

Chevron's \$16 Billion Environmental Problem in Ecuador

Fact Sheet on Legal Case and Indictments of Two Chevron Lawyers September, 2008

1. **Case filed in U.S. in 1993:** The case, *Aguinda v. ChevronTexaco*, began on November 3, 1993 when 30,000 people from Ecuador's Amazon filed a class action suit against Texaco in New York federal court alleging massive oil contamination of the rainforest. For ten years, Texaco argued before various U.S. judges that the case should be transferred to Ecuador's courts. During this time, Texaco lawyers submitted numerous expert affidavits praising the fairness of those courts. The U.S. federal judge granted Texaco's motion and removed the case to Ecuador on the condition that Texaco submit to jurisdiction there and be bound by any ruling. In the meantime, Chevron bought Texaco in 2001 and thereby assumed its liabilities and the defense of the case.
2. **Worst oil-related disaster on earth:** The case is historic for three primary reasons: a) it is the first time indigenous people from the rainforest have succeeded in forcing an American oil company to accept jurisdiction in their own courts; b) it concerns what experts believe to be the most extensive oil-related contamination on the planet; and, c) the amount of damages - estimated by a court appointed special master to be as high as \$16.3 billion - could lead to the largest civil judgment in history.
3. **Dumping of toxic water and hundreds of waste pits:** The basic facts are not in dispute. Texaco was the exclusive operator from 1964 to 1990 of an oil concession that covered 1,700 square miles of pristine rainforest - an area roughly the size of Rhode Island. Chevron has admitted that Texaco dumped over 18.5 billion gallons of toxic produced water into streams and soil in the rainforest during this time - about 4 million gallons daily at the height of its operation.¹ Texaco gouged out of the jungle floor 916 unlined, open-air waste pits and filled them with deadly toxins that were run off via a piping system into nearby streams and rivers.

The company also burned or vented millions of cubic meters of natural gas into the atmosphere without controls. All three of these practices violated customary industry standards in existence at the time in the U.S. Produced water was supposed to be re-injected into the ground; pits were to be built with impermeable liners so groundwater and soil would not be contaminated; and gas, which contains deadly dioxins, was not to be burned. The company also spilled at least 17 million gallons of crude from its pipelines and would regularly light the pits on fire, which produced huge plumes of toxic black smoke. Overall in Ecuador, the amount of crude Texaco either deliberately dumped or spilled from its pipeline amounts to roughly 30 times the amount discharged in the Exxon Valdez disaster.

4. **Calculating damages of \$16.3 billion:** By refusing to replicate environmentally safe practices required in the US at the time, it is estimated that Chevron saved an estimated \$1 to \$3 per barrel. According to the court's special master, the cost savings derived from using the three main sub-standard operational practices has created an "unjust enrichment" to Chevron shareholders of \$8.3 billion (in 2008 dollars). The plaintiffs are asking that this entire amount be disgorged from the company in addition to the roughly \$8 billion in actual costs that it would take to remediate the environmental damage and compensate the affected communities - hence, the \$16.3 billion damages assessment. Although Chevron has never revealed the cumulative profits Texaco made in Ecuador, the plaintiffs estimate them to be as high as \$30 billion.
5. **100% of Chevron sites contaminated:** A court-ordered report conducted by 15 independent scientists under the supervision of Richard Cabrera, an Ecuadorian professor and geologist, found that all 94 Chevron oil production sites examined during the trial had illegal levels of toxins in either surrounding soils or water, or both.² Some samples produced levels of deadly toxins thousands of times higher than Ecuadorian and U.S. standards. In a startling finding, Cabrera concluded that Chevron itself had produced samples at almost every site inspected, thus proving its own culpability. Cabrera found Chevron to be the primary responsible party and concluded that damages were between \$7.2 billion and \$16.3 billion. That figure excludes the cost of cleaning up groundwater contamination, which ultimately could drive the amount of damages significantly higher. Even if all of this money is collected, it will be impossible to repair much of the environmental and social damage.
6. **Impacts on indigenous groups:** Texaco ran roughshod over the

five indigenous groups that inhabited the region. One of the groups (the Tetete) has disappeared while four others (the Cofan, Secoya, Siona, and Wuaroni) are struggling to survive after having lost 95% or more of their ancestral land to oil operations and squatters from other parts of Ecuador who took over their territory. Further, the contaminated water and soil makes it virtually impossible for the indigenous groups to survive in the rainforest; the traditional lifestyles have been all but decimated. Testimonies gathered during the trial from elders demonstrate that Texaco workers would lie about the oil, claiming it was full of vitamins and would cause no harm. Several women reported they were raped or subjected to sexual assault by oil workers. The main town in the region, Lago Agrio, means "Sour Lake" and was named by Texaco after a town in Texas where the company was founded.

