

# ***Rainforest Catastrophe*** **Chevron's Fraud and Deceit In** **Ecuador**

## **An Investigative Report**

***by the Lago Agrio Legal Team***  
***of***  
***The Amazon Defense Coalition***

**NOVEMBER 2006**

### ***Understanding How:***

- Chevron violates its social responsibility and governance policies in Ecuador
- Chevron values Ecuadorian life at one-fiftieth the level of an American
- Chevron hides massive environmental liability from shareholders and markets
- Chevron has destroyed indigenous culture in Ecuador to save money
- Chevron faces a potential \$6 billion judgment at trial that is has not disclosed
- Chevron employees are targeted in criminal investigation in Ecuador

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# ***Rainforest Catastrophe***

## **Chevron's Fraud And Deceit In Ecuador**

### **Investigative Report**

#### ***Details of What Chevron Does Not Want You To Know:***

- ***Fraudulent "Clean-up" of Ecuador's Rainforest***
- ***Possible Genocide Against Indigenous Groups***
- ***Ongoing Scientific Fraud Before Ecuador Court***
- ***Cover-Up of Potential Liabilities from Shareholders***
- ***Criminal and Civil Investigations of Company Executives***
- ***Valuing Ecuadorian life at one-fiftieth the value of American***

#### **Summary**

This investigative report explains how in Ecuador's rainforest Chevron engages in fraud and deceit, violates its social responsibility and corporate governance policies, devalues its global brand, and puts shareholder interests at substantial risk by covering up irresponsible and illegal activity. Below are details of how the company's behavior in Ecuador has created a public health catastrophe that causes grave harm – even death and possibly genocide<sup>1</sup> – to thousands of indigenous people and others whose survival depends on the natural habitat of the Amazon. Chevron's policies in Ecuador have unnecessarily exposed the company to a potential multi-billion dollar civil judgment, exposed its employees to a criminal investigation in Ecuador, embroiled the company in a costly litigation with a foreign nation that is a friend of the United States, and risk constricting new investment opportunities in Latin America and elsewhere.\* It bears mentioning that this misbehavior stems from a major U.S. oil company that claims to adhere to the "highest ethical standards" in all business dealings and has a "Values" policy that proudly proclaims:

*Our Company's foundation is built on our Values, which distinguish us and guide our actions. We conduct our business in a socially responsible and ethical manner. We respect the law, support universal*

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\*This report is not intended to disparage those good individuals within Chevron who take seriously the company's corporate governance and social responsibility policies.

*human rights, protect the environment, and benefit the communities  
where we work.*<sup>2</sup>

Texaco (now Chevron) created what experts believe is the worst oil-related disaster on the planet in Ecuador's rainforest when it operated an oil concession there from 1964 to 1992. During that time, it violated industry practice and Ecuadorian and U.S. law by dumping 18 billion gallons of toxic waste directly upon the delicate floor of the rainforest to save on production costs. This report explains how in 1995 Chevron used a series of misrepresentations to obtain a "release" from Ecuador's government to avoid spending the estimated \$6.1 billion that a legitimate environmental clean-up would cost. It explains how Chevron's scientific fraud is ongoing today via the company's misleading sampling and analysis practices during a historic environmental trial in Ecuador, and how Chevron's management has constructed a complex cover-up to hide this fraud from shareholders, regulatory authorities, and the financial markets.<sup>3</sup> This report also attempts to explain the fraud in detail at a fundamental level, but this is not a complete accounting. There is a great deal of information Chevron has not revealed and additional facts continue to be adduced at trial and via various official investigations targeting Chevron in Ecuador and the U.S.<sup>4</sup>

A major Chevron fraud occurred in 1995 when company representatives led by lawyer Ricardo Reis Veiga induced the Ecuadorian government to sign a remediation agreement without disclosing the full extent of the damage that had been caused by Chevron's operations.<sup>5</sup> Another fraud occurred in 1998, when Reis Veiga and his team misrepresented to Ecuador's government that Chevron had "remediated" the damage to induce a release that purported to absolve the company of responsibility for further clean-up. To achieve this, Chevron's team engaged in a series of fraudulent misrepresentations. These include the presentation of misleading laboratory results stemming from the use of a bogus analytical test and sampling plan.<sup>6</sup> This report concludes that these multiple frauds make the release invalid and give the Ecuadorian government the right to take legal action against Chevron not only to rescind the agreement but to seek damages against the company for fraud and environmental contamination. Moreover, Chevron's frauds may rise to the level of criminal infractions, giving the Ecuadorian government the right and indeed the obligation to prosecute the responsible Chevron executives and officials under its penal laws designed to protect the public interest.<sup>7</sup>

This report reflects conclusions drawn from evidentiary analysis by a team of Ecuadorian and U.S. lawyers representing five indigenous groups and dozens of communities in the Amazon rainforest. These groups and communities have suffered widespread cultural devastation and have lost numerous loved ones, including young children, to cancer and other diseases that stem from oil contamination. They continue to bear the burden of Chevron's substandard operational practices, fraudulent clean-up, and ongoing deception. A class action lawsuit in Ecuador against Chevron seeks a comprehensive environmental clean-up and a cessation of polluting activities using Chevron's still-operational infrastructure. The lawsuit is in trial in the rainforest town of Lago Agrio, Ecuador ("Lago trial"). Members of the legal team for the affected communities who worked on

this investigation and report include Pablo Fajardo, Alejandro Ponce, Julio Prieto, Juan Pablo Saenz, Aaron Page, Daria Fisher, and Lauren Schrero.

### **History of Chevron In Ecuador**

In its 28 years in Ecuador's rainforest, Chevron deliberately dumped more than 30 times the amount of pure crude spilled in the Exxon Valdez disaster.<sup>8</sup> This toxic dumping has created a major risk of cancer and other health problems to the estimated 30,000 persons who live in the affected area, which is roughly the size of Rhode Island. It has spoiled once-pristine lands and waterways in the delicate rainforest ecosystem, threatened the very existence of five ancestral indigenous groups, and likely caused the disappearance of a sixth indigenous group that already was in decline when Chevron entered its territory.<sup>9</sup> Chevron designed and built a system of roughly 350 wells and an extensive pipeline network that by Chevron's own admission systematically dumped more than 18 *billion* gallons of carcinogenic byproduct (known as "water of formation" or simply "waste water") directly into the rainforest environment. This waste contained some of the most dangerous cancer-causing chemicals known to man and they will exist for centuries in the rainforest if a proper clean-up is not undertaken.<sup>10</sup> In addition, Chevron carved roughly 1,000 open-air waste pits out of the jungle floor, into which the company dumped oil sludge and toxic waste generated by well perforations and maintenance. Most of these pits have existed since the early 1970s, and to this day they leak toxins into the groundwater, soil, and air. In addition to Chevron's flagrant negligence in failing to use proper waste disposal technology, its further operational negligence resulted in the spillage of millions of additional gallons of oil from pipeline ruptures and the burning of natural gas without controls – the latter creating a "black rain phenomenon."<sup>11</sup>

