

# Chevron's Dirty Business In Ecuador

## *13 Examples That Expose a Corporate Cover-up*

*Does Chevron respect the law and human rights in Ecuador? You decide. On its website Chevron pledges to “conduct business in a socially responsible and ethical manner” and “to respect the communities” where it operates. But Chevron’s defense in the historic environmental trial in Ecuador’s rainforest (“Lago trial”) – where damages could be in the billions of dollars – can hardly be considered “ethical” or respectful of human rights. Chevron operated an oil concession in Ecuador’s rainforest from 1964 to 1992. The company admits during this time that it dumped 18 billion gallons of toxic waste in an area that was home to six indigenous nationalities – one of which is now extinct. For the last four decades, Chevron has treated Ecuador as an image problem to be managed rather than a humanitarian crisis that compels a compassionate and real solution. When one connects Chevron’s dots in Ecuador, what emerges is a coordinated series of frauds marked by misinformation designed to deceive courts, the public, shareholders, and the financial markets. The purpose of this scheme is to avoid paying the cost of a real clean-up, and it matters not that vulnerable rainforest peoples – among them thousands of children – have died or suffer grievously as a result. Already, the government of Ecuador has charged Chevron with fraud in U.S. federal court over a purported clean-up. The company also is being targeted by the SEC for hiding its Ecuador liability from shareholders. Still further, these problems have prompted a criminal investigation by Ecuador’s national prosecutor that could ensnare current Chevron managers – a fact the company has yet to disclose to shareholders or the SEC. Chevron’s Board of Directors appears asleep at the switch on this issue, raising questions about its corporate governance responsibilities. Some leading examples of Chevron’s fraud in Ecuador:*

### **1) Chevron: Our operational practices in Ecuador created no contamination.**

**Fact:** Experts believe that in Ecuador Chevron may have created the worst oil-related disaster in the world.<sup>1</sup> The company’s *intentional* decision to contaminate the pristine rainforest in an area that contained the ancestral lands of six indigenous groups has prompted legal scholars to suggest that Chevron could be charged with genocide under international criminal law.<sup>2</sup> Chevron has admitted in the Lago trial that it dumped more than 18 billion gallons of toxic waste (known as “produced water”) into this part of Ecuador’s Amazon from 1964 to 1992 – about 4 million gallons on a daily basis, or a total of 30 times more pure crude than was spilled in the Exxon Valdez disaster.<sup>3</sup> Chevron’s contamination took place in the Napo Concession, an area roughly the size of Rhode Island. The “produced water” discharged contained some of the most toxic and dangerous chemicals known to man.<sup>4</sup> In contrast to its substandard operational practices in Ecuador, in the U.S. Chevron regularly re-injected produced water into bored wells to ensure that it would have no adverse environmental impact. In addition, in Ecuador Chevron abandoned *roughly 1,000* open-air waste pits (many the size of an Olympic swimming pool) filled with life-threatening toxins such as chromium 6, barium,

cadmium, and lead.<sup>5</sup> Chromium 6 – used as anti-corrosive when perforating wells -- is a known human carcinogen that the U.S. government says “can cause stomach upsets and ulcers, convulsions, kidney and liver damage, and even death.”<sup>6</sup> The waste pits will contaminate the Amazon environment for centuries unless they are cleaned consistent with regulatory norms. Moreover, Chevron contaminated Ecuador *deliberately* to save an estimated \$1 to \$3 per barrel, or up to \$4.5 billion total.<sup>7</sup> Chevron extracted an estimated \$30 billion in profits from Ecuador.<sup>8</sup>

## **2) Chevron: The scientific evidence from the trial proves we are innocent.**

**Fact:** While Chevron insists the dumping of “produced water” and the continued existence of toxic waste pits pose no problem, the evidence from the Lago trial proves otherwise: 249 of Chevron’s 252 water samples taken for court-ordered inspections violate Ecuadorian and U.S. norms designed to protect public health.<sup>9</sup> Of the 35 inspected sites whose results have been reported to the court, 100% demonstrate significant amounts of life-threatening toxins, some thousands of times above the maximum amounts permitted by Ecuadorian and U.S. law. (The original lab reports are part of the evidentiary record of the Lago trial and are available for public view.) One Chevron well site, Lago 2, contained Total Petroleum Hydrocarbons (TPHs) in the soil at 325,000 parts per million -- an astounding 3,250 times higher than permitted in California, Chevron’s home state. (TPHs are harmful chemicals that derive from crude oil and include the human carcinogen benzene.<sup>10</sup>) Sadly, this is typical of the findings at all of the inspected sites as confirmed by scientists from both sides. Chevron is losing the trial, and losing overwhelmingly. Yet the company designs elaborate measures to conceal this fundamental fact. The great pain taken to hide the potential liability -- spearheaded by the controversial public relations firm Hill & Knowlton -- suggests that the fraud is part of an ongoing strategy planned at the highest levels of management. The effect is to mislead shareholders and the financial markets both about the size of Chevron’s Ecuador liability, and about Chevron’s dim prospects at the Lago trial.<sup>11</sup>