7. **Dangerous levels of toxins:** In a representative finding, Cabrera concluded that the soil around one well site operated exclusively by Chevron (Lago 35) had Total Petroleum Hydrocarbons (TPHs) at 414,414 parts per million--an astounding 4,144 times higher than the typical US soil clean-up norm of 100 ppm. (TPHs are harmful chemicals that derive from crude oil and include the carcinogen benzene.) Cabrera also found that roughly 80% of Chevron's remediated pits contain illegal levels of toxins. Chevron itself found TPHs in its own sampling hundreds of times higher than Ecuadorian and U.S. norms.
8. **Chevron's practices had been outlawed in the U.S.:** In 1939, Texas banned open-air toxic waste pits; Louisiana outlawed the dumping of oilfield produced water to fresh water bodies in 1942. In Ecuador, the dumping of produced water violated several laws dating to 1921 that prohibit contamination.³ Chevron also violated its operating agreement with Ecuador, which required it to "employ modern and efficient machinery" and to "avoid contamination of waters, airs, and lands."
9. **High cancer rates and other health impacts:** Despite evidence of extensive contamination and the expenditure of an estimated \$200 million on its defense of the legal case, Chevron to this day has not conducted even a single health evaluation of residents in the rainforest where it operated. Numerous independent, peer-reviewed academic studies have found cancer rates were anywhere from 1.7 to four times greater for people living in the area where Texaco operated than for people living outside the area.⁴ One study found that the risk for spontaneous miscarriage was 2.3 times higher among women living near contamination; another found alarming rates of childhood

leukemia. Chevron blames the health problems in the region on feces in water and poor personal hygiene.⁵

10. **Chevron's so called "remediation":** Chevron relies on technicalities to defend itself. In 1995, in a maneuver to dismiss the lawsuit then pending in U.S. federal court, Texaco claims it paid \$40 million for a clean up in exchange for receiving a legal release from Ecuador's government for any environmental claims the government had against the company. (Texaco sought the release even though it claimed it had not caused environmental damage.) The release was granted before any remediation work was actually done, and is now the subject of a fraud indictment in Ecuador. Texaco's "remediation" consisted of dumping dirt into a small number of waste pits without first cleaning out the toxins, the equivalent of trying to treat skin cancer with make-up. Under this process, dirt was dumped only at about 10% of all the pits Texaco built. For example at one of the so-called remediated sites operated exclusively by Texaco, Parahaucu 3, the TPH level today is 2,065 times higher than allowed in the US and 206 times higher than allowed by Ecuadorian law. The special master generally found no difference in levels of toxins between pits Texaco "remediated" and pits that had not been remediated. In essence, the Texaco remediation was a sham.
11. **Criminal indictment of two Chevron officials:** Ecuador's national prosecutor recently indicted two Chevron lawyers for fraud based on the results of the purported remediation. Those indicted are Ricardo Reis Veiga, currently a vice president of Chevron in charge of legal affairs in Latin America, and Rodrigo Perez Pallares, Chevron's top lawyer in Ecuador for more than three decades. The prosecutor's theory is that these individuals conspired with officials of Ecuador's government to falsify the results of a purported remediation to secure a legal "release" that could be used to avoid liability in the pending civil case. In actuality, a double fraud was committed - one victimized the people of Ecuador, whose government had legitimate claims against Chevron for environmental damage; the other possible victim was a U.S. federal court, which was asked to accept a potentially fraudulent release that would have extinguished the legal claims of thousands of vulnerable Amazonian residents. Texaco's outside counsel at the time, the Atlanta-based law firm of King & Spalding, had represented Exxon during the Valdez disaster.
12. **Chevron's so-called "release" does not apply to the lawsuit:** In any event, Chevron's release from the government has no legal relevance to the *Aguinda* case because it clearly carves out

individual claims held by the people of the region. Ecuador's government refused to include such claims in the release despite prodding from Chevron's negotiators. That said, Chevron - with no legal basis -- still tries to claim in lobbying to U.S. government officials that the very existence of the *Aguinda* case in Ecuador's courts violates its rights under the release. No court in either Ecuador or the U.S. ever has accepted Chevron's expansive interpretation of the release.