The only comprehensive assessment of the damage to Ecuador's national territory, performed in 2003 by the international firm Global Environmental Operations, estimated that clean-up of Chevron's contamination would cost a minimum of \$6.14 billion excluding personal damages to the thousands of victims.<sup>12</sup> Chevron has never disclosed this potential liability to shareholders in its public filings, which precipitated the filing of a complaint with the Securities and Exchange Commission (SEC). Multiple health studies of the region where Chevron operated, published in peer-reviewed international medical journals and reported in major newspapers, demonstrate highly elevated rates of cancer and other oil-related health problems such as spontaneous abortions and genetic defects.<sup>13</sup> Young children are four times as likely to contract leukemia in the region where Chevron operated than in other parts of Ecuador.<sup>14</sup> Experts suggest the possibility of numerous additional deaths and illnesses if an adequate clean-up is not performed immediately.<sup>15</sup>

Chevron's dumping violated various Ecuadorian laws and express contractual provisions that required the company to drill in a way that respected the natural habitat.<sup>16</sup> It also violated general international standards — for example, Chevron's methods of waste disposal used in Ecuador were outlawed in Texas, Texaco's original home state, in 1939. Chevron chose these methods to save \$1 to \$3 per barrel, enabling it to profit richly from its operations. The company took in roughly \$30 billion in profits over the life of its

concession contract in Ecuador. Chevron's devastation of the delicate rainforest environment, where indigenous groups had thrived for centuries, was thus no accident: it was a *deliberate* and *intentional* choice to disrespect the environment, the lives of Ecuadorian citizens, the company's obligations to the Ecuadorian government, and the company's own social responsibility and corporate governance policies. And it was done solely to make already-high revenues even higher.

### **Summary of Chevron's Fraud And Deceit In Ecuador**

Chevron's frauds and misrepresentations include the following:

- **(1) Chevron paid less than 1% of the total cost of a comprehensive clean-up despite representing to Ecuador it was cleaning 37.5% of the damage.<sup>17</sup> (37.5% is the portion of the concession Chevron owned by Chevron at the end of its operation).**
- **(2) During the negotiations with Ecuador's government over the scope of the clean up, Chevron hid the existence of more than 200 toxic waste pits that it had covered with dirt so they would be excluded from the clean-up.**
- **(3) Chevron invented and applied its own clean-up standards, rather than following those required by the law and industry custom.**
- **(4) Chevron never treated 92 toxic waste pits that it was obligated to remediate under the clean-up agreement.**
- **(5) Chevron misled the Ecuadorian government into "certifying" its clean-up by presenting misleading lab results.**
- **(6) Results from the Lago Agrio trial in Ecuador are now revealing the inevitable: all of Chevron's so-called "remediated" sites contain extensive and life-threatening levels of toxins. This is proven by water and soil samples submitted to the Lago Agrio court by *Chevron's own scientists* as well as scientists for the plaintiffs.**
- **(7) Chevron's previous fraud is ongoing in the Lago Agrio trial: to defend Texaco's shameful deeds, Chevron now is perpetuating a scientific fraud against the Court, the Ecuadorian government, regulatory authorities, and even against its own shareholders.**

### **The Early Stages of Chevron's Fraud**

## Chevron's Deceit In Ecuador November 2006

In November 1993, a group of affected individuals and indigenous communities in Ecuador filed a class-action lawsuit against Texaco in federal court in New York seeking individual damages and a full remediation of the contaminated area (at the time, New York was the site of Texaco's global headquarters).<sup>18</sup> In response to the lawsuit, and while refusing to speak to the dozens of affected communities, Texaco negotiated a deal with the Ecuadorian government in which the company agreed to pay \$40 million to perform a clean-up of the areas affected by the contamination. In exchange, Ecuador promised to release Chevron from further liability for any claims by the government. This offer was extended to Ecuador by a team of Texaco executives led by Reis Veiga (the "Reis Veiga team"), a Texaco lawyer who is now a Vice President of Chevron and the supervisor of Chevron's legal team in the Lago trial. Importantly, this clean-up arrangement sought by Texaco is a legal admission that it created harmful levels of contamination in Ecuador – a fact that has come back to haunt Chevron in the Lago trial.<sup>19</sup> The arrangement also was entirely strategic: at the time, Texaco was under no legal obligation to pay damages to the Ecuadorian government, and the Ecuadorian government had neither sued Texaco nor claimed that Texaco was liable for clean-up. The Reis Veiga team convinced certain officials in Ecuador's Ministry of Energy and Mines to accept Texaco's offer, and immediately Texaco's lawyers began using the existence of the agreement to seek a dismissal of the lawsuit in the United States. Although that effort was rejected by the U.S. court, in the current trial Texaco is again trying to use the existence of the agreement as a technical defense to avoid any responsibility for the damages resulting from its 40-year legacy of contamination.

At the end of a three-year clean-up period (1995-1998), the Reis Veiga team perpetrated a series of misrepresentations to convince representatives of Ecuador's government to certify Texaco's clean-up as adequate and release the company from any further claims for damages that could be brought by the government. However, the release did not affect the rights of private individuals to bring a lawsuit such as the one proceeding in Lago Agrio; in point of fact, the release expressly affects only the rights of the government to bring further claims against Chevron. Nonetheless, given the misrepresentations, it appears even this limited release is invalid. The scientific evidence from the Lago trial is now revealing the many layers of misrepresentations committed by the Reis Veiga team, and the extent of Chevron's potential liability as a result.

### **Chevron's Seven Fraudulent Acts**

**(1) Chevron paid less than 1% of the total cost of a comprehensive clean-up despite representing to Ecuador it was cleaning 37.5% of the damage.**

Chevron deliberately excluded a significant portion of the environmental damage from its proposal when it negotiated its "clean-up" agreement with Ecuador's government. Its plan did not include critical elements of a comprehensive clean-up as required by industry written documents cited by Chevron itself in its remediation contract, including:

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- the clean-up of contaminated groundwater on which local residents depend for drinking water, required by industry custom and laws in the U.S. and Ecuador;
- the clean-up of rivers and streams relied on by residents for bathing, washing, and cooking;
- the proper *removal* of contaminants from the pits instead of simply covering them with soil, so that the amount of toxins are reduced to levels that pose no risk to human health or the environment;
- the introduction of re-injection technology to stop further dumping of toxic waste water due to the continued use of Chevron's obsolete and inappropriate technology by Ecuador's state oil company, Petroecuador, which inherited Chevron's oil fields; and
- the payment of health care expenses for those with oil-related diseases and compensation for economic losses to other affected individuals.