## **3) Chevron: Our practices were legal and consistent with industry norms.**

**Fact:** Chevron’s practices in Ecuador were illegal and violated industry norms by almost every conceivable measure. The dumping of “produced water” by Chevron in Ecuador was outlawed in the oil-friendly state of Louisiana in 1942.<sup>12</sup> In 1939, Texas outlawed open-air toxic waste pits of the type Chevron built in Ecuador throughout the 1970s and 1980s.<sup>13</sup> In Ecuador, the dumping of produced water violated a variety of laws dating to 1921 that prohibit contamination.<sup>14</sup> Chevron also violated its operating agreement with Ecuador’s government, which required it to “employ modern and efficient machinery” and to “avoid contamination of waters, airs, and lands.” Chevron tries to claim that the plaintiffs are being unfair by trying to apply today’s laws in Ecuador retroactively, but this is a non-issue. In reality, Chevron violated multiple statutes and Constitutional provisions in Ecuador that existed *throughout the time of its operation in the country*. There is a strong argument that today’s environmental laws in Ecuador apply in the Lago

trial, as the contamination Chevron left years ago still exists and causes harm *today*.<sup>15</sup> Further, it is clear that Chevron violated various contractual provisions of its operating and remediation agreements with Ecuador. Whether the Lago court applies today's numerical norms or yesterday's statutes, the operating contract or the remediation agreement, Chevron still finds itself on the wrong side of the law.

#### **4) Chevron: Our dumping of “produced water” created no public health risk.**

**Fact:** Nobody can be sure exactly how many people have died from cancer and other oil-related diseases where Chevron operated, but it is likely that the number of victims reaches into at least the hundreds. You will never get this information from Chevron, as the company has not conducted even a single health evaluation in the area. What we do know is that the U.S. government links TPH exposure to cancer, reproductive problems, nervous system damage, immune system impairment, and a host of other health problems.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> Other peer-reviewed scientific studies have found elevated rates of oil-related health problems such as spontaneous miscarriages and genetic defects.<sup>19</sup> As part of its game of smoke and mirrors, Chevron blames the health problems in Ecuador's Amazon on the irrelevant problem of coliforms (feces) in the water. Even Chevron CEO David O'Reilly has insultingly suggested that the rainforest residents should blame their health woes on poor personal hygiene.<sup>20</sup> Coliforms, which generally exist in the water supply throughout rural Latin America, do not derive from oil contamination and above all do not cause cancer. Dozens of prominent scientists from 17 countries recently signed an open letter criticizing Chevron's lack of scientific integrity in Ecuador.<sup>21</sup> Despite the overwhelming scientific evidence that the substances Chevron discharged are toxic, Chevron's Ecuadorian lawyers continually make the knowingly false claim to the Lago judge that crude oil poses no risk to human health.

#### **5) Chevron: We cleaned the damage in Ecuador and are no longer responsible.**

**Fact:** In the mid 1990s, as a ruse to get the Lago trial dismissed when it was in a U.S. court, Chevron claimed to have paid \$40 million for a “clean-up” in exchange for a legal release from Ecuador's government. It then argued in the U.S. court that the problem was solved and there was no need for the lawsuit. Chevron now tries to use this so-called “remediation” as the major component of its choreographed fraud. The reality is that this remediation was a powerful admission by Chevron that its substandard practices were illegal. But consistent with its longstanding approach of always doing only the bare minimum, the company paid less than 1% of the cost of a real clean-up which had been estimated by independent experts to be at least \$5 billion.<sup>22</sup> The remediation consisted mostly of Chevron hiring a sub-contractor to bulldoze dirt over a small number of waste pits without first removing the toxins. Chevron's remediation plan did not include the

cleaning of contaminants in groundwater or rivers, compensation to local residents, medical care for the sick, the installation of re-injection wells to stop the ongoing pollution, and consultations with indigenous groups and others about their needs. As described below, the company then used a bogus lab test to misrepresent the results of its “remediation” to win a release from Ecuador’s government – a misrepresentation that has embroiled Chevron in a bitter legal battle in U.S. federal court over fraud charges and has prompted Ecuador’s top national prosecutor to launch a criminal investigation.<sup>23</sup>