13. **Environmental racism:** Chevron's current legal arguments in the *Aguinda* case often demonstrate a profound disrespect for the people and laws of Ecuador. Ecuador law currently prohibits TPHs in the soil at amounts greater than 1,000 ppm (considered a lax standard for polluters), while the mean clean-up standard in the U.S. is 100 ppm. Yet Chevron has urged the Ecuadorian court to adopt the astonishingly high standard of 10,000 ppm for TPH - 100 times higher than the soil clean-up standard in its home state of California and in numerous U.S. states. Chevron has not explained why it used a 5,000 ppm standard (still a grossly inflated standard) in its "remediation" contract but insists that the court adopt a 10,000 ppm standard during the trial. Some critics have called the Chevron practice of using different clean-up standards for different groups depending on where they live or their ethnic status as *environmental racism*.
14. **Issue of Petroecuador:** In 1990, when its operating contract expired, Chevron turned over its production and operational infrastructure to Petroecuador, Ecuador's national oil company. Although Petroecuador has made efforts to improve the deficient practices inherited from Chevron, there is little doubt that many improvements are still needed. PetroEcuador, though not a defendant in the *Aguinda* case, still bears responsibility to the people of the region to conduct oil operations without contaminating the environment. That said, under the legal theory of joint and several liability, Chevron can be held fully responsible for not only the contamination caused during the time it operated the oil fields but also for the contamination produced since by the continued use of the slipshod operational infrastructure that it installed plus continuing releases from its old operations. Chevron's own audit of its environmental practices concluded that spills that occurred after 1990 (which is when Chevron handed over operations to Petroecuador) that were caused by Chevron's "improper equipment design" were still the responsibility of Chevron.⁶

***For more information or interviews with technical experts,
lawyers, and the affected plaintiffs please contact:***

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¹ “Produced water” contains a variety of toxic and carcinogenic petroleum hydrocarbons, including benzene, toluene, ethylbenzene and xylene (together known as BTEX) and polynuclear aromatic hydrocarbons (PAHs).

² Ecuadorian courts generally give wide deference to the findings of court-appointed experts, who are akin to special masters in the United States.

³ Ecuador’s *Ley de Yacimientos* (Mineral Deposits Law), which entered into force on December 17, 1921, prohibits water contamination during exploration and production activities by companies exploiting natural resources. Ecuador passed a Hydrocarbons Law in 1971 that required oil companies to “adopt all necessary measures to protect the flora, fauna, and natural resources” and to “avoid contamination of water, air, and land.” Ecuador’s *Ley de Agua* (Water Law), which went into effect in 1972, “prohibits all contamination of waters that affect human health or impacts the development of flora and fauna;” the country’s *Ley de Prevención y Control de Contaminación Ambiental* (Law of Prevention and Control of Environmental Contamination), which became law in 1976, “prohibits the discharge ... of any type of contamination that could alter the quality of the soil and affect human health, the flora, the fauna, natural resources, and other natural capital.” Ecuador’s national Constitution recognizes the right to “to live in an environment free of contamination” which also means to live “without fear” of any eventual environmental threats. Ecuador Constitution, Art. 23.6. A complete list of Ecuador’s anti-pollution laws in effect during Chevron’s operation in that country is available from the plaintiffs.

⁴ The studies include: Hurtig AK. and San Sebastian M., “Incidence of Childhood Leukemia and Oil Exploitation in the Amazon Basin of Ecuador,” *INTERNATIONAL JOURNAL OF EPIDEMIOLOGY*, 31:1021-1027 (2002) (finding significantly higher rates of child leukemia found in Ecuador rainforest counties where Texaco’s oil exploitation had been ongoing for at least 20 years as compared with non-oil-producing counties); Miguel San Sebastian, Ben Armstrong, and Carolyn Stephens, “Outcomes of Pregnancy among Women Living in the Proximity of Oil Fields in the Amazon Basin of Ecuador,” *INTERNATIONAL JOURNAL OF OCCUPATIONAL HEALTH*, Oct/Dec 2002 (finding increased rates of spontaneous miscarriages in communities near where Texaco operated in Ecuador); San Sebastian M., Armstrong B., Cordoba JA. and Stephens C., “Exposures and cancer incidence near oil fields in the Amazon basin of Ecuador,” *OCCUPATIONAL & ENVIRONMENTAL MEDICINE*, 58(8):517-22 (2001) (an investigation of the Ecuador community of San Carlos located in Texaco’s former concession revealed severe exposure to TPHs by the residents and significantly higher than expected rates of cancer and cancer deaths, even when controlling for employment in the oil industry and smoking habits); San Sebastian M., Armstrong B. and Stephens C., “La salud de mujeres que viven cerca de pozos y estaciones de petróleo en la Amazonía ecuatoriana,” *REVISTA PANAMERICANA DE SALUD PUBLICA*, 9(6): 375-384 (2001) (communities relying on streams with high TPH concentrations demonstrated significantly higher prevalence of skin fungi, nasal irritation, throat irritation, and associations with higher prevalence of fatigue, headaches, eye irritation, earaches, diarrhea, and gastritis).

⁵ See David O’Reilly interview with British Broadcasting Corporation available at http://www.pbs.org/previews/extreme_oil/. Coliforms, which generally exist in the water supply throughout rural Latin America, do not cause cancer.

⁶ Fugro-McClelland, 1992. Environmental Field Audit for Practices 1964-1990, Petroecuador-Texaco Consortium, Oriente, Ecuador.