

Summary of Overwhelming Evidence Against Chevron in Ecuador Trial

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An Ecuadorian appeals court recently affirmed a trial court judgment finding Chevron guilty of massive environmental contamination stemming from its Ecuador operations (under the Texaco brand) from 1964-1992. The Ecuador trial court processed the case with meticulous attention to the due process rights of the parties, generating a voluminous record of 220,000 pages that contains more than 100 expert reports, testimony from dozens of witnesses, scientific data from 54 court-supervised inspections, independent health evaluations, and reams of legal argument. The proceeding transpired over the course of almost nine years—an agonizingly long time for the affected rainforest indigenous and farmer communities, who literally were dying off as Chevron employed (and continues to employ) delay tactics to prevent a resolution of their claims. As summarized below, the evidence before the Ecuador trial and appellate courts demonstrated overwhelmingly that Chevron (a) recklessly adopted sub-standard operational practices in Ecuador to cut production costs to the bare minimum, creating what experts believe could be the largest and most damaging oil-related disaster of all time; (b) flagrantly violated multiple Ecuadorian laws, its own contractual obligations, and oil industry standards in effect at the time; and thereby (c) caused massive environmental damage to an area the size of Rhode Island that for decades to come will create myriad health risks for thousands of rainforest inhabitants unless there is a comprehensive clean-up. The evidence against Chevron comes not only from the plaintiffs, but also from *Chevron's own experts and environmental auditors* as well as independent third-party sources. The damages also included a punitive component designed to punish Chevron for trying to sabotage the trial and threaten judges with jail time if they did not rule in the company's favor.

Chevron's Substandard Practices

Dumping of produced water. The trial court relied on oil industry field manuals and other evidence dating back to the 1920s to find that the billions of gallons of cancer-causing “produced water” discharged by Chevron into streams and rivers is toxic to the environment and human health. Chevron’s lead representative in Ecuador, Rodrigo Perez Pallares, *admitted* that the company dumped at least 16 billion gallons of the “produced water” into Amazon waterways that indigenous groups had relied on for their drinking water, bathing, and fishing. A Chevron environmental auditor (Fugro-McClelland) confirmed in 1992 that in Ecuador “[a]ll produced water from [Chevron’s] production facilities [is] eventually discharged to creeks and streams” except for one facility and that none of the discharges “were registered” with the appropriate Ecuadorian authorities. The result is that the affected plaintiffs have been forced to drink poisoned water for decades, and the sediment in river and stream beds is massively contaminated with heavy metals and other toxins.

Use of unlined waste pits. The trial court found detailed evidence of more than 900 waste pits carved out of the jungle floor and abandoned by Chevron that are filled with oil sludge and continue to contaminate soils and groundwater. Expert testimony set the amount of toxic material in these pits at over 5.6 million cubic meters. Industry field manuals at the time required

these waste pits to be lined and used for temporary storage; Chevron used them for permanent storage. Chevron documents from the 1970s show the company considered spending funds to address environmental problems from use of the pits, but decided it was too expensive. Chevron's auditors confirmed environmental problems stemming from the pits.

Frequent and devastating oil spills. The trial court record contains substantial evidence that Chevron never developed a plan to contain or clean up its frequent oil spills. Evidence showed that Chevron never conducted even basic maintenance on its extensive network of pipelines. Fugro McClelland and HBT Agra, the company's environmental auditors, both report that “no spill prevention methods were in place” in Chevron's concession area and that oil spills were either covered in sand or washed into local streams. Fugro-McClelland observed evidence of leaks from pipelines at 11 of 28 transects visited. Chevron documents corroborate the unusually high frequency of spills: a report dated November 1978 mentions 38 ruptures in the Sacha field during the month of September. More Chevron spills likely occurred than were reported given that company employees were ordered to destroy relevant documents.

Flaring of gas. The court also relied on evidence that Chevron exclusively used poorly-maintained flares to burn natural gas that caused extensive air pollution. The same sources also describe how Texaco routinely burned off oil from pits and spills, contaminating the air with huge plumes of black smoke.

Destruction of documents. The court also relied on a 1972 memo where a Chevron executive in charge of Ecuador sent a memo establishing the policy that “[o]nly major [environmental] events . . . are to be reported. . . . A major event is further defined as one which attracts the attention of the press and/or regulatory authorities or in your judgment merits reporting” and further that “[n]o reports are to be kept on a routine basis and all previous reports are to be removed from Field and Division Offices and destroyed.”

Chevron's Legal Violations

The Ecuador court relied on findings that Chevron violated numerous laws designed to protect human health and the environment that were in place at the time of the company operated in Ecuador. These included regulations from the Ministry of Public Works, which took effect in 1964, that ordered Chevron not to “deprive the drinkable and purity qualities of the waters”; a Health Law dating from 1971 providing that “no person shall be allowed to dispose into the air, ground, or waters, the solid, liquid or gaseous residues, without previous treatment making them inoffensive to health”; the Hydrocarbons Law of 1971 ordering oil producers to “adopt the necessary measures for the protection of flora and fauna and other natural resources” and to “avoid the contamination of waters, atmosphere and lands”); and the Water Law from 1972 forbidding “all contamination of the waters that affects the human health or the development of the flora or fauna”); and Chevron's production contract with Ecuador that required the company to “adopt the advisable measures for the protection of the flora, fauna and other natural resources, and they will avoid the contamination of waters, atmosphere and land.” As the trial court made clear in its judgment, these were not abstract provisions; various ministries imposed fines on Chevron for its reckless operations based on these laws and regulations. Evidence also showed that Chevron never filed environmental impact statements in Ecuador, as required by

law, nor did it budget any funds for environmental clean-up.

