

Forum Nobis *pllc*

A PROFESSIONAL
LIMITED LIABILITY
COMPANY

Aaron Marr Page
Managing Attorney
Forum Nobis PLLC
1629 K Street NW, Ste 300
Washington, D.C. 20006
Tel. +1 202 618 2218
Fax +1 202 291 0136
aaron@forumnobis.org

January 3, 2012

Dr. Douglas Mackay
Department of Land and Water Resources
University of California, Davis
One Shields Avenue
Davis, CA 95616-8627
dmmackay@ucdavis.edu

Dear Dr. Mackay:

I am part of the legal team for the thousands of Ecuadorian plaintiffs in the *Aguinda v. Chevron* lawsuit in Ecuador. In 2006, you signed an expert opinion for that proceeding in which you concluded that there was “no foundation” for earlier-made allegations “that the sampling program that Chevron’s experts are conducting [during the *Aguinda* trial] deliberately hides or minimizes the existing contamination and associated risks.”¹ The allegations had been made by a team of plaintiffs’ experts headed by Dr. Ann Maest.²

We write to put you on notice that the 2006 report that you signed and submitted to the Ecuador court appears to be part of a fraud on the Ecuadorian court—a fraud that did, in fact, involve “deliberately hid[ing] or minimiz[ing] existing contamination.” In light of the facts set forth in this letter and the attached documents, the *Aguinda* plaintiffs ask that you immediately disavow your 2006 opinion and so notify the court in Ecuador, where the opinion is part of the trial record currently being considered by a court of appeals.

As a foundation for your 2006 opinion, Chevron provided you and your colleagues with a document summarizing its sampling and testing program in Ecuador. That document was altered to remove language that directly ordered Chevron’s technical team to find only

¹ P. Alvarez, D. Mackay, R. Hinchee, “Evaluation of Chevron’s Sampling and Analysis Methods” (August 2006) at 2. The opinion is still available on Chevron’s website at www.texaco.com/sitelets/inspections/en/information/chevron_sampling_and_analysis_methods.pdf.

² A. Maest, M. Quarles, W. Powers, “How Chevron’s Sampling and Analysis Methods Minimize Evidence of Contamination” (March 2006), at chevrontoxico.com/assets/docs/e-tech-sampling-annex-final.pdf.

“clean” samples during the judicial inspections of former Chevron drilling sites, rather than make a genuine assessment of the site to determine if it was actually contaminated. An original version of the document, recently produced by a member of Chevron’s field team pursuant to a U.S. federal court subpoena, contains a “Strategy” table that was attached to the “Playbooks” that Chevron created for each site inspection, and it lays bare Chevron’s plan to use data gathered by a secret “pre-inspection team” (“PI team”) to produce false and misleading scientific results in order to deceive the Ecuadorian court.³ This has recently been reported widely by the plaintiffs.⁴

The differences between the original version of the document and the version provided to you leaves little room for doubt as to Chevron’s motives. For example, whereas the version given to you instructs Chevron field operatives to sample around the site perimeter to search for “potential migration of petroleum constituents from the site and absence/presence of widespread impacts,” the actual version used in the field orders operatives to “[d]efine [a] clean line around site *to show no widespread impacts*” and to choose perimeter locations in order to “emphasize clean points.”⁵ Your version of the document directs the Chevron team to “[c]ollect soil samples at 4 or more locations surrounding the site,” presumably based on their expert assessment of site characteristics, but the unaltered document orders the team to only collect samples at “locations that *the PI team has shown to be clean.*”⁶ Your version removes language admitting that most residents near the sites “rely on other sources (primarily wells and springs) for drinking water”—critical information for an expert considering whether the sampling and testing program is “appropriate to address . . . risks to human health,” as you undertook to consider in your 2006 opinion.⁷ Indeed, throughout the altered version of the document sent to you, the passages directing experts to consider “whether” contamination exists are consistently phrased in the original document as orders to demonstrate an absence of contamination regardless of what exists in the field.⁸

³ Your version of the “Strategy” table, disclosed by you in related litigation, is attached here as **Annex A**. A version of the same table produced by Chevron’s field team member Bjorn Bjorkman is attached as **Annex B**. The language Chevron sought to hide from you by removing it from Annex B is highlighted in yellow.

⁴ *See New Chevron Fraud in Ecuador as Company Used Secret Lab to Hide Dirty Soil Samples from Court, Say Documents & the Amazon Defense Coalition*, PR Newswire, Dec. 20, 2011, attached as **Annex C** and available at <http://www.prnewswire.com/news-releases/new-chevron-fraud-in-ecuador-as-company-used-secret-lab-to-hide-dirty-soil-samples-from-court-say-documents--the-amazon-defense-coalition-136031223.html>.

⁵ Compare Annex A at 1 with Annex B at 1 (emphasis added).

