Inc., Chevron Corp., ConocoPhillips, and Koch Industries Inc., were using the safer double hull vessels by 2009.<sup>217</sup>

In an April 2015 speech, ExxonMobil claimed "A commitment to safety... must be more than a priority, it must be a value – a core value that shapes decision-making all the time, at every level. . . . This is something that we spend a lot of time working at [sic] ExxonMobil."<sup>218</sup> Despite public claims to safety, not more than half a year later ExxonMobil was hit with a \$506,000 fine by the state of California for 19 potentially fatal violations, 6 being considered willful due to the fact that ExxonMobil knew about the dangers and ignored them deliberately.<sup>219</sup>

In December 1989, an Exxon refinery in Baton Rouge Louisiana exploded due to a power outage to the plant. Two employees were killed in the incident, and two others were hospitalized. The blast spread debris more than two miles away, shattered glass in dozens of locals of stores, and the explosion could be felt up to 15 miles away.<sup>220</sup> Tanks full of heating oil exploded, and a plume of smoke rose more than 500 feet into the air. Ruptured pipelines also caught fire."<sup>221</sup>

On January 1, 1990, a cracked underwater pipeline that connected the Bayway Refinery and the Bayonne plant in New Jersey ruptured and spilled nearly 600,000 gallons of heating oil into the Arthur Kill off of Staten Island.<sup>222</sup> The Bayway pipeline spill was a result of extreme failures in equipment and blatant negligence in employee training, and<sup>223</sup> Exxon admitted to EPA's criminal charge under the Clean Water Act.<sup>224</sup> Exxon initially claimed a ship had caused the rupture, but the company eventually told authorities that the leak was the result of a malfunctioning detection system. The spill continued nonstop for six hours, and the company admitted that if the detection system was operating correctly the leaking would have been 'fractional.'<sup>225</sup> The system had been regularly malfunctioning for more than a year, but Exxon

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<sup>216</sup> Alaric Nightingale & Tony Hopfinger, *Valdez Ghost Haunts Exxon with Spill-Prone Ships*, BLOOMBERG NEWS (Mar. 24, 2009), <https://www.bloomberg.com/news/articles/2009-03-24/exxon-valdez-ghost-lives-on-as-company-hires-spill-prone-ships>.

<sup>217</sup> *Two Companies Add Double Hull Tankers*, 91 OIL AND GAS JOURNAL 16 (1993), <http://www.ogj.com/articles/print/volume-91/issue-16/in-this-issue/gas-processing/two-companies-add-double-hull-tankers.html>; *Exxon still uses single hull ships*, WASH. TIMES (Mar. 26, 2009), <http://www.washingtontimes.com/news/2009/mar/26/ghost-ship/>.

<sup>218</sup> ISN Connect: Building a Culture of Safety (Apr. 9 2015), <http://corporate.exxonmobil.com/en/company/news-and-updates/speeches/building-a-culture-of-safety>.

<sup>219</sup> Nick Green, *Torrance leaders question ExxonMobil's credibility on safety in wake of state accusations*, DAILY BREEZE (Aug. 14, 2015), <http://www.dailybreeze.com/general-news/20150814/torrance-leaders-question-exxonmobils-credibility-on-safety-in-wake-of-state-accusations>.

<sup>220</sup> *One Worker Killed and Several Hurt in Blast at Louisiana Refinery*, N.Y. TIMES (Dec. 25, 1989), <http://www.nytimes.com/1989/12/25/us/one-worker-killed-and-several-hurt-in-blast-at-louisiana-refinery.html>.

<sup>221</sup> *Id.*

<sup>222</sup> Craig Wolf, *Exxon Admits a Year of Breakdowns in S.I. Oil Spill*, N.Y. TIMES (Jan. 10, 1990), <http://www.nytimes.com/1990/01/10/nyregion/exxon-admits-a-year-of-breakdowns-in-si-oil-spill.html>.

<sup>223</sup> *Id.*

<sup>224</sup> Allan R. Gold, *Exxon Guilty Plea Is Expected in Harbor Spill*, N.Y. TIMES (Mar. 20, 1991), <http://www.nytimes.com/1991/03/20/nyregion/exxon-guilty-plea-is-expected-in-harbor-spill.html>.

<sup>225</sup> *Id.*

did not fix it because upgrading the system was seen as a ‘low priority.’<sup>226</sup> On the night of the incident, employees simply ignored the alarm as was their standard practice in response to warnings from the broken detection system.<sup>227</sup> Exxon plead guilty to the criminal charges brought by EPA and settled to pay \$15 million to fund the cleanup of New York Harbor.<sup>228</sup> The company’s display of willful and negligence in this case demonstrates Exxon’s disregard of regulations and protocols for profit and at the expense of the health and safety of the environment and the public.

In November 1990, a federal judge awarded Valcar Bowman almost \$1.4 million because of Mobil’s wrongful dismissal of its employee.<sup>229</sup> Bowman was fired for refusing to “sanitize reports that documented Mobil’s environmental problems,” and for “object[ing] to plans for Mobil officials to remove records from a company plant when its lawyers realized a raid by law-enforcement officials was imminent.”<sup>230</sup> This shows blatant attempts by ExxonMobil’s predecessor to criminally defraud the government and the public. They also create a persistent environment of disregard for the law, by firing any employee who refuses to participate in corrupt activity alongside the corporation.

In 1996, an estimated 2,000 gallons of crude oil spilled into a Santa Barbara, California channel from an Exxon platform.<sup>231</sup> It contaminated approximately 20 miles of offshore waters, and cleanup crews were called to collect over 107 barrels of oil mixed with water. The cleanup took several days, and crews had to monitor local bird and fish populations to ensure that the slick would not contaminate feeding and nesting grounds.<sup>232</sup>

In February 1998, the U.S. Department of Justice filed a civil suit against Exxon on behalf of EPA. The suit claimed Exxon had committed over 200 Clean Air Act violations and sought \$4.7 million.<sup>233</sup>

In 1989, prior to the Exxon and Mobil merger, the city of Torrance, CA sued Mobil for years of disregard for worker or community safety in its operations of its Torrance refinery. In 1979, two workers and one member of the community burned to death due to a vapor cloud leak from the refinery’s tank farm.<sup>234</sup> In March 1989, leaks from the refinery were so severe that eight students and two teachers from a nearby school were hospitalized because of the fumes emerging from the plant.<sup>235</sup> A 1988 explosion at the refinery killed one person and burned several others, prompting the city to file criminal charges against Mobil’s refinery and two of its managers as a

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<sup>226</sup> Wolf, *supra* note 222.

<sup>227</sup> *Id.*

<sup>228</sup> Gold, *supra* note 224.