The numbers alone tell a big part of the story. While the only comprehensive assessment of damages caused by Chevron estimates clean-up at \$6.14 billion, Chevron promised to pay Ecuador only \$40 million – or less than 1% of the estimated amount of the actual clean-up costs. *Chevron misrepresented to the government that this amount would "reflect" its obligations deriving from its "37.5% percent ownership interest in the Consortium."* Even if one accepts Chevron's claim that it is only responsible for its 37.5% share of the costs, its offer of \$40 million is still a ridiculously small fraction — less than 2% — of its stated proportion of the ultimately assessed \$6.14 billion. Chevron's flagrantly inadequate offer underscores its plan to implement only a superficial, cosmetic clean-up solely for the strategic purpose of trying to dismiss the case against it in the U.S.

**(2) During the negotiations with Ecuador's government over the scope of the clean-up, Chevron hid the existence of more than 200 toxic waste pits that it had covered with dirt so that those pits would be excluded from the clean-up.**

Chevron defined the environmental damage it caused in such a way as to limit the scope of its so-called "remediation" to include only 2% to 5% of the actual harm it caused – probably even less if one takes into account the full environmental impact including health and cultural damages.<sup>20</sup> Through the late 1970s and 1980s, Chevron was the sole operator of the concession and it had exclusive control over almost all details of the oil-field operations. During this time period, Chevron *secretly covered with dirt more than 200 of the open-air waste pits without cleaning them of their toxic waste.* Because Chevron had complete control over these operations, Ecuador's government had no way of knowing about the existence of these covered pits, and Chevron failed to disclose their existence during the negotiations over the 1995 remediation agreement. The result was twofold: (1) the supposed "site by site" process of allocating Chevron a 37.5% share of the environmental damage was skewed by misleading data such that the resulting allocation of responsibility grossly understated Chevron's legal obligation for clean-up; (2) even at the sites that Chevron agreed to remediate, its failure to disclose hidden pits meant that it only remediated a fraction of the actual environmental damage at any given

site. Chevron accomplished this second step in part by hiring and paying a private "environmental consulting" firm with which it had close ties to "audit" the sites it was allocated. Not surprisingly, this firm failed to find the vast majority of the hidden pits that Chevron had failed to disclose -- even pits that still had pipes running out of them and should have been especially obvious to any environmental auditor.

The proof of Chevron's bad faith and manipulation of the negotiations is unassailable. Analysis of aerial photographs of Chevron's well sites taken by Ecuador's Instituto Geografico Militar (Military Geography Institute, or "IGM") in 1976 with IGM photographs of exactly the same sites taken in 1986 and 1990 shows that more than 200 open-air waste pits built by Chevron were covered up during this time period. Others likely were covered up before 1976 but no aerial photographs were taken by IGM before that year. These covered pits do not appear in the Remedial Action Plan ("RAP") that Chevron used to define the scope of its clean-up work in Ecuador. Examples of these photos and the proof of the covered pits is now part of the Lago trial against Chevron. The plaintiffs have discovered more than 200 such pits, but the total could rise significantly higher.<sup>21</sup> A systematic analysis of each of Chevron's well sites and 18 separation stations will provide a more complete picture of the number of pits covered in this fashion. To this day, Chevron has refused to disclose to the plaintiffs or to the court the exact location of each of its toxic waste pits. This has forced the affected communities to engage in their own painstaking site-by-site analyses to determine where the hundreds of hidden contaminated pits are located. Some of these hidden pits are literally contiguous to or beneath the homes of persons who bought land thinking the pits had been remediated and posed no danger.

**(3) Chevron invented and applied its own clean-up standards, rather than following those required by the law and industry custom.**

*Illegally High Clean-up Norms*

Part of Chevron's deception was to *invent* environmental norms to be used in the clean-up that were designed to limit the company's liability rather than to protect human health and environmental well-being. For example, Chevron adopted a clean-up standard for Total Petroleum Hydrocarbons (TPHs) that fundamentally disregards human health and environmental welfare, and endangers persons living in the area. TPHs are a family of toxic hydrocarbons that provide a benchmark measurement of oil-related contamination. The contractual clean-up standard negotiated by Chevron's Reis Veiga team -- 5,000 parts per million (ppm) for TPHs -- is five times higher than allowed by current Ecuadorian law, and 50 to 500 times higher than applicable standards then in effect in the U.S. The fact Chevron used a 5,000 ppm standard in Ecuador's rainforest, when at the same time in the U. S. it was adhering to a 100 ppm standard, demonstrates a gross disregard by the Reis Veiga team for the well-being of indigenous people and other Ecuadorians. In the cold logic of mathematics, the Reis Veiga team pegged Ecuadorian life at one-fiftieth the value of an American life for those living in oil-producing regions.<sup>22</sup> Chevron cannot cite another country in the world with such permissive standards for TPHs in areas where people live and rely on natural water sources for survival.

What is more, ten out of the first 12 “remediated” sites reported to the court in the Lago trial contained levels of TPHs that surpass the already ridiculously high contractual standard, further underscoring the extent of the misrepresentation. Samples higher than the illegal 5,000 ppm standard have been reported in the supposedly “remediated” sites Sacha 57 (262,581 ppm); Sacha 51 (68,430 ppm), Sacha 65 (37,158 ppm), Sacha 51 (29,657 ppm), Sacha 21 (28,000 ppm), Sacha 67 (20,344 ppm), Sacha 65 (12,256 ppm), Sacha 18 (8,886 ppm), Sacha 48 (7,800 ppm), Sacha 85 (7,570 ppm), Sacha 53 (5,600 ppm). Other sites are so far beyond the 5,000 ppm standard as to be flatly outrageous – for example, a separation station called Sacha Norte reported a soil sample at 900,000 ppm (pure crude is 1 million ppm); the Aguarico separation station reported TPHs at 333,262 ppm, the well site Lago 6 299,430 ppm, and the well site Lago 11A 224,076 ppm. At most of these sites, Chevron – to fraudulently obtain its release -- certified to the Ecuadorian government after the clean-up in 1998 that its samples came in lower than 5,000 ppm. At the Lago 2 well site – typical of the overall pattern -- Chevron claimed to Ecuador’s government in 1998 that the TPH level was below 5,000 ppm. At the Lago trial, a soil sample from the same site showed TPHs to be at the astonishingly high level of 325,000 ppm, or 3,250 times higher than the U.S. standard, and 65 times higher than the contractual standard.<sup>23</sup> Six representative examples of the fraud are contained in the following chart.

