

Understanding Chevron's "Amazon Chernobyl"

Key Questions and Answers

www.chevrontoxico.com - Spring 2009

What is Aguinda v. ChevronTexaco?

Aguinda v. ChevronTexaco is the landmark lawsuit filed against Chevron by 30,000 Amazon residents. The lawsuit alleges that Texaco (now Chevron) engaged in sub-standard practices in Ecuador that created a humanitarian crisis that has decimated the traditional lifestyles of five indigenous groups and caused an outbreak of cancer and other health issues. Among the problems: Texaco dumped more than 18 billion gallons of toxic waste into the Amazon over the 26-year period (1964 to 1990) that it was the exclusive operator of a large oil concession. This dumping alone was 30 times more crude oil than was spilled in the Exxon Valdez disaster. Texaco also left 917 waste pits filled with toxic sludge and allowed millions of cubic meters of poisonous gas to be flared into the atmosphere. The Valdez was an accident; Texaco's dumping was a deliberate attempt to lower costs.

What makes Aguinda v. ChevronTexaco a groundbreaking case?

The case represents the first time indigenous peoples from the Amazon have forced an American oil company to submit to jurisdiction in their national courts. It also includes what is potentially the largest damages claim (\$27 billion) in the history of the oil industry. The geographic scope of the damage, which affects an area the size of Rhode Island, could be unprecedented. After buying Texaco in 2001, Chevron is now defending the case and will bear any liability.

When did the case start?

The case was filed against Texaco in federal court in New York (Texaco's headquarters) in 1993. Texaco fought for nine years to avoid trial in the United States, eventually convincing a U.S. judge in 2002 to transfer the case to Ecuador. Texaco claimed that Ecuador's courts were a fair and adequate forum and the company presented ten expert witnesses to testify to that effect. As a condition of the dismissal, Texaco (and then Chevron) agreed to submit to jurisdiction in Ecuador and be bound by any judgment. The case was re-filed in Ecuador and a trial began in October 2003.

What has the evidence of the case shown?

Significant scientific evidence demonstrating Chevron's culpability has been collected and submitted to the court by the plaintiffs, Chevron, and an independent court expert. The court-appointed technical expert, Richard Cabrera, in 2008 released a 4,000 page report that analyzed all of the evidence, including more than 62,000 scientific sampling results (52,000 of which were submitted by Chevron). Cabrera, who was assisted by a team of 14 scientists, found that the sampling results conclusively prove that 100% of Texaco's 94 former well sites inspected during the trial show dangerous levels of cancer-causing hydrocarbons. The Cabrera report found that Chevron was primarily responsible for the pollution and estimated damages to be as high as \$27 billion.

What categories of damages did Professor Cabrera's report address?

Professor Cabrera's report includes compensation for the following damages: soil, groundwater, drinking water, health care, indigenous impacts, infrastructure repair, and excess cancer deaths and ecosystem losses. It also includes a category called "unjust enrichment" that would cause Chevron to disgorge the present day value of the monies saved by Texaco via the illegal use of sub-standard practices. The judge can accept the report in whole or in part, or modify it.

Are the findings of the court expert reasonable?

The damages assessment has been supported as reasonable by roughly 25 scientific experts from the U.S. and other countries. The \$27 billion estimate is consistent with damages for other large environmental disasters accepted by courts around the world. For example, Rocky Flats, an area 1% of the size of Texaco's concession in Ecuador, cost \$7.2 billion to remediate. The Hanford Nuclear Waste site in Washington State will cost at least \$53 billion to remediate, according to the U.S. Department of Energy.

What has been the health and social impact of the pollution?

Cancer rates and other oil-related health problems in the region where Texaco operated have skyrocketed, devastating a region with little or no access to adequate medical care. Five indigenous groups in the region have lost 95% of their ancestral land and seen dramatic declines in their populations. These groups – the Cofan, Secoya, Siona, Kichwa, and Huaorani – had prospered in the rainforest for centuries before Texaco's arrival. A sixth indigenous group, the Tetete, disappeared altogether during Texaco's reign of environmental destruction.

How significant has the impact been on the health of the people of the region?

Nobody can be sure exactly how many people have died from cancer and other oil-

related diseases where Texaco operated. Using a conservative analysis, the Cabrera Report estimated that the oil contamination has caused 1041 excess deaths from cancer in Texaco's operational area, as well as numerous other cases of cancer and disease that have not resulted in death. An epidemiological study published in the prestigious academic journal *International Journal of Occupation and Environmental Health* found rates of cancer in the area Chevron operated 130% above Ecuador's norm.¹ Another found 91 cases of child leukemia, and rates of child cancer four times higher in the area where Chevron operated than in other parts of Ecuador.² Other peer-reviewed scientific studies have found elevated rates of oil-related health problems such as spontaneous miscarriages and genetic defects.³

What has been Chevron's response to these impacts?