<sup>229</sup> *Bowman v. Mobil Oil Corp.*, 945 F.2d 394 (3d Cir. 1991); Dennis Hevesi, *U.S. Jury Faults Mobil Dismissal of an Employee*, N.Y. TIMES (Nov. 12, 1990), <http://www.nytimes.com/1990/11/22/nyregion/us-jury-faults-mobil-dismissal-of-an-employee.html>.

<sup>230</sup> Hevesi, *supra* note 229.

<sup>231</sup> Marla Cone, *2,000 Gallons of Oil Spill From Santa Barbara Channel Platform*, L.A. TIMES (May 3, 1996), [http://articles.latimes.com/1996-05-03/news/mn-55\\_1\\_santa-barbara-channel](http://articles.latimes.com/1996-05-03/news/mn-55_1_santa-barbara-channel).

<sup>232</sup> *Id.*

<sup>233</sup> *EPA Sues Exxon Unit Under Clean Air Act And Asks for up to \$4.7 Million in Fines*, WALL ST. J. (Feb. 13, 1998), <http://www.wsj.com/articles/SB887334587472729000>.

<sup>234</sup> Jeffrey L Rabin & George Stein, *Safety Fears in Torrance Strain Ties With Mobil*, L.A. TIMES (Apr. 16, 1989).

<sup>235</sup> *Id.*

result.<sup>236</sup> In 1990, as part of a settlement with the city, Mobil agreed to either phase out the hydrofluoric acid altogether or reformulate its use of the toxic substance.<sup>237</sup> Yet more accidents involving hydrofluoric acid would occur over the next 15 years.<sup>238</sup> Two more lives would be lost in February 2015 from an explosion and near miss of a catastrophic release of modified hydrofluoric acid due to what the U.S. Chemical Safety Board called “multiple safety deficiencies.” During its investigation of the incident CSB faced a lack of cooperation from ExxonMobil with nearly half of its requests for information unanswered as of January 2016.<sup>239</sup>

In 1989, the city of Los Angeles filed criminal charges against Mobil Oil Corp. because its failure to adequately monitor, maintain, and operate its pipelines resulted in two pipeline ruptures that spilled over 130,000 gallons of crude oil into the Los Angeles River and the city’s sewer system.<sup>240</sup> It was determined that Mobil was not monitoring or maintaining its pipelines properly, and changes in temperature of the oil being transported through the pipeline caused chafing and corrosion in the pipeline’s plastic covering.<sup>241</sup>

Mobil’s sloppy disregard for regular routine and maintenance led to a spill that “released sticky oil onto city streets in Encino, California on Sept. 10, 1988, and in Sherman Oaks on Sept. 27, 1989. Some of the oil flowed into the storm sewer system, polluting the Los Angeles River from the San Fernando Valley to Long Beach and killing hundreds of fish and at least 3 waterfowl.”<sup>242</sup> Exxon ultimately pleaded “no contest” to the criminal charges filed against it in the matter.<sup>243</sup>

In 1990, Mobil finally agreed to take responsibility for the “veritable underground lake of Petroleum from years of leaks from storage tanks and pipelines at the company’s facility in the Greenpoint Section of Brooklyn, New York.”<sup>244</sup> Mobil had negligently and intentionally permitted millions of gallons of oil to be leaked into the ground for decades with no admission of responsibility or attempts to mitigate the damage. Mobil ultimately signed a consent decree admitting responsibility and agreeing to clean up the enormous mess it caused so close to large populations of people in Brooklyn, New York.<sup>245</sup>

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<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> George Stein, *Release of Vapors Injures 3 at Mobil*, L.A. TIMES (June 14, 1990); George Stein, *Injured Employee Out of Hospital*, L.A. TIMES (June 15, 1990); Steve Maher, *Evaluation of Modified HF Alkylation Catalyst (in Support of Decree Section 4)*, Final Report Torrance Refinery Safety Advisor Project (May 1995); *Torrance Residents Wary of Mobil Plan to Lessen Risk of Toxic Cloud*, L.A. TIMES (Feb. 6, 1995).

<sup>239</sup> Press Release, U.S. Chemical Safety Board, U.S. Chemical Safety Board Finds Multiple Safety Deficiencies Led to February 2015 Explosion and Serious Near Miss at the ExxonMobil Refinery in Torrance, California, (Jan. 13, 2016), <http://www.csb.gov/us-chemical-safety-board-finds-multiple-safety-deficiencies-led-to-february-2015-explosion-and-serious-near-miss-at-the-exxon-mobil-refinery-in-torrance-california/> (noting that 333,000 residents, 71 schools, and eight hospitals are within a three-mile radius of the ExxonMobil Torrance refinery).

<sup>240</sup> Amy Pyle, *Criminal Case Filed Against Mobil Over Oil Pipeline Ruptures*, L.A. TIMES (Sept. 9, 1989), [http://articles.latimes.com/1989-09-09/local/me-1613\\_1\\_mobil-oil-corp](http://articles.latimes.com/1989-09-09/local/me-1613_1_mobil-oil-corp).

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> Phillip Mattera, *ExxonMobil: Corporate Rap Sheet*, CORPORATE RESEARCH PROJECT, <http://www.corp-research.org/exxonmobil> (last visited Dec. 11, 2016).

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*



The U.S. Environmental Protection Agency proposed \$575,000 in penalties against Mobil in 1991.<sup>246</sup> The proposed penalties were connected with several accidental releases of hazardous substances by Mobil's Paulsboro, New Jersey facility, which Mobil willfully neglected to report in violation of state and federal law.<sup>247</sup>

In 1991, EPA identified the top ten oil companies that were the largest culprits of discharging contaminated fluids from service stations either directly above or into underground drinking water sources.<sup>248</sup> Continuing their pattern of environmental and safety violations, both Exxon and Mobil were among the top ten companies identified by EPA in the study.<sup>249</sup> Exxon and Mobil were required to pay \$125,000 each in fines and clean the contaminated areas by the end of the year in 1993.<sup>250</sup>

Beginning in 1991, Mobil agreed to install monitors in two large open-air ponds in Staten Island in accordance with federal law.<sup>251</sup> Mobil had discharged oil-polluted water into these ponds for years and "clean[ed] empty barges by flushing them with water. The oil from the barge-cleaning operation was subsequently shown to contain more than 20 times the allowable amount of benzene, a chemical that is known to cause leukemia when airborne."<sup>252</sup>

In the Staten Island case, Mobil fraudulently lied on its permit application to EPA and sent in false water tests to cover up its illegal hazardous waste disposal operations.<sup>253</sup> First, before it installed the monitors, Mobil disclosed to EPA on its permit application that the "oil-and-water mixture was hazardous and contained high amounts of Benzene."<sup>254</sup> However, once the monitors were installed, Mobil attempted to dupe government officials by intentionally sending EPA samples of water from clean waste, saying that these were actual samples from the barge-cleaning discharge and that the previous samples were mistakenly polluted.<sup>255</sup>

In 1992, EPA inspectors tested the waste on three different occasions, and each test revealed highly polluted waters each time.<sup>256</sup> Regardless of these results, Mobil continued illegally operating its barge-cleaning activities for two more years without a permit to do so.<sup>257</sup> Court documents revealed that the company calculated \$3 million per year in savings if it operated without a permit.<sup>258</sup> ExxonMobil corporation knowingly violated federal law to save a small fraction of its massive net worth at the expense of the environment and the public.