#### **6) Chevron: 99% of soil samples collected in areas where we “remediated” are legal.**

**Fact:** Responding to scientific data at the Lago trial, Chevron’s Chief Lawyer, Edward Scott, claimed in a letter to the environmental group Amazon Watch that the results indicate “no sample from these remediated areas contained unsafe levels of potentially toxic metals or hydrocarbons.” Chevron asserts on its website that 99% of all samples taken at the Lago trial pose no threat to human health or the environment.<sup>24</sup> In reality, dozens of these so-called “remediated” sites – such as the Lago 2 site mentioned above – contain levels of dangerous toxins up to thousands of times higher than permitted by U.S. and Ecuadorian law. For example, a sample from the well site Lago 6 has TPH levels at 299,000 ppm, even though Chevron reported less than 5,000 ppm for TPH from that site to secure its release. Other sites demonstrate the same disturbing pattern, as illustrated in the chart below. Further, Chevron misuses the EPA’s Soil Screening Level Values (SSL) by failing to follow the strict multi-step process it requires to claim the toxins being found pose no threat.<sup>25</sup> All of this raises the question: just how seriously does Chevron take science? Chevron’s lead “scientific advisor” for the Lago trial, Sara McMillen, is often quoted in Chevron press releases claiming these horrific results actually exonerate the company.<sup>26</sup> Yet McMillen *does not even hold a doctorate degree*, nor does McMillen have *any* degree in toxicology or chemistry (the two fields most relevant to the scientific results).<sup>27</sup> The upshot is that no matter which legal or invented standard Chevron cites, the company is in violation when one applies that standard honestly to the levels of toxic contamination being found.

#### **7) Chevron: We conduct scientific sampling at the Lago trial with integrity.**

**Fact:** After abandoning hundreds of toxic waste pits without even the most minimal evaluation of the environmental impact, Chevron scientists now engage in a very sophisticated site analysis of each pit to *deceive the court as to the extent of the contamination*. Chevron scientists typically map out a contaminated site and choreograph a deceptive plan days before the judge arrives for a judicial inspection. During these inspections, Chevron treats the truth-seeking process as a game and often takes samples from higher elevations away from the pits that are not hydraulically related to the source of the contamination. When those samples show little or no contamination, Chevron claims it is exonerated. Further, Chevron mixes various soil samples in a composite to dilute the toxin levels before having them analyzed in a laboratory – a practice prohibited by the EPA in the U.S. except in very limited circumstances not

present in Ecuador.<sup>28</sup> Chevron’s deceptive sampling is outlined by top independent scientists in the report *How Chevron’s Sampling and Analysis Methods Minimizes Evidence of Contamination* (“Maest Report”), available at [www.chevrontoxico.com](http://www.chevrontoxico.com). Chevron’s attacks on the sampling methodology of the plaintiffs is a smokescreen to hide its own deceptive sampling procedures during the Lago trial.<sup>29</sup>

**8) Chevron: We did not defraud the Ecuador government to secure a release.**

**Fact:** After its so-called clean-up, Chevron deliberately used an inappropriate test to conceal the true extent of the toxic contamination. This test produced artificially low numbers that Chevron used to claim that it complied with the requirements of the remediation contract it negotiated with Ecuador’s government. Part of the scam worked like this. Chevron negotiated a 5,000 ppm standard for TPHs in the remediation contract -- a figure 50 times more permissive than the U.S. standard at the time. If Chevron could prove after its “remediation” that the level of TPHs in the soil was lower than 5,000 ppm, then it would be “released” of liability for that well site in terms of claims held by Ecuador’s government (the release did not cover claims of private citizens such as those bringing the Lago action). Chevron obtained this artificially low result by using the TCLP (Toxic Characteristic Leaching Procedure) test, which is not approved by the EPA as a method to determine soil contamination. TCLP measures the trace amounts of contamination that leech out of the soil when it is saturated with water, rather than the amount of contaminants in the soil itself. The TCLP test is similar to pouring water over coffee grounds and then measuring the amount of caffeine in the water rather the amount of caffeine in the coffee grounds.<sup>30</sup> The evidence in the Lago trial has exposed Chevron’s testing fraud as the examples in the chart illustrate.

**Examples of Fraud During Chevron’s “Remediation”**  
**(Measured in TPHs)**

<b>Chevron Well Site</b>	<b>Result Chevron Presented to Obtain Release from Ecuador Using TCLP Test (1998)</b>	<b>Actual Contamination 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>

\*Note: The mean U.S. standard for TPHs in the soil is 100 ppm.

