



## Texaco Toxic Past Haunts Chevron as Judgment Looms (Update1)

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By Michael Smith and Karen Gullo



Dec. 30 (Bloomberg) -- Bolivar Cevallos walks around the farm where his family once lived amid the oil fields of Ecuador's Amazon rain forest. His boots sink ankle deep in tar. Everywhere he steps, oily muck seeps from the ground.

A gasolinelike smell hangs in the sweltering jungle air. The mess is a remnant of **oil** drilling in a 120-mile-long swath of the tropical jungle in northeastern **Ecuador** where Texaco Inc. and Ecuador's state-run oil company, PetroEcuador, have pumped billions of barrels of crude from the ground during the past 40 years.

Cevallos, 51, whose face is tanned and creased from a life working in the tropical sun, plunges a shovel into a ditch. Grease oozes out and drains into a river his family used for drinking and bathing for more than 25 years.

About 230,000 people live in Ecuador's northeastern rain forest side by side with **oil wells** and pools of drilling waste. Cevallos is no longer one of them.

Four years ago, a doctor diagnosed his daughter, Diana, with histiocytosis X, a rare blood disease that caused tumors that punched holes in her skull.

"The doctor told us to get out because the pollution would make her sicker, maybe kill her," says Cevallos, who used to tend patches of cacao on his farm and now works as a laborer on a construction site for \$6 a day. His daughter, now 5, is thin and still ailing.

As he speaks, a dog claws at trash around the family's abandoned, windowless, one-bedroom, cement-walled home.

'I Was Already Poor'

"I was already poor, and now I was going to get poorer," he says.

The ruined land around Cevallos's home is part of one of the worst environmental and human health **disasters** in the Amazon basin, which stretches across nine countries and, at 1.9 billion acres (800 million hectares), is about the size of Australia.

And depending on how an Ecuadorean judge rules in a lawsuit over the pollution, it may become the costliest corporate ecological catastrophe in world history.

If the judge follows the recommendation of a court-appointed panel of experts, he could order **Chevron Corp.**, which now owns Texaco, to pay as much as \$27 billion in damages.

The case, which has languished for 15 years in U.S. and Ecuadorean courts, highlights the growing human and environmental toll of the global quest for oil.

"If they have to pay out, who takes the big hit? Ultimately, the shareholders," says Pat Doherty, director of corporate responsibility at the Office of the New York City Comptroller, which controls 6.5 million Chevron shares in public pension funds.

## 'Bad Shape'

Doherty says Chevron should settle. Otherwise, if the company loses, he expects it will file appeals in Ecuador and the U.S. for years to come, leaving stockholders in limbo.

"They're really in bad shape on this," he says. "A settlement would make sense. The trees that last the longest are the ones that bend."

**Ecuador**, which reported annual per capita income of \$3,400 in 2007 and defaulted on its bonds in December for the second time in a decade, is one of two Latin American members of the **Organization of Petroleum Exporting Countries** and depends on oil revenue to fund a third of the national budget.

Both sides in the Amazon case agree that for a quarter of a century, until 1990, Texaco discharged 16 billion gallons of wastewater that's a byproduct of drilling.

In 1993, 76 people who lived near the wells -- including members of the indigenous Cofan and Quichua Indian tribes and people who came to the Amazon from other parts of Ecuador for jobs -- sued White Plains, New York-based Texaco in New York federal court.

### Chevron Blames PetroEcuador

**They claimed** the pollution had ruined their livelihood as farmers and fishermen and made them and their families sick.

**Chevron says** Texaco had completely cleaned up its mess by 1998. PetroEcuador, which took over Texaco's operations in 1990 -- and not Texaco -- is to blame for today's pollution, Chevron says.

From 1990 until 2007, government-owned PetroEcuador released wastewater into the environment, says **Fausto Mejia**, a spokesman for PetroEcuador. He says the company has spent the past 16 years cleaning up, decreasing its dumping each year. It stopped releasing waste entirely by 2008, he says.