**Chevron’s Fraud During The Ecuador Remediation**  
**(Measured in TPHs)**

<b>Site of Judicial Inspection – Lago Agrio Trial</b>	<b>Chevron’s Reported Result to Obtain Release From Ecuador (1998)</b>	<b>Actual Result At Same Site During Trial (2006)</b>
<b>Lago 02</b>	<b>&lt;5,000 ppm</b>	<b>325,000 ppm</b>
<b>Lago 06</b>	<b>4,000 ppm</b>	<b>299,000 ppm</b>
<b>Sacha 65</b>	<b>3,600 ppm</b>	<b>32,400 ppm</b>
<b>Sacha 7A</b>	<b>&lt;5,000 ppm</b>	<b>12,700 ppm</b>
<b>SSF-18</b>	<b>&lt;5,000 ppm</b>	<b>301,000 ppm</b>
<b>SSF-27</b>	<b>&lt;5,000 ppm</b>	<b>26,400 ppm</b>

*Violations of Other Contractual Provisions – Decree 2144 and E&P Forum*

Chevron also hid violations of several other provisions of the remediation agreement from officials who signed off on the company’s release from liability. Most interesting is that in the agreement and in the actual work plan, the parties used “Ecuadorian environmental laws and regulations” (among other documents)<sup>24</sup> as the governing framework for the remediation. Among the laws cited was Regulation 2144, issued by Ecuador’s Ministry of Health in 1989 which outlined specific norms relating to water contamination. Oddly, the final clean-up report Chevron presented to Ecuador’s government almost completely ignores this law even though compliance with its provisions was required by the remediation agreement. If one looks at Chevron’s final laboratory results after its “remediation” and compares them to the standards articulated in Regulation 2144, one realizes why the Reis Veiga team was silent on this statute.

Water samples taken by Chevron at the well site Sacha 10 just after its supposed remediation demonstrate that the toxics Nickel, Cadmium, and Phenols all existed at dangerous levels several times higher than those permitted by Regulation 2144.

Another obvious violation of the remediation agreement concerned Chevron's failure to install the technology needed to re-inject toxic waste water, the standard procedure in the U.S. and other countries during the same period. The requirement to re-inject is outlined in "Oil Industry Operating Guideline For Tropical Rainforests," a document produced by the E&P Forum, an oil industry trade association of which Texaco and Chevron always have been leading members.<sup>25</sup> This document was cited in the clean-up agreement to guide Chevron in the fulfillment of its obligations during the remediation process. The E&P report has an entire section devoted to "Waste Handling" which says that waste water "should be reinjected into either the producing formation" or some other cavity where it will not contaminate water sources – the exact industry practice that Chevron violated in Ecuador by dumping 18 billion gallons of toxic waste water into the rainforest.<sup>26</sup> Worse, Chevron never included in its clean-up plan the installation of re-injection technology – virtually guaranteeing that its obsolete and flawed drilling equipment would continue to contaminate the environment (via Ecuador's state oil company, which inherited Chevron's operation) even as the company was supposedly "remediating" nearby waste pits. Chevron also violated several provisions of another E&P document, "Exploration And Production Waste Management Guidelines", that the company cited as a source of its obligations in the clean-up agreement.<sup>27</sup>

**(4) Chevron never treated 92 toxic waste pits that it was obligated to remediate under the clean-up agreement.**

Under the terms of its remediation agreement, Chevron was obligated to clean approximately 250 of its open-air toxic waste pits (of the approximately 650 that were known at the time), according to an independent investigation by Ecuador's national police agency ("Controlaria del Estado").<sup>28</sup> This report concluded that Chevron only attempted to remediate 158 of the pits, leaving 92 and possibly more untouched. Nevertheless, Chevron fraudulently counted each of these 92 untreated toxic waste pits as "remediated" when it presented its final work product to the Ecuadorian government for certification.<sup>29</sup> This report is now the basis of a criminal investigation by Ecuador's Fiscal, or national law enforcement agency.

**(5) Chevron misled the Ecuadorian government into "certifying" its clean-up by presenting misleading lab results.**

The Reis Veiga team knew that its clean-up methods were so inadequate that they would in many cases result in levels of TPHs *even higher* than the inflated standard of 5,000 ppm. Chevron thus committed an additional fraud by convincing Ecuador's government to certify its clean-up on the basis of results from an entirely inappropriate and biased analytical protocol – one guaranteed to put them within the maximum 5,000 ppm standard. Instead of testing for TPHs in soil using the standard industry method, Texaco used the Toxic Characteristic Leaching Procedure (TCLP). The TCLP test was

developed to detect landfill leaching and urban pollution; the test does *not* measure existing contamination embedded in the soil, yet Chevron used it for this purpose in Ecuador.<sup>30</sup> TCLP measures the trace amounts of contamination that leech out of the soil when it is saturated with water. This is the same as pouring water over a piece of contaminated soil and then measuring the water that leaks out of the soil, rather than testing the contaminated soil itself. Generally, the TCLP test captures only a fraction of the total contamination that actually exists. It was designated by the EPA for use only to measure oily waste contamination in landfills and urban areas.

By using the TCLP test, Chevron guaranteed that the vast majority of the soil samples from the toxic waste pits would register at under 5,000 ppm even though Chevron knew the soil actually contained much higher and illegal levels of contaminants, as illustrated by the chart on p. 9. *Yet the Reis Veiga team presented the results of the TCLP test to the Ecuadorian government as if they were an accurate representation of the actual level of contamination in the soil.* For example, before its “clean-up” of Sacha 51, Chevron tested the soil and found TPHs at the extraordinary level of 22,817 ppm, or 21 times higher than the maximum allowable levels under Ecuadorian norms and at least 220 times higher than the TPH norm for a typical U.S. state. After its so-called clean-up Chevron used the TCLP method to determine a level of TPHs “less than” 5,000 ppm (not specifying the exact result) and then presented this result to the Ecuadorian government as if it were the result of the standard TPH test. In fact, when the soil at Sacha 51 was re-tested using the standard test as part of the Lago Agrio trial, samples showed TPHs in one pit at 29,657 ppm – many times higher than the amount of TPHs Chevron told the Ecuadorian government actually existed to induce certification and obtain its release (there can be variations in sampling results at the same site because toxic contamination does not evenly distribute through the soil).