**9) Chevron: Toxic contamination in the soil up to 10,000 ppm for TPH is legal.**

**Fact:** This assertion is another key component of Chevron’s fraud and reflects a dreadful level of arrogance. Ecuador law currently prohibits TPHs in the soil at amounts greater than 1,000 ppm, an extremely lax standard for polluters. Yet Chevron has adopted the peculiar position that Ecuador law does not apply in Ecuador. Instead, Chevron insists

the Lago court adopt the astonishingly high standard of 10,000 ppm for TPH. (Chevron does not explain why it used a grossly inflated 5,000 ppm standard for its contractual “remediation” in the mid-1990s, yet wanted to *double* this during the Lago trial. It certainly suggests that company lawyers knew the results presented after the earlier “remediation” were false and likely would not withstand independent scrutiny.) Chevron cites no Ecuadorian law for the 10,000 ppm norm. It *does* cite an obscure regulation in Louisiana that applies only in strictly industrial areas where there is no possibility of surface water contamination, where people do not live, and where oil pits like those Chevron built in Ecuador have concrete liners. The Louisiana standard for TPHs for places where people live is 140 ppm – a fact Chevron neglects to mention to the Lago court. Nor does Chevron explain why, in any event, a state regulation from another country should apply in a legal proceeding in Ecuador.

#### **10) Chevron: High levels of toxins are found naturally in the Amazon soil.**

**Fact:** In several Chevron well sites, lab results report shockingly high levels of toxic heavy metals such as barium and cadmium. For example, at a Chevron well site called Sacha 6, all 17 Chevron soil samples turned up levels of barium in violation of EPA norms (most were also in violation of Ecuador’s more tolerant barium norm as well). The EPA standard for barium is 82 mg/kg; in Ecuador, the norm is 750 mg/kg. Yet Chevron has insisted that the Lago court adopt a standard for barium of 40,000 mg/kg – or roughly 50 times higher than the Ecuadorian norm and 500 times higher than the U.S. norm.<sup>31</sup> Chevron used many tons of barium and other heavy metals in its drilling process when it gouged 350 well sites out of the Amazon soil. Much of the waste from perforating these wells – calling “drilling muds” in industry parlance – were discarded decades ago in the open-air toxic waste pits around each well head, where they still sit. Chevron has argued that the high concentrations of barium and other heavy metals are explained by the “natural content” of the Amazon soil – an utterly preposterous assertion that wouldn’t pass muster in an elementary school science contest. If the high levels of poisonous heavy metals found at Chevron’s well sites truly occurred naturally, then indigenous groups would not have prospered for centuries before Chevron’s arrival. The land would simply be uninhabitable and there would be no need for environmental regulations anywhere in the world.

#### **11) Chevron: The Lago trial is about our earlier “remediation” and nothing else.**

**Fact:** In its public relations documents, Chevron generally limits its analysis of the scientific results of the Lago trial to the handful of sites that were part of its earlier “remediation” rather than to the entire Napo concession area where it operated. But the Lago trial is about Chevron’s substandard operational practices throughout the *entire* concession area. Chevron’s damage impaired the *entire* ecosystem (such as rivers and air) rather than just the land on which production facilities were placed. It was in the *entire* concession area that Chevron violated its legal duty to exercise the due care that it owed to indigenous groups and other residents of the region. The “remediation” that

Chevron purports to have completed was conducted at only a small fraction of the production sites and an even tinier fraction of the larger ecosystem.

### **12) Chevron: The responsibility for further remediation rests with Petroecuador.**

**Fact:** Chevron bequeathed its flawed production and operational infrastructure to Petroecuador, Ecuador's national oil company, when its operating contract expired in 1992. Unfortunately, Petroecuador has done little to improve Chevron's deficient infrastructure and substandard operational practices. That said, the legal position of the indigenous groups and affected communities is that Chevron is not only fully responsible for the contamination that occurred on its watch as managing operator of the Napo concession, but also for the contamination that has occurred since it left as a result of the continued use of the slipshod technology that it turned over to Petroecuador. It also warrants special mention that Chevron was the exclusive party that designed, installed, and operated all of the production facilities in the Napo Concession from 1964 to 1990. Under the legal theory of joint and several liability, Chevron is fully accountable for the contamination during that time even though Gulf and Petroecuador were passive partners at various times.