The case will be decided in an old concrete building in the Amazonian oil town of Lago Agrio, 37 miles (60 kilometers) north of Cevallos's former home. With a shoe store, a T-shirt shop and a beauty salon on the street level, the building, which has no elevator, also houses a provincial courthouse.

### 141,000 Documents

On the fourth floor, Judge Juan Nunez oversees the lawsuit, weighing evidence and pondering whether Chevron should pay billions in damages. Nunez, 55, who wears a tan, open-necked, short-sleeved shirt, is president of the Nueva Loja Superior Court, the highest **judicial body** in Ecuador's northeastern Sucumbos province.

He reviews soil tests, expert reports and requests for inspections of contaminated sites. A dark cherry desk in his office is covered with files in pink folders bound with string. The case has become a pincushion for legal and technical disputes, accumulating more than 141,000 documents.

Nunez will decide the case without a jury, as is customary in Ecuador's legal system. In civil cases, judges gather evidence from witnesses, documents and experts before reaching a decision. A statue of Lady Justice sits on a dusty coffee table near an old sofa in Nunez's otherwise Spartan office.

Nunez says his task is to decide what damage has been done and who is responsible. If he rules against Chevron, he'll determine the dollar amount of the judgment. He talks about the gravity of the case. "There are people who are dying or have died," he says.

### 1,401 Deaths

In November, a team of engineers, doctors and biologists submitted a court-ordered report concluding that Texaco's pollution had caused 2,091 cases of cancer among residents and led to 1,401 deaths from 1985 to 1998.

The panel had previously concluded that Texaco polluted streams and drinking water in a **1,920-square-mile** (4,972-square-kilometer) area and caused economic and social damage to people who live near the wells.

Chevron should pay as much as \$27 billion in cleanup costs and compensation for families of the sick and the dead, the court-ordered study says. Nunez, a former Ecuadorean Air Force officer, says that by March, most of the evidence will be submitted, and he'll reach a decision on the case later in 2009.

Silvia Garrigo, Chevron's lead in-house attorney in the case, has made dozens of trips to Ecuador's **Amazon**

**region** in the past five years from her office at the company's suburban, San Ramon, California, campus, 40 miles east of San Francisco.

### Wrongly Accused

She says residents have wrongly accused Texaco of contaminating the environment and that there's no credible evidence linking diseases to Texaco's work.

"They have been told so many times that it's Texaco, so everything that goes wrong in their lives, if their cow dies, it's Texaco," Garrigo, 47, says. "If their wife has diabetes, it's Texaco."

Health problems among residents of the Amazon are linked to poor sanitation and poverty, and residents of the oil region are pawns of activists and greedy attorneys, Garrigo says.

"You have people that are very needy," she says. "They will lie. 'My baby will have medical care, my son will get a job, if I testify.'"

If the judge follows the report's recommendations, it could be the biggest industrial environmental judgment ever, surpassing Chevron's 2007 profit by 50 percent. Chevron says it would appeal an adverse outcome, which could stave off paying anything for years.

### Exxon Valdez

Nunez's ruling has the potential to dwarf the \$470 million in damages paid by Union Carbide Corp. over a chemical leak in Bhopal, India, that killed 3,800 people in 1984. And it could exceed the cost for the biggest oil spill ever in U.S. waters, **Exxon Mobil Corp.**'s nearly \$4 billion in compensation and fines for the Exxon Valdez tanker disaster in Alaska in 1989.

Exxon settled both civil and criminal charges to end the litigation.

In 1995, Texaco agreed with Ecuador's **Energy and Mines Ministry** and PetroEcuador to clean up some of the waste dumping. Three years later, the agency approved the \$40 million repair effort by Texaco. It released the company from responsibility for pollution that remained, according to a letter to the U.S. court from Ecuador's ambassador in Washington.

Five years later, government auditors reported they had discovered pits oozing with oil and said the cleanup had been botched.