As a result of this maneuver, the Ecuadorian government certified Chevron for having “properly” remediated Sacha 51 and other sites. If Chevron had actually tested for TPHs using the commonly accepted analytical method, the Ecuadorian government would have known that Chevron had not engaged in a meaningful clean-up, and presumably would not have certified the company's efforts.

**(6) Results from the Lago Agrio trial in Ecuador are now revealing the inevitable: all of Chevron's so-called “remediated” sites contain extensive and life-threatening levels of toxins. This is proven by water and soil samples submitted to the Lago Agrio court by Chevron's own scientists as well as scientists for the plaintiffs.**

*(a) Evidence from the Lago Agrio trial:* The results of the scientific inspections of 42 separate well sites have been reported to the Lago court at the time of this writing. 100% of the sites demonstrate levels of toxins well above Ecuadorian and U.S. norms. Of the first 14 sites reported to the court, all 12 that Chevron was required to remediate under its contract with Ecuador contained extensive amounts of toxins in violation both of Ecuadorian law and the contractual provisions (the other two sites were operated by Chevron but were not included in the “remediation” agreement). Incredibly, Chevron's

own sampling has produced devastating proof against itself – for example, of 252 water samples submitted to the court by Chevron, 249 (or 99%) violate Ecuadorian legal standards. Of the 335 water samples submitted to the court by both sides, 330 (98%) contain high levels of toxins that violate Ecuadorian standards and jeopardize the well-being of those living in the area. These include TPHs and Polycyclic Aromatic Hydrocarbons (PAHs), which contain elements that cause cancer.

The results are all the more significant because pollution norms in Ecuador generally are far more permissive than those in the U.S. For example, Ecuador's standard for TPHs today (1,000 ppm) is ten times more lenient than the typical U.S. standard.<sup>31</sup> Even with these more lax standards, Chevron submitted a total of 223 water and soil samples from these 14 sites that violated Ecuadorian norms. As mentioned above, some samples came in at hundreds of times higher than maximum amounts permitted by U.S. norms. This concrete scientific evidence of still-existing contamination in flagrant violation of Ecuadorian law and U.S. standards clearly proves that Chevron's clean-up was a sham, and provides justification for the Ecuadorian government to invalidate the agreement and rescind the release. All of the inspected sites reported to the court have results consistent with this pattern.

***(b) Evidence from the official investigation by Ecuador's national prosecutor:*** As mentioned above, Ecuador's national prosecutor's office ("Contraloría General del Estado") conducted an independent investigation to determine whether Chevron complied with the terms of the clean-up agreement. The investigation concluded that the majority of Chevron's sites were never actually remediated in accord with the contract. In preparing its report, the prosecutor's office had technical experts conduct three rounds of soil testing in the area where Chevron operated. The first round of soil samples at 20 "remediated" Chevron sites turned up 14 samples that exceeded TPH levels specified in the contract. by the company (Prosecutor's Report, p. 36). The second round of 18 "remediated" sites revealed that 13 of them had levels of contaminants that exceeded permissible amounts as specified in the contract. (Prosecutor's Report, p. 38). A third round of testing at 26 separate Chevron sites found that 100% of the samples exceeded norms for water deemed fit for human consumption. (Prosecutor's Report, pp. 56-57). The report concluded that Chevron did not consult with Petroecuador, Ecuador's state oil company, in the clean-up effort as it was supposed to; did not receive proper authorizations from the Ministry of Energy; and generally bypassed various government authorities who were supposed to sign off on the work. (Prosecutor's Report, pp. 46-47). The report determined that Chevron "has not fulfilled its environmental clean-up contract in the Amazon region, given that there are toxic waste pits with crude that were never remediated, and several pits that were remediated that have surface puddles of crude that have come up from the ground..." (Prosecutor's Report, p. 70, 9.1.6.).

**(7) Chevron's previous fraud is ongoing in the Lago Agrio trial: to defend Texaco's awful legacy, Chevron now is perpetuating a scientific fraud against the Court, the Ecuadorian government, regulatory authorities, and even its own shareholders.**

At the current trial in Lago Agrio, Chevron is engaging in additional machinations designed to hide the effects of its sham clean-up and its ongoing deception of the Ecuadorian government. This time, the misrepresentations are being directed at the court itself, but Chevron's aim is still the same: to avoid being held accountable for its actions. For example:

**(a) *Ongoing scientific fraud at the Lago trial:*** To try to hide the defects of its clean-up, Chevron generally orders that the laboratory testing its soil samples to forego the standard analysis for TPHs so as to avoid results that clearly violate Ecuadorian norms and the norms specified in the clean-up contract. TPHs are essential in providing an overall picture of contamination, but Chevron ignores this bedrock measurement and instead tests largely for more volatile lighter elements which already caused harm but in most cases will have evaporated given the time lapse since the initial pollution. Chevron consistently avoids testing for certain heavy metals, which are the most dangerous and most persistent toxins that are likely to remain for centuries in the rainforest if not removed. Chevron also refuses to test for synthetic carcinogens that it used extensively in perforating and cleaning its wells. These chemicals, such as Chromium-6, are being found in high levels by the plaintiffs at the inspection sites but Chevron simply refuses to test for them. Chevron's scientists also take groundwater samples upgradient from known contamination sources, rather than downgradient, where contamination can be expected to have migrated. They typically take soil samples from the superficial layer of clean topsoil that Chevron laid in the 1990s as part of its fraudulent remediation, instead of taking samples from the subsurface where contamination actually exists. When Chevron takes subsurface samples – which happens only when the judge *demand*s it -- they typically "composite" the sample, mixing together a 12-foot tall column of sample soil so that any "hotspot" of contamination gets diluted. Via these "techniques" designed and executed by Chevron's scientists, Chevron is trying to construct a false picture of minimal contamination and thereby cover up its fraudulent clean-up. These deceptive methods are described in detail in a report written by Dr. Ann Maest, Mark Quarles, and William Powers, available at [www.chevrontoxico.com](http://www.chevrontoxico.com).<sup>32</sup> Even with these deceptive testing methods, Chevron is still turning up samples in violation of Ecuadorian and U.S. law at every site inspected – further testament to the extent of this unprecedented contamination. Even where Chevron takes samples thinking there will no contamination, the company is finding illegal levels of toxins.