⁶ Compare Annex A at 1 with Annex B at 1 (emphasis added).

⁷ Alvarez et al., *supra*, at 2.

⁸ Compare, e.g., Annex A at 1 (“Demonstrate *whether* drinking water sources have been impacted”) with Annex B at 2 (“Demonstrate drinking water sources are *not* impacted”); Annex A at 2 (“Demonstrate *whether* there are wide-spread impacts to surface water bodies”) with Annex B at 3 (“Demonstrate *no* wide-spread impacts to surface water bodies”); Annex A at 2 (“Demonstrate *whether* there are crop/vegetative impacts”) with Annex B at 3

In addition to altering the Strategy table before sending it to you, Chevron appears to have hidden from you its entire “pre-inspection” process, during which its technical team hunted for “clean” spots they could safely draw samples from without fear of running into contamination. The documents suggest that Chevron sent its “dirty” pre-inspection samples to a different laboratory (outside Ecuador) than where it sent its “clean” samples, apparently to hide their existence from the court and from the plaintiffs.⁹ You do not mention the pre-inspection process anywhere in your detailed description of Chevron’s practices in the 2006 opinion—rather, you emphasize repeatedly that Chevron’s sampling and analysis program is “done *only* with close supervision by the court and in the presence of the Plaintiffs.”¹⁰ If you knew at the time that Chevron’s only genuine sampling was done in these pre-inspections, and that the work of Chevron’s experts at the judicial inspections was just for show, presumably you would have taken that into consideration in reaching your conclusions.

As a prominent professor at a leading university, you surely recognize your duty to uphold the highest standards of academic integrity. Your 2006 opinion leverages not only the weight of your own reputation but also the reputation of the University of California, as well as the other academic and professional affiliations which you listed in the opinion as part of your résumé. To protect your own integrity and the integrity of the University of California, and to limit as much as possible the injustice Chevron’s deceit has already caused in Ecuador, the *Aguinda* plaintiffs respectfully request that you immediately disavow your 2006 opinion and notify the Ecuadorian court of the same.¹¹ To leave your 2006 opinion undisturbed in the Ecuador court record in light of the facts presented here would only serve to perpetuate Chevron’s fraud.¹²

(“Demonstrate *no* crop/vegetative impacts”); Annex A at 3 (“Collect bacterial sheen sample if needed to access *whether* sheen is related to petroleum”) with Annex B at 3 (“Collect bacterial sheen sample if needed to show that *no* oil sheen is present”) (all emphases added).

⁹ See Annex B at 1 (“Clean soil samples are analyzed for PAHs at STL [Severn-Trent Labs facility in Ecuador] w/ a split sent to Newfields [in the United States] to hold. Samples showing field evidence of contamination are sent to Newfields for PAH analysis and fingerprinting (*no STL PAH analysis*).”).

¹⁰ Alvarez et al. at 1 (emphasis added); see also *id.* at 9 (“the Plaintiffs and their experts were present for the sampling”); *id.* at 2; *id.* at 6; *id.* at 7.

¹¹ The plaintiffs have recently made the same demand publicly. See *Chevron Used Two Prominent U.S. Professors to Defraud Ecuador Court, Documents Reveal*, PR Newswire, Dec. 29, 2011, attached as **Annex D** and available at <http://www.prnewswire.com/news-releases/amazon-defense-coalition-chevron-used-two-prominent-us-professors-to-defraud-ecuador-court-documents-reveal-136392358.html>.

¹² In February 2011, the Ecuadorian trial court issued a final judgment adverse to Chevron. An Chevron has filed an appeal and the Ecuadorian appellate court is now considering the appeal *de novo*—that is, conducting a full review of the entire record, including your 2006 opinion. A copy of the Ecuadorian court’s final judgment (in Spanish), a translation, and a brief

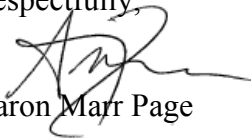
Dr. Douglas Mackay

January 3, 2012

Page 4 of 4

The plaintiffs further demand that you fully disclose the extent, if any, of other work you have done for Chevron on the Ecuador case so that investigation can be made to determine whether that work, too, was tainted by manipulation and fraud. We would also ask that you make public all additional information necessary to gain a full and complete understanding of the facts, including information regarding who at Chevron provided you with the altered version of the sampling and analysis document and what assurances were given about the information Chevron provided.

Respectfully,



Aaron Marr Page

cc: Mark G. Yudof
President, University of California

Linda P.B. Katehi
Chancellor, University of California, Davis

Randy A. Dahlgren
Chair, Department of Land and Water Resources, University of California, Davis

John S. Watson
Chairman and CEO, Chevron Corporation

R. Hewitt Pate
Vice President and General Counsel, Chevron Corporation