### **13) Chevron: Our legal rights in Ecuador are under attack.**

**Fact:** Actually, it is Chevron that has shown little respect for the law and human rights in Ecuador. Chevron's lawyers consistently have taken steps to undermine the due process rights of the affected communities to seek justice. For years, the company argued that the case – which had been filed in the United States in 1993 – should be heard in Ecuador. When the U.S. court granted that wish and the case was re-filed in Ecuador, Chevron immediately opposed jurisdiction on technical grounds. When the trial started, the company invented an “arbitration” claim against Ecuador's government and then pressed its claims in the same U.S. federal court that it had considered incapable of hearing the case years earlier. Further, since the Lago trial started, the plaintiffs have been victimized by a series of death threats and human rights abuses.<sup>32</sup> Many of these abuses have originated at an Ecuadorian army base with which Chevron has a security contract. Further, a military investigation in Ecuador found that Chevron's counsel used false pretenses to cancel a judicial inspection on indigenous territory that was to be covered extensively by journalists.<sup>33</sup> Two lawyers for the affected communities have been victimized by robberies, and the daughter of one was the victim of a kidnapping attempt. Chevron has yet to clearly condemn these human rights abuses. Nor has Chevron used its influence with the Ecuadorian military to put a stop to the abuses.

**Amazon Defense Coalition/September 2006**

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<sup>1</sup> Marc Lifsher, *Chevron Would Face \$5 Billion Tab For Amazon Cleanup, Expert Says*, The Wall Street Journal, Oct. 10, 2003 (quoting environmental auditor David Russell saying clean-up “would dwarf any decontamination effort ever undertaken.”)

<sup>2</sup> Since Chevron began operating in Ecuador, the impact of oil contamination on the six indigenous groups in the Chevron concession area has been nothing short of devastating. One group already in decline, the

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Tetetes, has disappeared altogether. Two others – the Secoya and the Cofan – have been pushed to the brink of extinction by the contamination and the invasion by Chevron of their ancestral lands. The Secoya estimate they have lost 98% of their traditional territory due to oil development, while the Cofan’s population has dropped from thousands before Chevron arrived to about 500 persons today. The Siuna, Wuaorani, and Kichua are also severely impacted and have experienced dramatic population declines on their ancestral lands. Chevron has not recognized that it has a duty to correct the unique harm caused to each indigenous group as a result of its substandard operational practices. Some legal scholars are beginning to question whether Chevron committed or through its ongoing neglect is committing genocide in Ecuador. The idea that the *intentional* creation of severe environmental degradation can be the basis of a genocide charge under international criminal law when it was clearly foreseeable that such practices would have a devastating impact on indigenous groups is beginning to receive serious examination. *See, e.g.,* Aaron Marr Page and Alejandro Ponce Villacis, *The Environmental and Cultural Destruction of Chevron in Ecuador As Acts of Genocide and Crimes Against Humanity Prohibited Under International Criminal Law* (on file with plaintiffs).

<sup>3</sup> Chevron had admitted at the Lago trial that it discharged roughly 18.5 billion gallons of toxic “produced water” in Ecuador. Approximately 2% of such “produced water” is pure crude. Thus, the equivalent of 332 million gallons of crude was dumped. This amount is just over 30 times the 11 million gallons that was spilled in the Exxon Valdez disaster in 1989. This does not include the additional crude oil spilled by Chevron from pipelines, which has been calculated at 16.8 million gallons. *See Amazon Crude*, National Resources Defense Council, 1989.

<sup>4</sup> “Produced water” contains a variety of toxic and carcinogenic petroleum hydrocarbons, including benzene, toluene, ethylbenzene and xylene (together known as BTEX) and polynuclear aromatic hydrocarbons (PAHs). Chevron claims on its website that produced water is “brackish” and that its discharge into the natural environment is not unusual. In reality, almost all produced water from land-based oil production have been re-injected into bored wells for decades except in extremely rare circumstances where natural water sources and people cannot be affected as was obviously *not* the case in Ecuador’s rainforest. Chevron conceals this key fact in its public relations materials, and claims the exception is the rule. To the best of our knowledge, Chevron has never discharged produced water in the U.S. as it did in Ecuador – that is, into waterways that nearby residents relied on for their drinking water.

<sup>5</sup> Evidence at the Lago trial demonstrates that throughout the 1970s and 1980s Chevron hid the existence of more than 100 pits by covering them with dirt without cleaning them out. These pits all pose a severe public health hazard, yet Chevron has never volunteered the location of any of its pits (hidden or open) to the residents of the region. During the trial, Chevron generally ignores the hidden pits at the sites being inspected until the plaintiffs point them out to the judge.

<sup>6</sup> The U.S. Department of Health and Human Services maintains a registry of harmful chemical substances based on the latest scientific literature, available at [www.atsdr.cdc.gov](http://www.atsdr.cdc.gov). This registry, called the Agency for Toxic Substances and Disease Registry, documents the effects from Chromium 6.

<sup>7</sup> Savings for dumping “produced water” are based on American Petroleum Institute estimates.

<sup>8</sup> Profits were calculated based on crude oil prices and estimates of production costs during the relevant years. Chevron has tried to claim its profits did not surpass \$500 million, but this amount refers to the profits booked only by its 4th-tier subsidiary in Ecuador, Texpet.