**(b) The use of “detergent” to clean the pits:** Under its Ecuador clean-up plan, Chevron decided that any pit with levels of TPHs between 5,000 and 20,000 ppm would be cleaned with a detergent known by the commercial name of PECS. This detergent, similar to what one might use to wash dirt out of a bathtub, is not an acceptable method of clean-up for a natural habitat where people live and depend on natural water sources. The effluent must be submitted to further treatment for removal of heavy metals, which Chevron never did. Moreover, PECS is ineffective once the petroleum has had time to chemically and physically bond with the soil, making it a clearly inappropriate clean-up method for dumping sites that have existed for three or four decades. In the trial in Lago Agrio, sampling from the area treated by PECS around SA-53 showed a level of 14,000 ppm for TPH, *several years* after the so-called clean-up.

**(c) The use of “bioremediation” for any pit with TPHs between 20,000 ppm and 50,000 ppm.** Bioremediation, which is the treatment of soil with bacteria that is supposed to break up and dissolve toxins, is problematic for a number of reasons. For example, the method does not even claim to treat heavy metal toxics such as nickel, cadmium, barium, chromium, and zinc. More fundamentally, however, while Chevron claims to have used this method, it has never presented any evidence, nor have plaintiffs ever found any evidence, that the company actually employed bioremediation technology in its clean-up program.

**(d) The “Chevron Exception” in Ecuadorian law continues:** When reporting its sampling results to the court, Chevron continues its longstanding practice in Ecuador of operating outside the law. In its reports from the judicial inspections, Chevron violates a court order and by failing to mention Ecuadorian norms that regulate environmental pollution in Ecuador.<sup>33</sup> In its reports, Chevron's technical team creates its own legal norms to judge whether the various toxics found at its former wells sites are permissible. Many of these invented standards are up to *thousands of times higher than those permitted under Ecuadorian law*. For example, the toxin barium is permissible under Ecuadorian norms at 750 mg/kg. Chevron claims it only has to adhere to a standard for barium of 20,000 mg/kg, or 26 times higher than Ecuadorian norms. Naftaleno, another carcinogen, is allowed in Ecuador at 0.1 ppm. Chevron's invented standard allows this toxin at 3100 ppm, or a level 31,000 times higher than that in Ecuadorian law. Chevron cites an obscure Louisiana rule to claim TPHs should be allowed up to 10,000 ppm, or ten times higher than Ecuadorian law and 100 times higher than the law in California, Chevron's home state.

## **Conclusion**

Based upon Chevron's four decades of reckless operational practices in Ecuador, the government of Ecuador has ample legal basis to rescind the release it gave Chevron as a result of its fraudulent clean-up. Such an action would allow the government to seek damages from Chevron for both the fraud, and for the full multi-billion dollar impact of the environmental contamination caused by the company.

For more information on the history of the case and current developments, see [www.chevrontoxico.com](http://www.chevrontoxico.com).

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<sup>1</sup>A detailed explanation of the genocide argument can be found at [www.chevrontoxico.com](http://www.chevrontoxico.com). The genocide comparison is not inapt - Chevron's practices in Ecuador likely were a contributing factor in the disappearance of one indigenous tribe (the Tetetes) that was already in decline, and have forced two others (the Cofán and Secoya) to the brink of extinction. Under international law, genocide can be accomplished by "inflict[ing] on [a national, ethnical, racial or religious] group conditions of life calculated to bring about its physical destruction in whole or in part." See Convention On The Prevention and Punishment of the Crime of Genocide, art. II(c). Although genocide is most often thought to require "specific intent," authorities agree that courts are required "to infer the necessary intent from ... actions or omissions of such a degree of criminal negligence or recklessness that the defendant must reasonably be assumed to have been aware of the consequences of his conduct." Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide, Prepared by Mr. B. Whitaker, Special Rapporteur, U.N. Doc. E/CN.4/Sub.2/1985/6, para. 39, at 19 (1985). Chevron's environmental contamination of Ecuador, ongoing today in light of clear evidence of horrific destruction of indigenous communities, potentially amounts to an act of genocide as proscribed by the Genocide Convention. Even with the clear evidence that indigenous communities have suffered devastating impacts from its practices, members of Chevron's top management team -- including CEO David O'Reilly and Vice President Ricardo Reis Veiga -- continue to blame the woes of local residents at least partly on a lack of personal "hygiene." See, e.g., O'Reilly and Reis Veiga interviews with BBC available at [http://www.pbs.org/previews/extreme\\_oil/](http://www.pbs.org/previews/extreme_oil/).

<sup>2</sup> On its website, Chevron also has a section titled "Integrity" that maintains: "We are honest with others and ourselves. We meet the highest ethical standards in all business dealings. We do what we say we will do. We accept responsibility and hold ourselves accountable for our work and our actions." [www.chevron.com/about/chevtex\\_way/values.asp](http://www.chevron.com/about/chevtex_way/values.asp)

<sup>3</sup> Chevron's program of fraud and deceit in Ecuador is sophisticated and multi-layered. It involves many persons, among them management executives, in-house lawyers, outside counsel, company scientists and outside environmental consultants. Most of these individuals see Chevron's Ecuador issue primarily as an image or legal problem to be managed, not a humanitarian and environmental catastrophe to be alleviated. They participate in a campaign that "spins" the artificial reality that the dumping of 18 billion gallons of oil contamination into the rainforest poses no cancer or health risk to human beings, that elevated rates of cancers in areas where Chevron operated in Ecuador actually are caused by traces of feces in the drinking water, that the toxic dumping neither caused nor causes harm to indigenous groups who for centuries relied on the natural bounty of the forest for their survival, and that no deleterious impact on the rainforest ecosystem can be discerned. In the Chevron worldview, the company remediated any environmental contamination in accord with the strictures of the law and has no further obligations in Ecuador. In many respects, Chevron's Ecuador spin campaign is similar to the public relations offensive deployed by the tobacco industry when it claimed smoking did not cause cancer despite overwhelming scientific evidence