Rather than address the humanitarian crisis caused by Texaco, Chevron has launched a massive political, advertising, and public relations campaign to evade a judgment and to hide its potential liability from shareholders. This campaign has included the purchase of newspaper ads in Ecuador and the U.S. to smear court officials and the plaintiffs; hiring Washington lobbyists to pressure the U.S. government to cancel trade benefits for Ecuador as "punishment" for letting the case proceed; delaying the trial process by filing repetitive motions, creating fake security threats, tolerating death threats, and by menacing the presiding judge with the prospect of prison; distorting, and indeed lying about, the underlying science in the case; and, attempting to pressure Ecuador's President to extinguish the claims of the plaintiffs. Chevron now attacks as "unfair" the very court process in Ecuador that it had once praised to avoid a U.S. trial.

Has Chevron done anything to ameliorate the humanitarian crisis?

To date, no action has been taken by Chevron to offer relief to local residents. Ecuador's government and organizations like the Rainforest Foundation and UNICEF are dedicating resources to provide clean water and mitigate some of the impacts. Such efforts, as laudable as they are, cover only a fraction of the need. Despite the extensive evidence of health problems, neither Texaco nor Chevron ever funded a health evaluation of the area, never conducted an environmental impact study, never had a budget line in Ecuador for environmental matters, and never had a pipeline maintenance program. The company never even kept a log of the existence and locations of its hazardous waste pits so local residents could avoid them.

What about the legal release Chevron claims as a defense?

Chevron claims that Texaco was released from any responsibility for further clean-up after it "remediated" approximately 15% of its 917 waste pits in the mid 1990s. This purported "remediation" consisted of covering the pits with dirt without cleaning them out of toxins, allowing cancer-causing hydrocarbons to continue to leach into soil and

groundwater to this day. Certain Ecuadorian government officials in 1998 gave a “release” to Texaco which the company’s lawyers then tried to use to dismiss the *Aguinda* case then pending in New York. The language of this release, however, applies only to the claims of Ecuador’s government; it *expressly excludes* the claims of private citizens that are the basis of the *Aguinda* action. This release was rejected by the U.S. court, but that does not stop Chevron from continuing to claim that the release absolves it. Notably, two Chevron lawyers and seven former Ecuadorian government officials are now under indictment in Ecuador for fraud for lying about the results of the purported remediation to secure the release.

Was Texaco’s remediation effective?

Texaco’s environmental remediation at best was ineffective, and at worst a fraud. Soil sampling taken during the trial from each of the “remediated” sites demonstrates significant contamination, often thousands of times higher than norms. The Cabrera Report found no difference in levels of contamination between pits that had been “remediated” and pits that had not. Scientists for the plaintiffs recently discovered that Texaco used an improper laboratory test when taking soil samples that allowed it to fake the results that were submitted to Ecuador’s government to secure the release.

Chevron now blames PetroEcuador. Is there anything to this?

Chevron has tried to shift the responsibility for any clean-up to Petroecuador, Ecuador’s state-owned oil company that inherited Texaco’s flawed infrastructure when Texaco left Ecuador in 1992. The *Aguinda* lawsuit is about damage caused by Texaco when it was the exclusive operator of the concession – damage that today still causes harm to the environment and the tens of thousands of people living in the region. The lawsuit also seeks clean-up for the damage caused by the subsequent use of Texaco’s defective infrastructure by Petroecuador. As a matter of law, Texaco cannot absolve itself of responsibility by simply turning over a known nuisance to the next company. It bears remembering that Texaco designed, installed, and operated all of the oil production facilities in the concession. In contrast to Chevron, Petroecuador at least has attempted in recent years to clean up some of the damage and to cease the dumping, even if those efforts are not fully adequate. If Chevron believes Petroecuador should share the liability, Chevron has the right to sue Petroecuador.

When will the legal case end?

A judgment from the court is expected in late 2009. The plaintiffs plan to enforce a favorable judgment immediately in U.S. courts. If it loses, Chevron has promised a “lifetime of litigation” by dragging out the appeals process.

Amazon Defense Coalition/Spring 2009

Contact: Karen Hinton/703-757-0601/Karen@hintoncommunications.com

#

¹ San Sebastian M., Armstrong B. and Stephens C., Outcomes of pregnancy among women living in the proximity of oil fields in the Amazon basin of Ecuador, *International Journal of Occupational & Environmental Health*, 8(4):312-9 (2002).

² 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) (significantly higher rates of child leukemia found in rainforest counties where oil exploitation had been ongoing for at least 20 years as compared with non-oil-producing counties).

³ See, e.g., 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 Chevron'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).