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<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Ground-water Action Against 10 Major Oil Companies*, 17 EPA JOURNAL 3, at 8 (1991).

<sup>249</sup> *Id.*

<sup>250</sup> Mattera, *supra* note 243.

<sup>251</sup> Barbara Stewart, *ExxonMobil to Pay \$11.2 Million for Lying About Poison Waste*, N.Y. TIMES (Dec. 14, 2001), <http://www.nytimes.com/2001/12/14/nyregion/exxonmobil-to-pay-11.2-million-for-lying-about-poison-waste.html>.

<sup>252</sup> *Id.*

<sup>253</sup> *U.S. v. Mobil Oil Corp.*, No. 96-CV-1432, 1997 WL 1048911, at \*2 (E.D.N.Y. 1997).

<sup>254</sup> Stewart, *supra* note 251.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

The lies and deceit did not stop there. Mobil decided to avoid applying for federal and state mandated permits and properly disposing of hazardous waste by claiming that it discontinued its practice of discharging the oily water without a permit.<sup>259</sup> What it did not disclose, however, was that it simply shifted dump sites, and begin illegally dumping its hazardous waste directly into the Arthur Kill in Staten Island.<sup>260</sup>

Once again, the Staten Island example illustrates ExxonMobil's history of intentional disregard for government safeguards and regulations to protect both environmental and public health and safety. This time, however, Mobil tried several different schemes to both avoid obtaining proper permits and implementing pollution control methods while lying to the government and the public.<sup>261</sup> It falsified test results, permit applications, and waste disposal practices all in an effort to save \$3 million per year, despite its status as one of the largest companies in one of the wealthiest industries in the world.<sup>262</sup> It is also important to reiterate that the hazardous substance Mobil was directly dumping into open-air ponds and Arthur Kill in Staten Island was a chemical known to cause cancer and Leukemia when airborne, and Mobil was dumping waste containing 20 times the allowable limit of the substance.<sup>263</sup> Ultimately, ExxonMobil agreed to pay \$11.2 million to settle the case, but that was in 2001, which was ten years after Mobil's harmful dumping began at the site.<sup>264</sup>

In 1993, Exxon Chemical agreed to pay more than \$3.8 million in fines and restitutions to resolve federal charges relating to the company's role in submitting false test reports to the U.S. Army to qualify for contracts to supply fuel additives.<sup>265</sup>

A series of explosions and a major fire at Exxon Chemical's plant in Baton Rouge, Louisiana in August 1994 was followed by the filing of lawsuits on behalf of more than more than 15,000 local residents who said they were exposed to toxic smoke from the blast.<sup>266</sup> In 1995 the U.S. Occupational Safety and Health Administration fined the company \$120,000 in connection with the accident, but the lawsuits dragged on in federal court for more than 15 years.<sup>267</sup>

In 2008, ExxonMobil agreed to pay \$6.1 million for violating its 2005 Clean Air Act settlement with EPA and DOJ.<sup>268</sup> The original settlement required ExxonMobil to install pollution controls at six refineries across the U.S., pay \$7.7 million in civil penalties, and commit

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<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *ExxonMobil Corporation Hazardous Waste Settlement*, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/enforcement/exxonmobil-corporation-hazardous-waste-settlement> (last visited Dec. 8, 2016).

<sup>265</sup> *Company News; Exxon Unit to Pay \$3.8 Million in Fines and Restitution*, N.Y. TIMES (Nov. 11, 1993), <http://www.nytimes.com/1993/11/11/business/company-news-exxon-unit-to-pay-3.8-million-in-fines-and-restitution.html>.

<sup>266</sup> *In re 1994 Exxon Chemical Fire*, 558 F.3d 378, 381 (5th Cir. 2009).

<sup>267</sup> *See id.*; *Exxon Chemical Americas Inspection: 110342607*, U.S. OCCUPATIONAL SAFETY AND HEALTH ADMN. (Feb. 6, 1995), [https://www.osha.gov/pls/imis/establishment.violation\\_detail?id=110342607&citation\\_id=01012](https://www.osha.gov/pls/imis/establishment.violation_detail?id=110342607&citation_id=01012).

<sup>268</sup> *ExxonMobil to Pay Penalty for Violating Agreement*, U.S. DEP'T. OF JUSTICE (Dec. 17, 2008), <https://www.justice.gov/archive/opa/pr/2008/December/08-enrd-1118.html> [hereinafter *Exxon Penalty* 2008].

another “\$6.7 million in supplemental environmental projects in communities around the company’s refineries.”<sup>269</sup> For the two years immediately following the signing of the 2005 agreement, ExxonMobil failed to monitor sulfur content in some fuel gas streams and later test results revealed sulfur content in emissions that exceeded EPA limits.<sup>270</sup> When sulfur-containing gases are burned, sulfur dioxide is emitted, which can lead to serious respiratory problems and targets at-risk populations.<sup>271</sup>

In 2008, “ExxonMobil agreed to pay \$2.64 million to settle EPA charges that it violated the Toxic Substances Control Act by improperly handling and disposing of PCBs [polychlorinated biphenyls] on an offshore oil and gas platform in the Santa Barbara Channel off the Southern California coast.”<sup>272</sup> Two large electrical transformers that were located on part of Exxon’s Santa Ynez Unit called Platform Hondo leaked approximately 400 gallons of fluid contaminated with PCBs.<sup>273</sup> The leak occurred between 2002 and 2005 and Exxon allowed this two-year leak to continue in violation of the Toxic Substances Control Act.<sup>274</sup> Further, Exxon put its workers in danger once it was ordered to clean up the leak. It did not ensure that cleanup crew staff were equipped with the proper protective clothing or equipment required to protect employees from direct contact with and inhalation of PCBs.<sup>275</sup>

In 2009, a subsidiary of ExxonMobil pled guilty to one criminal charge of Clean Water Act violations and was ordered to pay \$6.1 million as a result of a 15,000-gallon diesel fuel and kerosene spill into the Mystic River in Massachusetts.<sup>276</sup> On January 9, 2006, a worn valve caused kerosene to leak into the river while an oil tanker was pumping diesel fuel into a storage tank at an Everett oil terminal.<sup>277</sup> The spill flowed over into the Mystic and continued until 5 a.m. on January 10, 2006.<sup>278</sup> This carelessness in oversight and equipment maintenance resulted in a spill of 2,500 gallons of kerosene and 12,700 gallons of diesel directly into the river.<sup>279</sup> Exxon did not discover the massive spill until two days after the spill began, but only because the Coast Guard discovered the fuel sheen covering the river and followed it to determine its source.<sup>280</sup> Exxon was found negligent in several respects in this instance. First “it did not fix the valve that failed in the spill, even though a contractor pressure tested it in September 2005 and told the

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<sup>269</sup> *ExxonMobil Pays \$6M Penalty Following Air Pollution Violations/ExxonMobil failed to comply with court-ordered Clean Air Act agreement at refineries in Southern California, Texas, and Louisiana*, U.S. ENVIRONMENTAL PROTECTION AGENCY (Dec. 17, 2008),

<https://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/bee3abce3fa91fd285257522006fe92%21OpenDocument&Highlight=2,Exxonmobil> [hereinafter *ExxonMobil \$6M Penalty*].