Ongoing Impact of Chevron's Contamination

Judicial site inspections. The trial court conducted 54 inspections of Chevron wells and oil production facilities and found oil contamination (measured as Total Petroleum Hydrocarbons, or TPH) in violation of applicable legal norms *at every single site inspected*. Ecuador law allows TPH in soil and waters at 1,000 mg/kg—a standard ten times more lax than the typical U.S. standard. As the trial court noted, some times samples at Chevron sites showed contamination up to 900 times higher than the Ecuadorian norm. The average TPH level across the nearly 800 samples taken from Chevron pits was 20,033 mg/kg—over 20 times the lax Ecuadorian standard. The average TPH level from the nearly 1000 samples taken in areas surrounding those pits was 5,247 mg/kg, or five times that standard.

Witness testimony. The court also relied on eyewitness testimony from rainforest inhabitants who had witnessed Chevron's waste pits routinely overflow into surrounding streams. Witnesses also testified that Chevron covered some of its open-air pits with dirt without cleaning them out as part of a “remediation” it conducted in the mid-1990s. They told of how their water supply became visibly contaminated and noxious-smelling because of oil operations and how healthy family members became ill and even died as a result of exposures to toxins.

Human health impacts. Substances found in TPH and at the inspected sites include known human carcinogens and toxins such as benzene, toluene, ethylbenzene, xylene, polycyclic aromatic hydrocarbons (PAHs), benzoanthracene, benzopyrene, and phenanthrene. The soil and water samples taken from Chevron sites established illegal levels of barium, cadmium, copper, chromium VI, mercury, naphthalene, nickel, lead, vanadium, and zinc. The trial court relied on materials from U.S. Agency for Toxic Substances and Disease Registry (the preeminent authority on toxicity) to describe how these chemicals adversely affect the functioning of the immune, nervous and reproductive systems and can cause cancer.

Phony Chevron remediation. Chevron claims that a limited “clean-up” it conducted in Ecuador in the mid-1990s effectively mitigated any harm, but the court found that the scientific evidence proved beyond any doubt that the Chevron remediation was a sham. It applied to only 16% of the waste pits built by the company. Chevron also used a fake laboratory test to minimize the amount of contamination that would be reported to the government. At trial, 83% of Chevron's supposedly “remediated” pits showed illegal levels of TPH—up to 206,000 mg/kg TPH at one site, 35,380 mg/kg at another (Sacha 18), 32,444 mg/kg at another (Sacha 65). Dozens of waste pits that Chevron claimed to have found “no apparent contamination” when it inspected them in the 1990s revealed illegal levels of contamination during the trial— at one site, up to 175,000 mg/kg TPH as measured by Chevron's own expert.

Chevron's own data proves claims against it. The trial court noted that the levels of contamination at Chevron's sites were so high that Chevron could be found liable on the basis of its own data. At the Sacha 94 site, Chevron expert Ernesto Baca reported TPH of 8,700 mg/kg in one pit and 5,600 in another. At the Sacha 57 site, Chevron expert Gino Bianchi found six samples showing illegal levels of TPH. (Chevron had reported both sites “remediated” in the

1990s). Overall, Chevron's own TPH data proved that 79% of its well sites are contaminated over the Ecuadorian norm, and 91% are contaminated over the international standard of 100 mg/kg. Data from Chevron auditor Fugro-McClelland and two other court-nominated Chevron experts corroborated these extraordinarily high levels of contamination. Other independent third-party sources also produced data that corroborated the findings.

The Court Fully Addressed Chevron's Legal Defenses and Due Process Concerns

The trial court's 188-page decision methodically addressed each of Chevron's legal defenses. The court rejected Chevron's complaint that an environmental law in Ecuador was being applied retroactively given that the substantive provisions of the claims derived from a civil code provision dating to 1861. The court also found Chevron responsible for the liabilities of Texaco, a company that Chevron purchased in 2001. The trial court acknowledged Chevron's complaints about two expert report and disregarded them in its final decision.

The Trial Court's Measure of Damages Is Appropriate

Having heard voluminous evidence of the devastating effect of the contamination, the trial court ordered Chevron to pay nearly \$5.4 billion for remediation of contaminated soil, \$600 million for assessment and treatment of groundwater contamination (an amount significantly below what certain experts had thought necessary), \$200 million for restoration of ecology (again, a fraction of what experts said was required), and \$150 million to implement an emergency potable water system for affected residents. The court also ordered Chevron to fund a series of projects aimed at mitigating the effect of environmental damage whose remediation would be impossible. These amounts included \$1.4 billion to address the public health crisis in the region, and \$100 million to compensate the five affected indigenous communities. The court calculated the damages from data and analyses provided to the court by numerous experts from both parties. For example, the per-cubic-meter cost estimate for remediating soil was provided by Chevron's own nominated expert, Gerardo Barros. The overall \$8.5 billion assessment of actual damages is modest compared to BP's estimated \$60 billion liability for its 2010 Deepwater Horizon spill in the Gulf of Mexico. In contrast to the BP spill, Chevron's Ecuador contamination has existed for almost 50 years, has poisoned one of the world's most delicate and bio-diverse ecosystems, has decimated indigenous groups, and creates grave health risks for tens of thousands of men, women, and children.

Finally, the trial court reviewed the voluminous evidence of Chevron's contemptuous actions toward the plaintiffs and malfeasance throughout the trial, from its constant campaign to delay the process with frivolous motions to its outright attempts to corrupt, impugn, and even threaten the court, and concluded that this misconduct warranted the imposition of a "moral damages" award equal to the amount of the actual damages, but offered Chevron the chance to avoid paying this award entirely if it simply apologized publicly to the victims of its contamination. Chevron refused. The appeals court, too, focused on the unprecedented depth of Chevron's "flagrant bad faith" and upheld the moral damages portion of the trial court award in its entirety.

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