"Texaco has caused irreversible damage," says the report by the General Controller of the State, a government agency that audits public contracts. "The environmental remediation and repair agreement goes against the country's interest," says the report, which was approved on April 9, 2003.

### A Sham

Garrigo, Chevron's lawyer, says the controller's audit is a sham. It's part of an Ecuadorean government campaign to concoct a case against the company and help the jungle residents and their lawyers reap billions of dollars of damages, she says.

"We have independent scientific analysis that refutes those findings," Garrigo says.

Doctors at Ecuador's top cancer hospital say oil pollution has taken a heavy toll on public health in the Amazon.

"There are enough cancer cases in the Amazon to show there is a trend, and the trend is rising," says Rena Munoz, the doctor in charge of clinical oncology at Sociedad de Lucha Contra el Cancer, the Quito cancer hospital known as **SOLCA** that has treated people from the area.

Regardless of who's to blame, oil pollution is a part of daily life in northeastern **Ecuador**. San Carlos is a town of 2,800 residents living in run-down wooden houses in the heart of the former Texaco oil fields.

### 'We Drank This Water'

Trucks and bulldozers driven by government workers putting in the town's first paved streets leave giant tread marks in the mud. A crude-oil processing plant run by PetroEcuador has machinery that roars like jet engines. Smokestacks spew flames and black, sooty clouds into the air.

Texaco built dozens of oil wells near San Carlos, and one is next to the Cevallos family's abandoned home.

"We drank this water because we had to; there's no other water," says Cevallos, dressed in rubber boots and

jeans caked with mud, sweating on the banks of the stream. "No one ever told us it was bad, so we just drank it for years. Before, we didn't know. Now, we do."

Cevallos says the waste pit by his old home, which is overgrown with weeds and is the size of a tennis court, has been there since he moved to the farm with an uncle in the mid-1970s. Workers contracted by Texaco used bulldozers to cover the pits with dirt, he says.

### 1.2 Million Oil Barrels

The well produced 144,321 barrels of wastewater and 1.2 million barrels of crude in the 18 years Texaco managed it, according to company documents in court records.

When Cevallos's daughter, Diana, became ill in 2004, she was bathed in water from the polluted stream in her parents' efforts to lower her fever.

Maria Barba, a doctor at **Baca Ortiz Children's Hospital** in Quito, diagnosed the girl with histiocytosis X. Barba says she's used cancer treatments to fight the disease as it flooded Diana's body with white blood cells that attacked her bones and organs with tumors.

Barba sits at her desk at Baca Ortiz, where she runs the oncology and hematology department, reviewing Diana's records. She says she can't prove how Diana got the illness. Poor nutrition and sanitation, she says, make people sick in the impoverished Amazon, but pollution from oil drilling waste is a factor.

"It could be the water," Barba says.

The Cevallos family isn't named in the lawsuit.

### No Scientific Evidence

Chevron spokesman **Kent Robertson** says there's no scientific evidence linking Diana's disease to crude oil.

In Joya de los Sachas, a town about 5 miles north of San Carlos, three boys stand on a 29-inch-wide (74-centimeter-wide) oil pipeline running down the median on the main street. They're selling candy in the midday sun as trucks, scooters and buses speed by.

On a rutted dirt road near the pipeline in Sachas, Cevallos sits in the front room of his brother's three-room house. His family sought refuge there four years earlier after fleeing their polluted farm to help Diana heal. To pay the medical bills, he's had to sell two small houses he was fixing up.

Cevallos has been able to take Diana to clinics and hospitals in Ecuador's public health system, which charges patients for medicine only. He's had to pay for drugs and treatments, including \$210 for injections every three weeks.

Next to Texaco's old Sushufindi 38 well, farmer Manuel Salinas, 72, steps out of his family's wooden shack and walks 50 feet, through a garbage-strewn patch of coffee trees. A pool of thick oil 50 yards (45 meters) long bakes in the sun.