<sup>270</sup> *Exxon Penalty 2008*, *supra* note 268.

<sup>271</sup> *ExxonMobil \$6M Penalty*, *supra* note 269.

<sup>272</sup> Press Release, U.S. Environmental Protection Agency, “U.S. EPA fines ExxonMobil \$2.64 million for PCB release,” (released Aug 21, 2008) (visited May 16, 2016)

<https://yosemite.epa.gov/opa/admpress.nsf/dc57b08b5acd42bc852573c90044a9c4/66964079fdc4700e852574ac006f4537!OpenDocument>.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Company Agrees to Pay \$6.1M payment in Mass. oil spill*, ASSOCIATED PRESS (Dec. 24, 2008),

<http://www.southcoasttoday.com/article/20081224/NEWS/812240333>.

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

company it leaked.”<sup>281</sup> Additionally, “ExxonMobil employees failed to perform a regular walkthrough inspection that could have detected the spill as it was happening.”<sup>282</sup> Exxon’s lack of standard operating procedures in daily routine maintenance checks and inspections caused a major spill to go undetected for over two days when it should have been avoided or at least discovered almost immediately.

In 2009, ExxonMobil was found liable for contaminating New York’s groundwater with methyl tertiary butyl ether (“MTBE”), which is an additive that “helps gasoline burn more cleanly and reduces tailpipe emissions.”<sup>283</sup> MTBE is considered a carcinogen in animals in high doses, and it can make water undrinkable because of both its taste and odor.<sup>284</sup> As of 2009, 25 states including New York either banned or restricted the use of MTBE.<sup>285</sup> In 2009 a federal jury determined that ExxonMobil was liable because MTBE leaked from several underground storage tanks across the country, contaminating groundwater and awarded the city \$104 million in compensatory damages.<sup>286</sup>

In a related MTBE case, the U.S. Supreme Court said on May 16, 2016 that it would not hear ExxonMobil's appeal regarding its use of MTBE in New Hampshire.<sup>287</sup> New Hampshire sued Exxon and other oil companies in 2003 for damages to remediate MTBE contamination, saying Exxon knew it was supplying a product that is more difficult to clean up than other contaminants.<sup>288</sup> The trial resulted in the largest jury award in the state's history; “[i]n addition to the \$236 million verdict, the lower courts previously ruled the state is entitled to ‘pre-judgment interest’ now approaching \$100 million.”<sup>289</sup>

In December 2010, Environment Texas Citizen Lobby and the Sierra Club filed suit in federal court charging that ExxonMobil’s manufacturing complex in Baytown, Texas, which includes chemical production, has committed thousands of violations of the Clean Air Act.<sup>290</sup> The complaint alleges that the facility released more than 8,000,000 pounds of toxic chemicals including benzene and 1,3 butadiene over a five-year period in violation of its air permit.<sup>291</sup> A three-judge panel in the 5<sup>th</sup> Circuit Court of Appeals decided on June 1, 2016 to send the case against ExxonMobil’s Baytown Refinery back to the lower court to determine an “actionable” monetary penalty suitable for the company’s egregious history of Clean Air Act violations at the

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<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> Mireya Navarro, *City Awarded \$105 Million in ExxonMobil Lawsuit*, N.Y. TIMES (Oct. 19, 2009) [http://www.nytimes.com/2009/10/20/science/earth/20exxon.html?\\_r=0](http://www.nytimes.com/2009/10/20/science/earth/20exxon.html?_r=0).

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> Dave Solomon, *U.S. Supreme Court Refuses To Hear ExxonMobil MTBE Appeal*, NEW HAMPSHIRE UNION LEADER (May 16, 2016), <http://www.unionleader.com/US-Supreme-Court-refuses-to-hear-ExxonMobil-MTBE-appeal>.

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> *See* Complaint, *Env’t Texas Citizens Lobby, Inc. v. ExxonMobil Corp.*, 66 F.Supp.3d 875 (S.D. Tex. 2014), (No. 4:10-cv-4969), <http://www.environmenttexas.org/sites/environment/files/reports/DKT-1.Complaint.pdf>.

<sup>291</sup> *Id.* at ¶ 2.

plant.<sup>292</sup> Exxon clearly shifted the costs of pollution onto the public in the form of poor health and environmental cleanup while it continued polluting without any attempt at lessening the harmful effects of its operations. This, once again, demonstrates ExxonMobil's disregard for human health and the environment in order to protect its bottom line.

In July 2011, as a result of ExxonMobil's disregard for routine maintenance of its pipelines, 63,000 gallons of crude oil spilled into the Yellowstone River when a pipeline ruptured in Montana.<sup>293</sup> Before the accident, local residents complained that the pipeline had been corroded and exposed for more than a year, and asked ExxonMobil to inspect the line.<sup>294</sup> Company officials said it did inspect the pipeline in May 2011 but that there were no problems with the line.<sup>295</sup>

Montana Governor Brian Schweitzer believed that ExxonMobil misled the state and withheld key information about the accident from officials. Schweitzer stated that ExxonMobil lied about the number of gallons spilled into the river, the amount of acreage of water and wetlands affected, the length of time the spill was ongoing by hours, and whether Exxon was actually and effectively cleaning up the spill.<sup>296</sup> ExxonMobil reported that the spill only affected ten miles of the river but low-lying areas of the wetlands around the state park were inundated more than 40 miles downriver from the spill.<sup>297</sup> On September 21, 2016 the Department of Justice and Exxon filed a consent decree to resolve natural resource damage claims in the Yellowstone River.<sup>298</sup> Pursuant to the decree, Exxon is required to pay \$12 million in penalties and conduct various environmental improvement projects.<sup>299</sup>

In 2013, the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration sought to fine ExxonMobil \$2.659 million for a rupture in an Arkansas pipeline that spilled approximately 5,000 barrels of oil.<sup>300</sup> The oil spilled north of Little Rock in a residential area.<sup>301</sup>

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<sup>292</sup> *Env't Texas Citizen Lobby, Inc. v. ExxonMobil Corp.*, 824 F.3d 507, 533–34 (5th Cir. 2016); Sean Reilly, *Air Pollution: Appeals court allows fines for ExxonMobil Texas Plant*, E&E REPORTER (June 1, 2016), <http://www.eenews.net/greenwire/stories/1060038143>.