<sup>9</sup> These and all laboratory results from the water and soil sampling at the judicial inspections are on file with the plaintiffs and with the Lago court, where they are part of the evidentiary record.

<sup>10</sup> Total petroleum hydrocarbons (TPH) describes a large family of several hundred chemical compounds that derive from crude oil. Some chemicals that may be found in TPH are hexane, jet fuels, mineral oils, benzene, toluene, xylenes, naphthalene, and fluorene, as well as other petroleum products and gasoline components. *See* <http://www.atsdr.cdc.gov/tfacts123.html>. The International Agency for Research on Cancer (IARC) has determined that benzene is carcinogenic to humans and that other TPH compounds (benzo[a]pyrene and gasoline) are probably carcinogenic to humans.

<sup>11</sup> Hill & Knowlton has achieved notoriety for its aggressive attempts to sanitize the misdeeds of its corporate clients and for its willingness to cross the ethical line. The firm represented the tobacco industry for decades when the industry claimed smoking did not cause cancer. During this time, Hill & Knowlton created an “independent” research entity on smoking that was actually staffed by Hill & Knowlton employees. *See*, Tobacco Council’s Objectivity Questioned, *The New York Times*, May 27, 1994, p. 16. In 1991, to boost public support for the first Gulf War, Hill & Knowlton arranged for perjured testimony to be

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presented to the U.S. Congress by a Kuwaiti girl who claimed she witnessed Iraqi soldiers ripping babies out of incubators in a Kuwait hospital. In reality, this girl was the daughter of Kuwait's ambassador to the U.S. See, Deception On Capitol Hill, *The New York Times*, January 15, 1992, p. A20. Chris Gidez, a former Texaco and Chevron public relations executive who for years handled public relations for the Lago litigation, recently joined Hill & Knowlton on a full-time basis. Gidez has the unenviable task of managing Chevron's Ecuador image problem – not unlike putting the arsonist in charge of the firehouse, we might add. Consistent with Hill & Knowlton's reputation, in Ecuador (well out of sight of U.S. legal authorities) Chevron's local counsel engages in a variety of unethical litigation tactics that likely would result in sanctions if employed by lawyers in the U.S. For example, during the Lago trial Chevron has published dozens of full-page advertisements in five prominent Ecuadorian newspapers attacking the personal credibility of the technical experts and lawyers for the affected communities in a clear attempt to influence the litigation. An appropriate analogy might be O.J. Simpson taking out full-page ads in *The Los Angeles Times* during his trial attacking the prosecutor, Marcia Clark, and then delivering the newspaper to jurors each morning before testimony.

<sup>12</sup> Order No. 29-A, Statewide Order Governing the Drilling for and Producing of Oil and Gas in the State of Louisiana, State of Louisiana Department of Conservation, Minerals Division, May 20, 1942 (on file with Lago court and plaintiffs).

<sup>13</sup> Texas Oil and Gas Statewide Rulebook, Railroad Commission of Texas, July 1, 1967, p. 28 (as of July 31, 1939 ordering that "... all crude petroleum or the products and by-products thereof now stored in open pits or earthen storage shall be removed from said open pits or earthen storage and placed in storage tanks...") (document on file with Lago court and plaintiffs).

<sup>14</sup>Ecuador's *Ley de Yacimientos* (Mineral Deposits Law), which entered into force on December 17, 1921, prohibits water contamination during exploration and production activities by companies exploiting natural resources. Ecuador passed a Hydrocarbons Law in 1971 that required oil companies to "adopt all necessary measures to protect the flora, fauna, and natural resources" and to "avoid contamination of water, air, and land." Ecuador's *Ley de Agua* (Water Law), which went into effect in 1972, "prohibits all contamination of waters that affect human health or impacts the development of flora and fauna;" the country's *Ley de Prevención y Control de Contaminación Ambiental* (Law of Prevention and Control of Environmental Contamination), which became law in 1976, "prohibits the discharge ... of any type of contamination that could alter the quality of the soil and affect human health, the flora, the fauna, natural resources, and other natural capital." Ecuador's national 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. Several other statutes in effect during Chevron's operating period in Ecuador prohibit contamination, either absolutely or at levels that could cause harm. A complete list of Ecuador's anti-pollution laws in effect during Chevron's operation in that country is available from the plaintiffs.