to the contrary. Perhaps not coincidentally, Chevron's Ecuador spin campaign is led by the same public relations firm (Hill & Knowlton) that for decades advanced this fundamental untruth on behalf of cigarette makers. It is hardly a stretch to assert that Hill & Knowlton has a history of employing scorched-earth tactics and outright fraud to advance the perceived interests of its clients. For example, in 1991 Hill & Knowlton arranged for perjured testimony to be presented to the U.S. Congress by a 15-year-old Kuwaiti girl who claimed she witnessed Iraqi soldiers ripping babies out of incubators in a Kuwait hospital. Based on this supposed eyewitness account, journalists at the time widely reported this horrific fact as true. It was later revealed the witness actually was the daughter of the Kuwaiti ambassador to the U.S. and that her false testimony was orchestrated and scripted by Hill & Knowlton to gin up American support for military action. See, Deception On Capitol Hill, *The New York Times*, January 15, 1992, p. A20. Another time-tested Hill & Knowlton tactic also used in Ecuador is the creation of seemingly "independent" research to create artificial debates about established scientific consensus (a tactic also used today by some oil companies to cast doubt on global warming). In the 1950s, Hill & Knowlton created the Council for Tobacco Research to publish independent "research" purporting to show that smoking did not cause cancer. This organization actually was staffed by Hill & Knowlton employees although it held itself out as an independent entity. The Council for Tobacco Research sent booklets to all U.S. doctors contending that smoking was safe; paid obscure scientific researchers to advance industry views, and then promoted them to the media as sources of independent information; and paid free-lance writers to publish articles reflecting industry viewpoints without revealing their affiliation. See, Tobacco Council's Objectivity Questioned, *The New York Times*, May 27, 1994, p. 16. Chris Gidez, a long-time Texaco and Chevron public relations executive, recently joined Hill & Knowlton as a full-time employee. Gidez heads a team at the firm with the unenviable task of managing Chevron's Ecuador image problem. A personable and well-liked individual, Gidez is being counted on by the affected indigenous groups and communities in Ecuador to provide a dissenting voice to the untruths propagated by Chevron and its Hill & Knowlton partners.

<sup>4</sup> Investigations of Chevron include one by the U.S. Securities and Exchange Commission (SEC) over the company's failure to disclose its potential Ecuador liability to shareholders in its public filings; an investigation by Ecuador's Department of Justice (*Procurador*) into possible civil fraud by the company; and, an investigation by Ecuador's top law enforcement agency (*Fiscal*) into whether Chevron employees and others committed criminal offenses by deliberately covered up the company's failure to comply with remediation agreement. There also are various investigations by Ecuadorian police and local prosecutors into threats, assaults, robberies, and harassment of members of the legal team for the affected communities. In addition, Chevron faces civil lawsuits in Ecuador and in U.S. federal court relating to its Ecuador contamination and alleged fraud. More information is available at [www.chevrontoxico.com](http://www.chevrontoxico.com).

<sup>5</sup> This memo uses "fraud" and "deceit" interchangeably. "Fraud" has both a legal and vernacular definition. While the authors are convinced Chevron has committed various legal frauds in Ecuador, not every fraud cited herein when viewed in isolation necessarily constitutes a legal violation.

<sup>6</sup> The clean-up agreement, "Contrato Para La Ejecucion De Trabajos De Reparacion Medioambiental y Liberacion De Obligaciones, Responsibilidades y Demandas" ("Contract for Environmental Repair Work and the Release From Obligations, Responsibilities, and Claims"), was signed in Quito on May 4, 1995 by Ricard Reis Veiga, then Vice President of Texaco and now Vice President of Chevron, and Dr. Rodrigo Perez Pallares, then and now the legal agent for Texaco (now Chevron) in Ecuador. Signing for the government of Ecuador were Dr. Galo Abril Ojeda, the Minister of Energy and Mines, and Dr. Frederico Vintimilla Salcedo, the President of PetroEcuador, Ecuador's state oil company.

<sup>7</sup> Chevron and its executives have been the subject of an official investigation in Ecuador for failing to fulfill the terms of its clean-up contract with Ecuador's government. See discussion of Report of Ecuador's National Prosecutor.

<sup>8</sup> Chevron had admitted to discharging roughly 18.5 billion gallons of toxic "water of formation" in Ecuador. Approximately 2% of water of formation is pure crude; thus, the equivalent of 332 million gallons of crude was dumped. This amount is just over 30 times what was spilled in the Valdez disaster. This total amount does not include the millions of gallons of crude spilled by Chevron from pipelines.

<sup>9</sup> The five indigenous groups participating in the Lago lawsuit are the Cofan, Secoya, Huarani, Siuna and Quichua. There are no longer traces of the Tetetes, who had a handful of persons living in the rainforest near what is today Lago Agrio when Chevron arrived there in the mid-1960s. Given the clearly foreseeable impacts of Chevron's deliberate contamination and ongoing cover-up, some commentators have argued that

the company is guilty of committing cultural genocide in Ecuador. For more on the legal and factual basis of this argument, visit [www.chevrontoxico.com](http://www.chevrontoxico.com).

<sup>10</sup> The toxins include Total Petroleum Hydrocarbons and benzene, toluene, xylene, lead, chromium 6, barium, and cadmium.

<sup>11</sup> Citing official records, Judith Kimerling estimated 16.8 million gallons were spilled from pipeline ruptures – an amount itself about 1.5 times larger than the Exxon Valdez disaster. *See Amazon Crude*, National Resources Defense Council, 1989. A Quito-based environmental group, Accion Ecologica, cites newspaper accounts and other sources to estimate that Chevron spilled roughly 30 million gallons of crude from its pipeline. To this day, Chevron has never released the locations of each of its waste pits nor warned local residents of the inherent danger of living near or on toxic waste sites.

<sup>12</sup> This report is available at [www.texacotoxico.org](http://www.texacotoxico.org)

<sup>13</sup> 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) (pregnancies of women in communities relying on streams with high TPH concentrations significantly more likely to end in spontaneous abortion); 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 community of San Carlos 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, and throat irritation, and associations with higher prevalence of fatigue, headaches, eye irritation, earaches, diarrhea, and gastritis).

<sup>14</sup> 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 Oriente counties where oil exploitation had been ongoing for at least 20 years as compared with non-oil-producing counties).

<sup>15</sup> Hurtig AK. and San Sebastian M., *Oil exploitation in the Amazon basin of Ecuador: a public health emergency*, REVISTA PANAMERICANA DE SALUD PUBLICA, 15(3): 205-211 (2004).

<sup>16</sup> Political Constitution of Ecuador Art. 3.3, Art. 23.6, Art. 86-91; Ley de Gestion Ambiental; Ley de Hidrocarburos;Codigo de la Salud; Ley Forestal y de Conservacion. Ecuador's 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.

<sup>17</sup> This proportion was Chevron's final ownership interest in the consortium in 1992, the year it departed the country. This is also the percentage amount of the total damage that Chevron was obligated to remediate under its agreement with Ecuador's government, but we re-emphasize that this agreement does not cover the claims of the private citizens bringing the Lago action. The affected communities assert in the Lago trial that Chevron is legally responsible for 100% of the environmental damage given that it was the sole operating manager of the consortium and it made the decision to dump toxic waste water.