<sup>293</sup> *Yellowstone River Oil Spill Natural Resource Damage Report*, MONTANA DEP'T OF JUSTICE <https://dojmt.gov/lands/yellowstone-river-oil-spill-july-2011/> (last visited Dec. 11, 2016).

<sup>294</sup> Jim Robbins, *Governor Says Montana Was Misled on Oil Spill*, N.Y. TIMES (July 8, 2011), [http://www.nytimes.com/2011/07/09/us/09spill.html?\\_r=0](http://www.nytimes.com/2011/07/09/us/09spill.html?_r=0).

<sup>295</sup> *Id.*

<sup>296</sup> *See id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Public and Environment to Benefit from Proposed \$12 Million Settlement with ExxonMobil for Natural Resource Damages from 2011 Yellowstone River Oil Spill*, U.S. DEP'T OF JUSTICE (Sept. 21, 2016), <https://www.justice.gov/opa/pr/public-and-environment-benefit-proposed-12-million-settlement-exxonmobil-natural-resource>.

<sup>299</sup> *Id.*

<sup>300</sup> *Notice of Probable Violation and Proposed Compliance Order*, U.S. DOT PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMIN. (Nov. 6, 2013), [http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Enforcement%20Notices/420135027\\_NOPV%20%26%20PCO\\_11062013.pdf](http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Enforcement%20Notices/420135027_NOPV%20%26%20PCO_11062013.pdf).

<sup>301</sup> *Id.*

In September 2013, the Attorney General's Office announced charges against XTO, a Pennsylvania subsidiary of ExxonMobil, for illegally discharging more than 50,000 gallons of toxic waste water from a Marcellus Shale gas well site in Penn Township, Lycoming County.<sup>302</sup> A Pennsylvania Department of Environmental Protection inspector discovered that a valve on an XTO storage tank had been opened and a drain plug had been removed, causing gas well waste water to flow out of the storage tank onto the ground.<sup>303</sup> XTO did not have a permit to discharge waste water and failed to report any waste water spills to DEP.<sup>304</sup>

In July 2013 Minnesota settled allegations that ConocoPhillips, Chevron, and ExxonMobil fraudulently sought reimbursement from a state fund for cleaning up leaking underground petroleum tanks at gasoline stations around the state while also being reimbursed by insurers.<sup>305</sup> The state alleged the companies obtained funds from the state's Petrofund (Petroleum Tank Release Cleanup Fund), which reimburses petroleum storage-tank owners and operators for cleanup costs, while not disclosing that they also had insurance policies covering the cleanups.<sup>306</sup> Under the settlement, Conoco paid \$4.9 million, Chevron paid \$1.975 million, and Exxon paid \$550,000.<sup>307</sup>

In November 2013 New York Attorney General Eric T. Schneiderman announced an \$8.05 million settlement with ExxonMobil Oil Corporation, which will reimburse the State of New York for costs incurred by the New York Environmental Protection and Spill Compensation Fund (Oil Spill Fund) within the Office of the State Comptroller to investigate and remediate an oil spill in Ogdensburg.<sup>308</sup> "An investigation revealed widespread petroleum contamination in and around the former ExxonMobil Main Terminal facility and near underground pipelines connecting the terminal to the Oswegatchie River."<sup>309</sup>

Additionally, in August 2014, ExxonMobil Pipeline Company agreed to pay a civil penalty of \$1.437 million for a violation of the Clean Water Act stemming from a 117,000 gallon crude oil spill from ExxonMobil's "North Line" pipeline near Torbert, Louisiana.<sup>310</sup>

In August 2015 the California Division of Occupational Safety and Health (Cal/OSHA) issued 19 citations to ExxonMobil Refining & Supply Company and proposed \$566,000 in penalties for workplace safety and health violations stemming from the February 2015 explosion

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<sup>302</sup> Donald Gilliland, *Attorney general files criminal charges against Marcellus gas drilling company*, PENN LIVE (Sept. 10, 2013), [http://www.pennlive.com/midstate/index.ssf/2013/09/attorney\\_general\\_files\\_crimina.html](http://www.pennlive.com/midstate/index.ssf/2013/09/attorney_general_files_crimina.html).

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> David Shaffer, *Oil companies to pay \$7.4 million for wrongly tapping state cleanup fund*, STAR TRIBUNE (July 9, 2013), <http://www.startribune.com/oil-companies-to-pay-7-4-million-for-wrongly-tapping-state-fund/214781041/>.

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> Press Release, New York Attorney General Schneiderman, A.G. Schneiderman Announces \$8 Million Settlement With Exxonmobil Following Ogdensburg Oil Spill (Nov. 22, 2013), <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-8-million-settlement-exxonmobil-following-ogdensburg-oil>.

<sup>309</sup> *Id.*

<sup>310</sup> *ExxonMobil Pipeline Company to Pay Civil Penalty Under Proposed Settlement for Torbert, Louisiana Oil Spill/ Settlement Resolves Clean Water Act Violation Stemming from 2012 Spill*, U.S. ENVIRONMENTAL PROTECTION AGENCY (Aug. 26, 2014), <https://yosemite.epa.gov/opa/admpress.nsf/0/55B7E7F27932FE8885257D40006F410E>.

at the company's Torrance refinery.<sup>311</sup> "Four workers were injured in the explosion, which was caused by a hydrocarbon release from the refinery's fluid catalytic cracker unit into its electrostatic precipitator. Cal/OSHA found that Exxon did not take action to eliminate known hazardous conditions at the refinery and intentionally failed to comply with state safety standards."<sup>312</sup> "Eighteen of the citations were classified as serious due to a realistic possibility of worker death or serious injury."<sup>313</sup> Of the eighteen serious violations, six were classified as willful because ExxonMobil "did not take action to eliminate known hazardous conditions at the refinery and intentionally failed to comply with state safety standards."<sup>314</sup>

### **EPA's Enforcement Database Shows Numerous ExxonMobil Facilities Are in Noncompliant Status.**

In addition to this litany of past instances of disregard for environmental or public health and safety issues, ExxonMobil has repeatedly been found in violations of environmental laws by EPA. EPA's ECHO database<sup>315</sup> provides integrated compliance and enforcement information for approximately 800,000 regulated facilities nationwide. The distinction between the ECHO database results and those identified above is that it includes the compliance status of these facilities, as opposed to the outcomes from an enforcement action. ECHO provides a relatively current – though not real-time – insight into a regulated facility's compliance status with environmental laws enforced by EPA.