<sup>15</sup> "Retroactivity" is another disingenuous argument advanced by Chevron's lawyers. Here, Chevron confuses criminal laws – which cannot be applied retroactively – with civil laws, which can be so applied. Laws are applied retroactively in civil environmental cases based on a principle of the English common law (the foundation of the American system of civil law) dating back hundreds of years. *Heydon's Case*, 76 Eng. Rep.637, 638 (Ex. 1584). The rationale is obvious: environmental statutes are remedial, and thus by nature always focus on *past* conduct so by their very nature they must be retroactive (criminal statutes in contrast focus on *prospective* acts). This principle has been confirmed by the U.S. Supreme Court when reviewing the legality of U.S. environmental laws. Examples of U.S. environmental laws applied retroactively include the Coal Mine Health and Safety Act of 1969 (which allowed miners with "black lung" disease to sue their former employers) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), which allows states and private parties to sue corporations for past environmental damage. We note that CERCLA not only applies retroactively, but it also imposes strict liability and joint and several liability on polluters. This means that polluters are fully liable even if they were unaware of the harm they were causing, even if they adhered to standards in effect at the time, and even if they were a minority partner. While Chevron argues it would be "unfair" to apply Ecuador's current laws to its past conduct, what would really be unfair is for the thousands of victims to have no right to seek compensation because of a loophole in the law. Chevron chose to act in the first place by building oil production facilities in the pristine rainforest, so it must under the law bear the fundamental responsibility for the risks associated with its profit-making activities even if they could not all be foreseen at the time. In the final analysis, the retroactivity argument is a non-starter for Chevron in that the company

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was violating Ecuadorian laws in effect at the time of its operation as well as the laws in effect today. Thus, it is of little significance whether the Lago court chooses to apply environmental laws from the past, or such laws from today.

<sup>16</sup> See U.S. Agency for Toxic Substances and Disease Registry (ATSDR) at [www.atsdr.cdc.gov](http://www.atsdr.cdc.gov).

<sup>17</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).

<sup>18</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 rainforest counties where oil exploitation had been ongoing for at least 20 years as compared with non-oil-producing counties).

<sup>19</sup> 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).

<sup>20</sup> See David O'Reilly interview with British Broadcasting Corporation available at [http://www.pbs.org/previews/extreme\\_oil/](http://www.pbs.org/previews/extreme_oil/).

<sup>21</sup> Texaco And Its Consultants, INTERNATIONAL JOURNAL OF OCCUPATIONAL & ENVIRONMENTAL HEALTH, 11(2):217-20(2005).

<sup>22</sup> David Russell, the President of the U.S. firm Global Environmental Operations and a remediation expert, told *The Wall Street Journal* that the Ecuador clean-up would cost at least \$5 billion in 2003 dollars. *Supra*, N.1. Other experts, such as Fausto Penafiel (the former environmental director of the Ecuador capital of Quito and a consultant to the plaintiffs) believe even a \$6 billion estimate is conservative. Still others believe the clean-up cost could be much lower by employing newer technologies.

<sup>23</sup> This litigation, before Judge Leonard Sand in the Southern District of New York, is scheduled for trial in March 2007. Ecuador is seeking a rescission of its settlement agreement with Chevron. If it prevails, it could press its independent claims against Chevron for the same environmental damage sought by the plaintiffs in the Lago trial.

<sup>24</sup> [http://www.texaco.com/sitelets/ecuador/en/plaintiffs\\_myths.asp](http://www.texaco.com/sitelets/ecuador/en/plaintiffs_myths.asp)

<sup>25</sup> Dr. Ann Maest, Mark Quarles, and William Powers, *How Chevron's Sampling and Analysis Methods Minimize Evidence Of Contamination*, 8 March 2006 (hereinafter, "Maest Report") (on file with Lago Court and plaintiffs and available at [www.chevrontoxico.com](http://www.chevrontoxico.com)).

<sup>26</sup> In a Chevron press release dated August 8, 2006, McMillen says: "The scientific evidence speaks for itself – all legitimate laboratory analysis verifies the effectiveness of the Texpet remediation program, and neither people nor the environment is at risk from oil contamination in the areas remediated by Texpet." Note that McMillen does not acknowledge the Lago trial results at Texpet's so-called "remediated" sites that are thousands of times higher than permitted by Ecuadorian law (1,000 ppm for TPH) and by Chevron's contractually negotiated (and likely illegal) remediation standard of 5,000 ppm for TPH – sites such as at Lago 2 (325,000 ppm for TPH), Lago 6 (299,000 ppm for TPH), and Shushufindi 18 (301,000 ppm for TPH), to name but a few. Nor does McMillen acknowledge that Chevron itself has turned up samples thousands of times higher in TPH than permitted by law at sites such as Sacha Norte 2 (91,800 ppm for TPH). Nor does McMillen acknowledge the vast areas that Chevron contaminated that are outside the scope of its extremely limited remediation plan -- sites that Chevron will be responsible for remediating should plaintiffs prevail in the Lago trial. For McMillen's quote, see [http://www.texaco.com/sitelets/ecuador/en/legal\\_archives/press/2006-08-08\\_two\\_years.asp](http://www.texaco.com/sitelets/ecuador/en/legal_archives/press/2006-08-08_two_years.asp)