### Chickens in Quagmire

Salinas says the oily pool has been there since he moved to the farm in the early 1970s. He started to worry that the water wasn't safe years ago, when his chickens would slip into the quagmire and die a slow death.

Havoc Laboratory in Quito, which analyzed soil samples for residents, found oil contamination about 20,000 percent above safe levels. Chevron spokesman Robertson says company tests found that drinking water near the pit isn't polluted.

Both Texaco and PetroEcuador have been cited by government inspectors for repeated spills since oil production began in the 1960s. In 1994, PetroEcuador began reinjecting wastewater from drilling into the oil formations deep below the ground, PetroEcuador's Mejia says.

Reinjection is a common practice in the U.S. For decades, Texaco put the waste into unlined pits, treated it and then discharged it into rivers and streams, a practice that was legal in Ecuador at the time, Chevron says on its Web site.

### Outlawed in U.S.

As Texaco was dumping waste in Ecuador, environmental regulators in U.S. states were outlawing open-air

pools.

Texas banned unlined waste pits that leaked into groundwater as far back as 1969, says Steve Seni, former assistant director of environmental studies at the Texas Railroad Commission, which regulates the oil industry.

A few miles from San Carlos, Ines Suquisupa stands by a grave in a jungle clearing with a photograph of her daughter Ana Patino. Ana, a shy girl who got good grades in school, agonized with leukemia for weeks in the wooden shack in which she was reared near an oil well outside San Carlos.

Doctors at Eugenio Espejo Hospital in Quito referred her to the Red Cross Hospital in Quito. There, Juan Sghirla, a hematologist, concluded her leukemia was so advanced that there was little he could do. That day, on June 20, 2005, Ana died. She was 18 years old.

"It was so fast that before we knew it, she was dead," says Suquisupa, standing by her unpainted wooden home, which has uncovered openings for windows and no running water.

#### Shallow Water Well

Ana probably came down with the deadly disease because of the oil pollution around her home, Sghirla says. Ana, whose family settled the farm before she was born, grew up about 100 yards from an oil well and drank from a shallow water well that lay underneath rusty crude-oil pipelines.

A team from the general controller's office that took soil tests at a well near Ana's home found hydrocarbon contamination 5,716 times normal levels, the 2003 audit says.

Once, when neighbors tried to dig a water well a few feet away, they struck a layer of tar, says Suquisupa, 50, who makes a living tending a patch of cacao and coffee on her farm. Ana's family isn't among those who sued Chevron.

Chevron spokesman Robertson says soil and water tests found no chemicals known to cause leukemia.

There had been no oil production in **Ecuador's** Amazon before 1964. That year, Texaco entered the region when the government gave the company the right to explore a strip of jungle in two provinces, Orellana and Sucumbios, near the Colombian border. On March 29, 1967, the search bore its first fruits.

A well called Lago Agrio, which is Spanish for Sour Lake, gushed thick, black crude. Sour Lake is also the name of a Texas town where Texaco made one of its first oil strikes, in 1903.

#### 'Country's Salvation'

Jorge Viteri, an engineer who worked for one of Texaco's contracted exploration crews, recalls dancing by the well that day as the crude rained down.

"We thought it would be our country's salvation, bringing us out of poverty," says Viteri, 82, who wrote a book, *Oil, "Spears and Blood"* (Palabra Editores, 2008), about the quest for oil in Ecuador.

Four decades later, 35 percent of Ecuadorians live below the government's poverty line, earning less than \$720 a year. In rural areas like the northeast Amazon, the poverty ranking is nearly 60 percent, according to Ecuador's National Institute of Statistics and Census.

Starting in 1964 and throughout Texaco's 26-year presence in the Amazon, Texaco crews cleared roads, built bridges and river ports and hired more than 3,000 laborers. Workers also dug hundreds of pits near wells and processing stations to hold the water containing salt and chemicals that comes up with oil during drilling, court records show.