According to ECHO's facility report dated May 11, 2016, ExxonMobil Everett Terminal, 52 Beacham Street, Everett, MA 02149, Facility Registry Service ID number 110000736801, the facility is identified as a non-complier because of the following:

- In the past three years covered by the ECHO report, the facility was noncompliant with its Clean Water Act Permit MA0000833 for ten out of twelve quarters.<sup>316</sup>
- Additionally, the Conservation Law Foundation recently announced it is preparing a lawsuit against the facility because it is leaking highly carcinogenic chemicals into the Mystic River and the Island End River "well beyond what's allowed under the terminal's federal permit for most of the last three years."<sup>317</sup>

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<sup>311</sup> *Cal/OSHA Cites ExxonMobil \$566,600 for Torrance Refinery Explosion*, CA DEPT. INDUSTRIAL RELATIONS (Aug. 13, 2015), <http://www.dir.ca.gov/DIRNews/2015/2015-76.pdf> [hereinafter *Torrance Refinery Explosion*].

<sup>312</sup> *Citations for February 2015 Torrance Refinery Explosion*, PROJECT ON GOVERNMENT OVERSIGHT, <http://www.contractormisconduct.org/misconduct/2457/citations-for-february-2015-torrance-refinery-explosion>.

<sup>313</sup> *Torrance Refinery Explosion*, *supra* note 312 at 1.

<sup>314</sup> *Id.*

<sup>315</sup> See *ECHO Database*, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://echo.epa.gov/?redirect=echo>.

<sup>316</sup> See Exhibit 33.

<sup>317</sup> Jon Chesto, *Conservation Law Foundation plans lawsuit against ExxonMobil over Everett terminal*, BOSTON GLOBE (May 17, 2016), <https://www.bostonglobe.com/business/2016/05/17/conservation-law-foundation-plans-lawsuit-against-exxon-mobil-over-everett-terminal/N0YoUgUZx8LII08JI0oXZP/story.html>.

According to ECHO's facility report dated May 11, 2016, ExxonMobil Oil Corp Des Plaines Terminal, 3213 Terminal Drive, Arlington Heights, IL 60005, Facility Registry Service ID number 110000428699, the facility is identified as a non-complier because of the following:

- In the past three years covered by the ECHO report, the facility was noncompliant with its Clean Water Act Permit IL0066362 for eleven out of twelve quarters.<sup>318</sup>
- According to the ECHO report, a Clean Air Act inspection has not been completed at the facility since June 11, 2013, a Clean Water Act inspection has not been completed since September 8, 2011 despite the almost constant state of noncompliance in the past three years, and a Resource Conservation and Recovery Act inspection has not occurred since January 25, 2007.<sup>319</sup>
- According to ECHO's facility report dated May 11, 2016, ExxonMobil MO 827 Well CB OCS G-5060, Gulf of Mexico, GE 00000, Facility Registry Service ID number 110037479323, the facility is identified as a non-complier because in the past three years covered by the ECHO report, the facility was noncompliant with its Clean Water Act Permit GEG460503 for all twelve of the past twelve quarters.<sup>320</sup>

According to ECHO's facility report dated May 11, 2016, ExxonMobil Refining & Supply Baytown Refinery, 2800 Decker Dr., Baytown, TX 77529, Facility Registry Service ID number 110000502901, the facility is identified as a significant non-complier because of the following:

- In the past three years covered by the ECHO report, the facility was in significant violation of its Clean Air Act Permit TX0000004820100027 for all twelve of the past twelve quarters. In all of those quarters, the violations were categorized as High Priority Violations due to its significant discharges of nitrogen oxides NO<sub>2</sub>, sulfur dioxide, and carbon monoxide.<sup>321</sup>
- In the past three years covered by the ECHO report, the facility was noncompliant with its Clean Water Act Permit TX0006271 for nine of the past twelve quarters.<sup>322</sup>
- In the past three years covered by the ECHO report, the facility was noncompliant with its RCRA Permit TXD000782698 for two of the past twelve quarters. EPA has brought three informal enforcement actions against this facility for RCRA violations and two formal enforcement actions that resulted in a penalty of \$20,000.<sup>323</sup>

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<sup>318</sup> See Exhibit 34.

<sup>319</sup> *Id.*

<sup>320</sup> See Exhibit 35.

<sup>321</sup> See Exhibit 36.

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*



According to ECHO's facility report dated May 11, 2016, ExxonMobil, P.O. Box 4358, Houston, TX 77210, Facility Registry Service ID number 110011276298, the Baytown facility is identified as a significant non-complier because of the following:

- In the past three years covered by the ECHO report, the facility was in significant violation of its Clean Water Act Permit GMG290070 for all twelve of the past twelve quarters. In all of those quarters, the violations were categorized as Significant Noncompliance Category 1. ExxonMobil was ordered to pay \$5,000 in federal penalties, \$5,000 in state and local penalties, remove pollutants resulting from an oil spill, and restore the damaged area. It appears that there was an additional \$8,000 compliance action cost, according to the ECHO report.<sup>324</sup>

According to ECHO's facility report dated May 11, 2016, ExxonMobil Production Hawkins Gas Plant, FM 1795, Hawkins, TX 75765, Facility Registry Service ID number 110000915859, is identified as a significant non-complier because of the following:

- In the past three years covered by the ECHO report, the facility was in significant violation of its Clean Water Act Permit TX0067687 for all twelve of the past twelve quarters. In all of those quarters, the violations were categorized as Significant Noncompliance Category 1.<sup>325</sup>

According to ECHO's facility report dated May 11, 2016, ExxonMobil Joliet Refinery, 25915 SE Frontage Road, Channahon, IL 60410, Facility Registry Service ID number 110000595339, the facility is identified as a significant non-complier because of the following:

- In the past three years covered by the ECHO report, the facility was in significant violation of its Clean Air Act Permit IL000197800AAA for all twelve of the past twelve quarters. In all of those quarters, the violations were categorized as High Priority Violations due to its significant discharges of nitrogen oxides NO<sub>2</sub>, sulfur dioxide, and carbon monoxide.<sup>326</sup>
- The ECHO report discloses two informal enforcement actions under the CAA and four formal enforcement actions under the CAA in the past five years.<sup>327</sup>
- In the past three years covered by the ECHO report, the facility was in significant violation of its RCRA Permit seven of the past twelve quarters. In the noncompliant quarters, the facility was categorized as a significant non-complier.<sup>328</sup>
- On October 11, 2005, EPA, three states including Illinois, and ExxonMobil all reached an agreement involving violations at seven of the company's refineries across

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<sup>324</sup> See Exhibit 37.

<sup>325</sup> See Exhibit 38.

<sup>326</sup> See Exhibit 39.