<sup>27</sup> McMillen, who holds a masters degree in biology from the University of Houston, is a former employee of Exxon and has spent her entire professional career in the oil industry. She has demonstrated precious little independent judgment when assessing the impact of Chevron's oil contamination on the rainforest residents of Ecuador. Her public statements purporting to exonerate Chevron in the face of the

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overwhelming scientific evidence to the contrary are obviously made in service of the company's legal and public relations strategies rather than the higher calling of science. The fact that McMillen claims the contamination being found at Chevron's sites pose no health risk when independent, peer-reviewed studies show people are *dying* as a result is nothing less than shameful. Significantly, McMillen's statements are not within the narrow scope of her limited expertise and for that reason would never be credited by an American court (and they are decidedly *not* part of the evidence in the Lago trial). In contrast, Dr. Ann Maest, an advisor to the plaintiffs, has a doctorate in chemistry from Princeton and is the author of several articles on topics directly relevant to the Lago litigation in prestigious peer-reviewed academic journals. Dr. Maest's research has been published in *Applied Geochemistry*, *Canadian Journal of Fisheries and Aquatic Sciences*, *Chemical Geology*, *Applied and Environmental Microbiology*, and *Environmental Science and Technology*. Unlike Ms. McMillen, Dr. Maest has served as an expert witness for the U.S. Department of Justice and several state agencies in environmental lawsuits in federal and state courts in the U.S. Dr. Maest also has served as a research geochemist at the U.S. Geological Survey. She has designed, conducted, and managed numerous groundwater and surface water hydrogeochemistry studies – issues particularly germane to those being assessed by the Lago court. There is no evidence McMillen ever has been qualified as an expert by a court on the topics of chemistry and toxicology on which she opines so freely in Chevron's Ecuador image-management campaign.

<sup>28</sup> According to the EPA, composite sampling of the type Chevron does in Ecuador is appropriate when toxic contamination is a function of airborne pollution and gets dispersed uniformly throughout a particular area. When the contamination is a function of "indiscriminate" dumping or the burying of wastes – exactly what Chevron did in Ecuador's Amazon – composite sampling is wholly inappropriate because it misses the "hotspots" where the toxins are most concentrated. *See* U.S. Environmental Protection Agency, Environmental Investigations Standard Operating Procedures and Quality Assurance Manual, Region 4, Athens, Georgia (on file with the plaintiffs). *See also* Ann Maest, et al., *How Chevron's Sampling and Analysis Methods Minimizes Evidence Of Contamination*, p. 5 (available at [www.chevrontoxico.com](http://www.chevrontoxico.com)).

<sup>29</sup> Both the plaintiffs and Chevron have acknowledged to the court that on occasion some of their sampling results had to be discarded because of chain of custody issues, temperature variations in transport, and other logistical snafus that affect field sampling. Such aberrations are virtually inevitable during an extensive litigation process like that taking place in the Lago trial. These instances always are pointed out to the Lago court when they become known, and only samples that meet the highest custodial and analytical standards are used as evidence. Chevron does not divulge in its public relations campaign that some of its samples have been lost or not reported to the Lago court. Nor does Chevron divulge that its U.S. laboratory is in violation of Ecuadorian law because it is not certified in Ecuador, raising the possibility that all of the company's sampling results could be invalidated by the Lago court.

<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* Maest Report, p. 6 (available at [www.chevrontoxico.com](http://www.chevrontoxico.com)).

<sup>31</sup> Again, Chevron misrepresents a Louisiana regulation. The regulation cited states clearly that it should only be applied in a narrow set of circumstances where the threat to groundwater is virtually non-existent. This is contrary to the situation in Ecuador's Amazon, where thousands of people rely on shallow groundwater to survive. *See* Maest Report, p. 8 (available at [www.chevrontoxico.com](http://www.chevrontoxico.com)).

<sup>32</sup> Concerns over these abuses are outlined in letters to Ecuador's government from the International Commission of Jurists and Hina Jilani, Special Representative to the United Nations Secretary General for Human Rights Defenders. Copies are available at [www.chevrontoxico.com](http://www.chevrontoxico.com).

<sup>33</sup> This Ecuador Ministry of Defense Investigation, published on February 3, 2006, found that Chevron employees presented a false report to the court to induce the cancellation of the Guanta inspection. (report on file with plaintiffs).