#### Little Threat

Chevron's Robertson says the chemicals pose little or no threat to health. Ecuador's Amazon gets an average of 120 inches of rain a year, and Texaco's pits sometimes overflowed, polluting streams, according to the 2003 general controller's audit.

The roads Texaco built helped open up a strip of the Amazon that had been inaccessible to vehicles and inhabited by small groups of Amazonian Siona-Secoya, Cofan and Quichua Indians.

A wave of poor Ecuadorians, mainly from the southern Andean city of Loja, flocked to the area, encouraged by government settlement programs. These so-called colonists built wooden shacks on stilts and cut down the jungle next to wells and waste pits to start farms.

Nunez remembers flying over the region when he was in the air force during those years. Dark areas showed where the lush jungle had been slashed away.

"You ask yourself what happened and what caused this?" Nunez says. "You don't have to be a technical expert to know something has happened." He says the memories won't influence his decision in the case.

### Military Rulers

By the early 1970s, Ecuador's military rulers began pressuring for a direct stake in the oil riches, says **Alberto Acosta**, a historian and former Ecuadorean energy minister.

PetroEcuador bought the majority stake of the oil venture in 1977, leaving Texaco to work the wells. The state-owned company needed Texaco then because it lacked experience in oil drilling. Texaco ran the fields until June 1990, when PetroEcuador took over. Texaco kept a 37.5 percent stake in the oil fields until 1992, when PetroEcuador bought all of it.

As management was changing hands, Miguel San Sebastian, a physician based in Spain, began to wonder how the oil pollution was affecting the health of people living in Ecuador's Amazon. San Sebastian had worked as a traveling doctor treating Indians and colonists in the jungle where Texaco operated.

"You could see it everywhere, the spills in rivers and pits," says San Sebastian, 42, who's now a professor of epidemiology at Umea University in Umea, Sweden. "We started to sense that it had to have an impact on people's health."

### Lawyers Notice

Texaco's oil drilling in Ecuador also began to attract the attention of American lawyers. Amherst, Massachusetts, attorney **Cristobal Bonifaz**, a former research engineer at DuPont Co., grew interested in oil pollution in the Ecuadorean Amazon when his son showed him a report by an environmental group.

Ecuadorean-born Bonifaz, whose grandfather, Neptali Bonifaz, was elected president of Ecuador in 1931, traveled to the region to take a look. "I saw lakes of oil," he says.

Bonifaz contacted Harold Kohn, a Philadelphia antitrust attorney who pioneered the use of class-action, or group, lawsuits. Kohn's son Joseph, a partner at Kohn Swift & Graf P.C. in Philadelphia, teamed up with Bonifaz.

**Steven Donziger**, a former journalist and Washington public defender who went to Harvard Law School with Bonifaz's son, John, joined the case.

On Nov. 3, 1993, Bonifaz, Donziger and Kohn walked into a federal courthouse in downtown Manhattan with members of Ecuadorean Indian tribes in traditional dress and filed the lawsuit against Texaco.

### Jurisdiction Battle

Lawyers for both sides fought over whether the suit should be in a U.S. court. Texaco sought dismissal, saying the U.S. courts were the wrong forum because the land and the people affected were in Ecuador.

The plaintiffs said the case should stay in the U.S. because Texaco was a U.S. company.

In the midst of the legal wrangling in New York, Texaco signed an agreement on May 4, 1995, with Ecuador's energy ministry and PetroEcuador to clean up a portion of the oil fields. In return, Texaco would be absolved from any liability for environmental damage.

Texaco said it would clean up about a third of the waste pits because it had held a 37.5 percent interest in the oil fields for the last six years of its partnership with PetroEcuador. The state-owned company would take care of the rest.

Back in New York, U.S. District Court Judge Jed Rakoff threw the case out in 1996, saying disputes that occurred in Ecuador shouldn't be decided in U.S. courts. He also said the case had been improperly filed because it didn't name PetroEcuador as a defendant.