<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

five different states.<sup>329</sup> The Joliet refinery was among those involved in the settlement. ExxonMobil “agreed to spend an estimated \$180 million on environmental improvements at its Joliet refinery and \$2.2 million on supplemental environmental projects in Illinois.”<sup>330</sup> The agreement was aimed at reducing “nitrogen oxide and sulfur oxide emissions from the refinery. The facility was ordered to reduce nitrogen oxide emissions by 1,818 tons per year and sulfur dioxide emissions by 24,069 tons per year.”<sup>331</sup> ExxonMobil agreed to attempt to greatly reduce or completely eliminate benzene emissions and stray emissions of volatile organic compounds and other hazardous air pollutants and pay a \$500,000 fine to the Superfund because of its violations at the refinery.<sup>332</sup>

According to ECHO’s facility report dated May 11, 2016, Exxon affiliate XTO Energy, Inc. – Piceance Creek SE NW SEC 8 T2S R96W 6TH PM, Meeker 16.9 MI. SW OF, CO 81650, Facility Registry Service ID number 110021161357, the facility is identified as a significant non-complier because of the following:

- In the past three years covered by the ECHO report, the facility was in significant violation of its Clean Air Act Permit CO0000000810300162 for all twelve of the past twelve quarters. In all of those quarters, the violations were categorized as High Priority Violations.<sup>333</sup>
- The report indicates that in the past five years the facility has been subject to one informal enforcement action and one formal enforcement action.<sup>334</sup>
- A Compliance Order between ExxonMobil and the Colorado Department of Public Health and the Environment was executed to resolve a matter involving excess air emissions at the facility discovered during testing at the facility in 2006 and 2007.<sup>335</sup>

According to ECHO’s facility report dated May 11, 2016, ExxonMobil Oil Corp – Torrance Refinery, 3700 W 19<sup>th</sup> St., Torrance, CA 90504, Facility Registry Service ID number 110000475263, the facility is identified as a significant non-complier because of the following:

- In the past three years covered by the ECHO report, the facility was in significant violation of its Clean Air Act Permit CASCA0000603700079 for all twelve of the

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<sup>329</sup> U.S., *Illinois reach agreement with ExxonMobil for violations at Joliet refinery*, U.S. ENVIRONMENTAL PROTECTION AGENCY (Oct. 13, 2005), <https://yosemite.epa.gov/opa/admpress.nsf/4d84d5d9a719de8c85257018005467c2/4d9f9c89529094ae852570bc00712bf3!OpenDocument>.

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

<sup>333</sup> See Exhibit 40.

<sup>334</sup> *Id.*

<sup>335</sup> Compliance Order On Consent In The Matter Of ExxonMobil Corporation, COLORADO DEPARTMENT OF PUBLIC HEALTH AND THE ENVIRONMENT (Nov. 12, 2008), <http://www.colorado.gov/cdphedir/wq/enfactions/2008/sw/po/11-12-08exxonmobil.pdf>.

past twelve quarters. In all of those quarters, the violations were categorized as High Priority Violations. Of the limited information contained in the report, it appears as though the facility failed inspections for both ammonia and volatile organic compounds in a few instances. ECHO indicates that the last CAA inspection occurred on July 15, 2013.<sup>336</sup>

- Although the ECHO Report does not disclose the details of the enforcement actions, it indicates that there were two informal CAA enforcement actions and two formal CAA enforcement actions in the past five years.<sup>337</sup>

According to ECHO's facility report dated May 11, 2016, ExxonMobil Oil Corp Beaumont Chemical Plant, 2775 Gulf States Road, Beaumont, TX 77701, Facility Registry Service ID number 110000464131, the facility is identified as a significant non-complier because of the following:

- In the past three years covered by the ECHO report, the facility was in significant violation of its Clean Air Act Permit for all twelve of the past twelve quarters. In the past three years covered by the ECHO report, the facility was noncompliant with its Clean Water Act Permit TX0004227 for five out of twelve quarters. Of the limited details contained in the noncompliance report on the ECHO database, the facility was violating at least the amount of toluene it was discharging during at least one of the twelve quarters. The last CWA inspection occurred on March 29, 2010.<sup>338</sup>
- In 2005, EPA, five states, and ExxonMobil reached a consent decree concerning seven of its facilities, one of which was the Beaumont, facility.<sup>339</sup> In 2008, EPA and DOJ fined ExxonMobil \$6.1 million in civil penalties for violating the consent decree continuously between 2005 and 2007.<sup>340</sup> Part of that penalty was the \$122,500 penalty at the Beaumont refinery for failure to monitor the sulfur content of gases burned in the refinery furnaces.<sup>341</sup>

According to ECHO's facility report dated May 11, 2016, ExxonMobil Chemical Co. Baytown Olefins Plant, 3525 Decker Drive, Baytown, TX 77520, Facility Registry Service ID number 110000463169, the facility is identified as a significant non-complier because of the following:

- In the past three years covered by the ECHO report, the facility was in significant violation of its Clean Air Act Permit TX0000004820100257 for all twelve of the past twelve quarters. In all of those quarters, the violations were categorized as High

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<sup>336</sup> See Exhibit 41.

<sup>337</sup> *Id.*

<sup>338</sup> See Exhibit 42.

<sup>339</sup> See *ExxonMobil Refinery Settlement*, U.S. Environmental Protection Agency, <https://www.epa.gov/enforcement/exxonmobil-refinery-settlement> (last visited Dec. 11, 2016).

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

Priority Violations. ECHO indicates that the last CAA inspection occurred on August 12, 2015.<sup>342</sup>

- On August 6, 2009, there was a small pipeline explosion at the facility. It caused a fire and cut off power to 1,500 homes in Houston temporarily.<sup>343</sup>
- The ECHO report does not indicate any CWA violations in the past three years, but a CWA inspection has not been conducted at the plant since November 20, 2013.<sup>344</sup>

### **State Attorneys Generals Investigate ExxonMobil Securities Fraud and More**

On March 29, 2016, Attorneys General (AGs) from 15 states, the District of Columbia and the U.S. Virgin Islands announced a new climate change coalition called AGs United for Clean Power is investigating whether fossil fuel companies, ExxonMobil in particular, misled investors and the public about climate change.<sup>345</sup>

The Attorneys General are investigating violations of the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”). In addition, New York statutes including the Martin Act give the government broad investigative powers to take action against “persistent fraud or illegality” and the deceptive business and trade practices act.<sup>346</sup> In Massachusetts, the Attorney General can use the Uniform Securities Act to investigate fraud or the unfair and deceptive practices provisions in the state’s general laws.