<sup>18</sup> In 2002 the Second Circuit Court of Appeals affirmed the removal of this lawsuit to the courts of Ecuador on the theory that the case could be more conveniently tried there. *Aguinda v. Texaco*, 303 F.3d 470 (2d Cir. 2002). The removal was conditioned on Chevron's acceptance of jurisdiction in Ecuador, its waiver of statute of limitations defenses, and its waiver of objections to the use of discovered documents. *Id.* at 478-79. The *Aguinda* case was re-filed in 2003 in Ecuador. U.S. courts have expressed their readiness to re-hear *Aguinda* should Chevron breach its commitments or not abide by a judgment.

<sup>19</sup> It is the position of the Lago plaintiffs that Chevron's admissions alone – including that it dumped 18 billion gallons of oil-related waste into the rainforest -- allow the plaintiffs to meet their burden even without the scientific sampling that proves the ongoing presence of contamination. There is no mechanism for summary judgment in Ecuador.

<sup>20</sup> We use "remediate" advisedly. The "clean-up" work Chevron did cannot be described as "clean-up" as that word is commonly understood. To cite one example, waste pits with fewer than 5,000 Total Petroleum Hydrocarbons (TPHs) (toxins derived from petroleum) required "no action" according to Chevron and therefore were left untreated. Put another way, Chevron's Reis Veiga team decided that a pit with

extensive toxic contamination (the typical norm for TPHs in the U.S. is 100 ppm) did not require any clean-up. Yet when Chevron presented its final work product to Ecuador's government in 1998, it included these extensively contaminated and untreated waste pits on its list of "remediated" sites. These untreated sites were then counted toward the 37.5% threshold, allowing Chevron to escape what should have been a major expense. According to Ecuador's national prosecutor's office, which investigated Chevron's so-called "clean-up", Chevron only "remediated" 158 of the 250 toxic waste pits that it was obligated to under the agreement. See Ecuadorian Prosecutor's Report, p. 4.

<sup>21</sup> A preliminary study by the plaintiffs of several well sites and separation stations via the aerial photos from the Geographic Military Institute show a series of open-air waste pits surrounding Chevron well sites that existed in 1976 but that had been covered by 1990, when aerial photos of the same sites are available. These sites include, but are not limited to, Lago Agrio 20, Sacha 19, Sacha 80, Sacha 72, Sacha 91, Sacha 99, Sacha 49, Shushufindi 26, and the Shushufindi Central Separation Station.

<sup>22</sup> Since then, the already-diminished value of an Ecuadorian has been cut in half in the Chevron universe. At the Lago trial, Chevron tries to use a 10,000 ppm standard for TPHs – meaning an Ecuadorian is now worth 100 times less than an American, at least according to the company's lawyers.

<sup>23</sup> All of the findings in this paragraph are taken from original laboratory analyses from the designated sites submitted to the Nueva Loja court. These findings are on file with the court and with the plaintiffs.

<sup>24</sup> Clean-up Agreement, Provision 3.1.

<sup>25</sup> The document was prepared for the E&P Forum by its Environmental Quality Committee, which counted a certain M.T. Stephenson of Texaco as one of seven members. See E&P Forum, *Oil Industry Operating Guideline for Tropical Rainforests*, Report No. 2.49/170, April 1991 (hereafter "Rainforest Guidelines"). See Clean-up Agreement, Provision 3.1.

<sup>26</sup> "Rainforest Guidelines," p. 14. Chevron also violated several other provisions of these industry standards required by this report, including its failure to dispose of drilling wastes in steel drums.

<sup>27</sup> The E&P Forum, *Exploration And Production Waste Management Guidelines*, Report No. 2.58/196, September 1993. This document requires oil companies to take several measures to dispose of petroleum waste. Chevron violated at least seven of these measures in its Ecuador operations – failure to reduce waste, failure to re-use waste, failure to recycle, failure to properly bio-remediate, failure to incinerate, failure to control open burning, and failure to contain mud pits that contain contaminants from well perforation.

<sup>28</sup> The clean-up contract only specified the well sites that Chevron was responsible for remediating, not the number of toxic waste pits at each well site. The Prosecutor's office estimated there were 250 toxic waste pits at the sites Chevron was obligated to remediate, and that only 158 were actually "remediated" even using the flawed methods. This total of 92 pits does not include the hundreds of other pits that Chevron created that the company did not remediate because they were not written into the clean-up contract. Nor does it include the 100-plus hidden pits covered with dirt in earlier years at the well sites it was obligated to remediate.

<sup>29</sup> The Prosecutor's Report suggested that the Ecuadorian government was partially at fault for not demanding that Texaco remediate the 92 untouched sites before certifying the clean-up. Prosecutor's Report, p. 43-44.

<sup>30</sup> The TCLP test can be used to return a rough estimate of contamination that might be released in a single rainstorm at a landfill site. It does not come close to capturing the cumulative environmental threat from toxins and heavy metals embedded in soil that resulted from Chevron's operational practices in Ecuador. See Ann Maest, et al., *How Chevron's Sampling and Analysis Methods Minimizes Evidence Of Contamination*, p. 6 (available at [www.chevrontoxico.com](http://www.chevrontoxico.com)).

<sup>31</sup> Ecuador did not have a specific TPH norm written into its regulations at the time of the remediation agreement was signed. Pollution regulations in any country generally cover only a representative sample of thousands of possible chemical contaminants known to be harmful. Just because a chemical is not regulated does not mean it is safe or legal to dump it. Ecuador did have a series of statutes and a Constitutional provision outlawing pollution on any level. The country also had norms for various chemicals that Chevron generally refused to test for after is supposed remediation out of obvious fear of the findings. Given Chevron's vast experience in the U.S. with a norm of 100 ppm for TPHs, it can only be described as a flagrant violation of ethical standards for the Reis Veiga team to negotiate a standard that was 50 times more dangerous for Ecuadorians than U.S. residents. That said, and as this memo makes clear, Chevron used deceit to hide its violations of even that inflated and unethical standard.

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<sup>32</sup> Ann Maest, Mark Quarles & William Powers, *How Chevron Sampling & Analysis Methods Minimize Evidence of Contamination*. (March 2006), available at [www.chevrontoxico.com](http://www.chevrontoxico.com).

<sup>33</sup> These norms are codified in Decrees 1215 and 3516.