### Decision Reversed

The Amazon residents appealed to the U.S. Court of Appeals for the Second Circuit in Manhattan. The court reversed the decision and sent the case back to Rakoff, saying it should be decided in Ecuador.

Texaco then learned that Ecuadorean government environmental officials questioned the company's cleanup.

In September 1996, the energy ministry's environmental department issued a report saying Texaco had failed to identify more than 200 additional waste pits and hadn't come up with a plan for treating about 50,000 barrels of crude-oil waste, according to memos cited in the 2003 controller's audit.

In 2001, inspectors from the government controller's office found oil seeping out of 41 Texaco waste pits and said 59 pits had been left uncovered. Texaco's cleanup didn't comply with Ecuador's environmental regulations, and the government erred in certifying the cleanup as complete, the audit concluded.

### \$45.8 Billion Acquisition

Back in the U.S., as Texaco was facing the cleanup controversy in Ecuador, Chevron, then the second-largest U.S. oil company, acquired No. 3 Texaco in October 2001 for \$45.8 billion. Chevron saw acquiring Texaco as a way to cut costs and have more capital to compete with rivals in the search for new oil reserves.

In 2003, the Ecuadoreans filed their case in Superior Court in Nueva Loja, also known as Lago Agrio, 20 miles south of the Colombian border. The suit was led by U.S. and Ecuadorean lawyers. Pablo Fajardo, a community activist and former oil worker who earned a law degree in 2004, joined the lawyers.

Bonifaz, the lawyer who started the suit in 1992, left the case. In a different case in San Francisco, a federal judge fined Bonifaz \$45,000 in 2007 for filing untrue claims that three Ecuadorean families had cancer cases linked to Texaco pollution.

Bonifaz says he had relied on information from Ecuadorean lawyers not connected to the Chevron case.

Under Ecuadorean environmental rules, lawsuits over pollution are handled by chief judges, who rotate every two years.

### Evaluating Pollution Data

In 2007, Judge Germn Yanez, the case's third judge, appointed Richard Cabrera, a geological engineer in Quito with 20 years of experience, to evaluate the pollution data, assess the effects of contamination on people and the environment and recommend a cleanup plan.

Cabrera had specialized in environmental studies for mining and oil companies in Ecuador, and he put together a team of scientists, doctors and biologists.

In April 2008, Cabrera's team concluded that Texaco's mishandling of waste until 1990 was the main cause of the pollution. It proposed a cleanup of 916 pits and underground aquifers. The report pegged total damages at \$16 billion.

The team reviewed studies by San Sebastian, the Spanish doctor, and a group of government health workers. It found that cancer rates were above those of areas of Ecuador without oil operations. Its revised report, which used studies by the **American Petroleum Institute** and the U.S. court cases to gauge costs, increased the damage estimate to \$27 billion.

### Not Supported By Evidence

Chevron says the expert panel's findings aren't supported by the evidence. The company hired doctors, epidemiologists and other experts who refute the report.

The Chevron case is the most important environmental litigation on the planet, says **Mike Brune**, executive director of the San Francisco-based Rainforest Action Network, which lobbies companies to improve their practices.

"When the verdict comes in, it will force environmental ethics to go global," he says.

Nunez says the case will have international significance.

"The Amazon gives the breath of life to humanity," Nunez says. "That's why this is the trial of the world."

Cevallos says Texaco's legacy has made his world crumble. His daughter, Diana, is a lively girl with a broad smile who likes to do homework while sitting with her mother, Sandra Gutierrez. She's spent much of the past year taking 18-hour round trips by bus with her mother to the hospital in Quito every three weeks, for chemotherapy and radiation treatments.

Across the old Texaco fields in Ecuador's Amazon, after 40 years of oil production, thousands are ill and hundreds have died. Most have no way out.

"People are getting sick all around here," says Cevallos, standing by his abandoned house. "But what can you do? When you're poor, there's nowhere else to go."

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