Many of the prosecutors in the AGs United for Clean Power are no longer pursuing legal action<sup>347</sup> and a federal judge “issued a discovery order *against* the Massachusetts attorney general” in her Exxon investigation,<sup>348</sup> but a recent decision from the Supreme Court of the State of New York upheld AG Schneiderman’s subpoena to PricewaterhouseCoopers LLC, ExxonMobil’s financial firm.<sup>349</sup> Although there have been some legal blockades, the investigation into Exxon’s fraud is ongoing and picking up steam in New York.

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<sup>342</sup> See Exhibit 43.

<sup>343</sup> Marks, Joseph, “*ExxonMobil Sued Over Baytown Plant Explosion*,” LAW 360 (March 9, 2011), <http://www.law360.com/articles/230815/exxonmobil-sued-over-baytown-plant-explosion>.

<sup>344</sup> See Exhibit 43.

<sup>345</sup> Press Release, A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat Climate Change, (March 29, 2016), <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>.

<sup>346</sup> See, e.g. N.Y. Exec. Law § 63(12) (McKinney 2014).

<sup>347</sup> See e.g. James Osborne, ExxonMobil, *Virgin Islands settle subpoena issue*, HOUSTON CHRONICLE (June 30, 2016), <http://www.houstonchronicle.com/business/energy/article/Exxon-Mobil-Virgin-Islands-settle-subpoena-issue-8335660.php>.

<sup>348</sup> Steven Mufson, *Federal judge in Texas gives Exxon right to see Mass. attorney general’s records*, WASH. POST. (Oct. 13, 2016), [https://www.washingtonpost.com/business/economy/federal-judge-in-texas-gives-exxon-right-to-see-mass-attorney-generals-records/2016/10/13/6e01aafc-916f-11e6-9c85-ac42097b8cc0\\_story.html?utm\\_term=.0fb51163d468](https://www.washingtonpost.com/business/economy/federal-judge-in-texas-gives-exxon-right-to-see-mass-attorney-generals-records/2016/10/13/6e01aafc-916f-11e6-9c85-ac42097b8cc0_story.html?utm_term=.0fb51163d468) (emphasis added).

<sup>349</sup> New York v. PricewaterhouseCoopers, (Oct. 26, 2016) [https://ag.ny.gov/sites/default/files/2016.10.26\\_ny\\_v.\\_pwc\\_and\\_exxon\\_decision\\_and\\_order.pdf](https://ag.ny.gov/sites/default/files/2016.10.26_ny_v._pwc_and_exxon_decision_and_order.pdf)

## **Anti-Competitive Practices Violations**

In 1996, the Federal Trade Commission filed a complaint against Exxon, claiming that it misled consumers by running advertisements stating that its gasoline made engines cleaner and reduced maintenance costs.<sup>350</sup> Exxon signed a consent order with the Federal Trade Commission the following year.<sup>351</sup>

In 2001, a jury in Florida ordered Exxon to pay a substantial fine to 10,000 service station owners around the country who claimed that Exxon had overcharged them for gasoline for twelve years.<sup>352</sup> The company fought the case all the way to the U.S. Supreme Court. In 2005, the Supreme Court ruled against Exxon, and the resulting judgment with interest was \$1.3 billion.<sup>353</sup>

## **Failure to Pay Royalties and Subsidies**

In 1998, Mobil paid \$45 million to settle claims that it underpaid royalties that were owed to the federal government for oil produced on public and Indian land in the western United States and in the Gulf of Mexico.<sup>354</sup>

In 2000, an Alabama jury found Exxon guilty of defrauding the state of royalty payments from natural gas wells in state waters.<sup>355</sup> The jury imposed a \$3.5 billion fine on Exxon for its misdeeds.<sup>356</sup> The 2000 verdict was overturned by the Alabama Supreme Court on technical grounds, but in 2003 another trial was held and the new awarded the state \$11.9 billion.<sup>357</sup>

## **CONCLUSION**

The foregoing actions by ExxonMobil, including its long campaign of misinformation regarding climate change, provide ample basis for suspension and debarment. One of the primary goals underlying the suspension and debarment regime is to protect the government from business relations with dishonest, unethical, criminal, or otherwise irresponsible contractors or persons.<sup>358</sup> It is the federal government's responsibility to protect the public interest by ensuring the integrity of federal programs by conducting business only with responsible persons.

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<sup>350</sup> *In the matter of Exxon Corporation*,

<https://www.ftc.gov/sites/default/files/documents/cases/1996/09/d9281cmp.pdf>

<sup>351</sup> 124 F.T.C. 249, 1997 WL 33483324

<sup>352</sup> See generally *Allapattah Services, Inc. v. Exxon Corp.*, 157 F. Supp. 2d 1291 (S.D. Fla. 2001); see also Mattera, *supra* note 243.

<sup>353</sup> See *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546 (2005); see also *Exxon to Pay \$1.3 Billion Under Ruling by Justices*, N.Y. TIMES (June 24, 2005), [http://www.nytimes.com/2005/06/24/politics/exxon-to-pay-13-billion-under-ruling-by-justices.html?\\_r=0](http://www.nytimes.com/2005/06/24/politics/exxon-to-pay-13-billion-under-ruling-by-justices.html?_r=0).

<sup>354</sup> Mattera, *supra* note 243243.

<sup>355</sup> Leslie Wayne, *Exxon Told to Pay Alabama \$3.5 Billion for Natural Gas*, N.Y. TIMES (Dec. 20, 2000), <http://www.nytimes.com/2000/12/20/us/exxon-told-to-pay-alabama-3.5-billion-for-natural-gas.html>.

<sup>356</sup> *Id.*

<sup>357</sup> Jennifer Bayot, *Exxon Is Ordered to Pay \$11.9 Billion to Alabama*, N.Y. TIMES (Nov. 15, 2003), <http://www.nytimes.com/2003/11/15/business/exxon-is-ordered-to-pay-11.9-billion-to-alabama.html>

<sup>358</sup> See 48 C.F.R. § 9.406-2.

As demonstrated above, ExxonMobil has a long and well documented history of engaging in dishonest, unethical, unlawful, and irresponsible activities affecting the environment and the public health and welfare. Most notably, despite access to vast financial resources, ExxonMobil's senior management team has engaged in decades of misinformation regarding its knowledge of climate change and the imminent potential for disastrous global impacts, and maintained a corporate culture condoning regulatory noncompliance as a cost of doing business which is reflected in the company's past and present violation history.

ExxonMobil's history of continued willful violations, dishonest corporate attitude, deliberate misleading of the public and government officials, undermining climate science, and fueling of public skepticism demonstrate internal institutional problems and a lack of business integrity that make ExxonMobil appropriate for debarment. Upon the basis of the information and authority provided herein Petitioner respectfully requests the immediate debarment of ExxonMobil from government-wide programs and activities involving Federal financial and nonfinancial assistance and benefits. Upon suspension and debarment, ExxonMobil's status and other identifying information should be included on the General Services Administration list of excluded persons, now known as the System for Award Management.

Respectfully submitted,



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