



The Dubious Lawsuit against Chevron in Ecuador - Part 1

Posted by [Gail the Actuary](#) on June 15, 2009 - 9:50am

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[Editor's note by Super G] *The Oil Drum staff consists of a diverse set of voices. The story that follows is one staff member's perspective. Other perspectives on this case may be posted in the future.*

Recently, a fraudulent lawsuit against Dole was dismissed. [According to the WSJ](#),

Court cases get dismissed all the time, but rarely are dismissals as significant as the two lawsuits against Dole Food and other companies that were tossed recently by a California judge. Among other good things, the ruling is a setback for tort lawyers who troll abroad seeking dubious claims to bring in U.S. courts.

The allegations against Dole, the world's largest fruit and vegetable producer, involved banana plantation workers in Nicaragua who alleged that exposure to the pesticide DBPC in the 1970s left them sterile. The only problem is that most of the plaintiffs had not worked at plantations and weren't sterile. In fact, there's no evidence that farm workers at Dole facilities were exposed to harmful levels of the chemical -- which was legal and widely used at the time -- or that the level of exposure they did experience even causes sterility.

I recently visited Ecuador, as a guest of Chevron. Based on what I learned during that visit, it seems to me that the suit against Chevron has a fair number of similarities to the Dole suit. In this post, I will explain why I think the Chevron case is as dubious as the Dole case.

The Chevron case has gotten widespread publicity in the US, as a result of publicity by the Amazon Defense Front, or, as it is known in the US, the [Amazon Defense Coalition](#). If the plaintiffs win the case, the Amazon Defense Coalition (ADC) will be the recipients of any monies awarded. This is a photo of members of the ADC, assisting the allegedly "independent expert" in gathering soil samples for testing for the court. The independent expert is not in the photo shown below, although he is present in others in the [series](#).



Figure 10: Silvio Jaya of the Amazon Defense Coalition assisting the court's "independent expert" during a site inspection.

Figure 1. Click [here](#) for PDF with 18 similar photos

It seems to me that the Amazon lawsuit is filled with myths, misunderstandings, and out-and-out lies. Here are a few I have run across.

Myth 1. Pablo Fajardo, winner of the [CNN hero](#) award in 2007 and [Goldman Environmental Prize](#) is lead lawyer for the plaintiffs in the suit against Chevron.

It is certainly true that Pablo Fajardo is a lawyer for the case. Pablo Fajardo [became a lawyer in 2004](#) after completing a correspondence law degree, and this is his first case ever. The question is whether he is really has been "spearheading the legal team for the plaintiffs for several years" as the [article describing the Goldman award says](#), or is just a puppet, with other more experienced lawyers really in charge.

Who would these other lawyers be? The original lawyer when a similar case was brought in the US in 1993 was **Cristóbal Bonifaz**, a native Ecuadorian whose grandfather was president of the country in the 1930s. He is no longer on the case, but he was one of the leading lawyers when the case was first filed against Chevron in Ecuador in May 2003.

Another lawyer for the plaintiffs is Steven Donziger of New York. In a recent [letter to the Economist Magazine](#), he bills himself as "Lawyer representing Amazonian communities in legal action against Chevron". He has also been involved with the current suit in Ecuador since it was filed in 2003.

According to [this article](#), Donziger enlisted the help of the Philadelphia law firm of **Kohn, Swift & Graf**, which specializes in class-action suits. We also read on Kron, Swift, & Graf's [web page](#):

Vanity Fair Article on Chevron/Texaco Litigation

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Vanity Fair magazine's May 2007 issue has a [feature article](#) on the landmark environmental litigation pending in an Ecuadoran court against Chevron Corporation. The suit alleges environmental harm to the indigenous tribes of the Lago Agrio region of Ecuador arising out of Texaco's oil exploration activities in 1970s. Kohn, Swift & Graf, P.C. has been one of the lead plaintiffs' counsel in the litigation since its inception in 1993.

For more information about this case, visit the homepage for the litigation at texacorainforest.com.

Figure 2. Image from Kohn, Swift, and Graf [website](#)

So, in 2007, which is about the time when Fajardo was getting these awards, Kohn, Swift & Graf considered themselves "one of the lead plaintiffs' council" in the Amazon litigation.

We find others involved in the case as well. According to a July 2008 Newsweek [article](#):

Just recently, Donziger and other trial lawyers in the case retained their own high-profile D.C. superlobbyist, Ben Barnes, a major Democratic fund-raiser. And they have tapped a capital connection that may pay off even more. Roughly two years ago, when Donziger first got wind that Chevron might take its case to Washington, he went to see Obama. The two were basketball buddies at Harvard Law School. In several meetings in Obama's office, Donziger showed his old friend graphic photos of toxic oil pits and runoffs. He also argued strongly that Chevron was trying to subvert the "rule of law" by doing an end run on an Ecuadoran legal case. Obama was "offended by that," said Donziger.

So there seem to be all kinds of high-profile folks involved in the case. We know that Ben Barnes is being paid by Kohn, Swift, & Graf, because his [lobbying registration](#) indicates that that is his employer.

Was Fajardo, on his first case after completing correspondence school for a law degree in 2004, really in charge? Maybe, maybe not.

Myth 2. The death of Pablo Fajardo's brother in 2004 was in some way connected to Texaco or Chevron.

These are a couple of typical quotes:

"In my case, in 2004 when we were starting the case, one of my brothers was killed. I cannot say Texaco is to be blamed for this, and neither can I say the opposite. This was never investigated. There have been a lot of things, a lot of pressure and persecution." -
- **Pablo Fajardo, Ecuador TV, April 22, 2008**

Fajardo affirmed that “in these 15 years we have received a lot of pressure, starting with threatening phone calls, and campaigns to damage the professional reputation of experts defending the FEDAM’S cause. Undoubtedly the most dramatic experience of these clashes is the death of Pablo Fajardo’s brother eight days prior to the beginning of the oral proceedings in this case. “I cannot prove Texaco was behind this, but the truth is my brother was killed,” said Fajardo. – **Europa Press (Zaragoza), September 3, 2008**

The death of Pablo's brother Wilson Fajardo most certainly has been investigated. There is no evidence whatsoever that Texaco was involved. Instead, it seems to an "execution" by FARC, related to drugs and the theft of "white gasoline" from pipelines for use in cocaine preparation. His brother was tortured and shot in the head at close range.

This is the [complaint](#) filed by Pablo Fajardo with the police at the time of his brother's death. At no point in the complaint does he mention Texaco. Instead, he asks that the friends who his brother had been drinking with that night be taken into protective custody.

This is an [editorial](#) from El Comercio talking about the 20 FARC deaths by hired assassins in the past year, which mentions Wilson Fajardo. He was a journalist working for Radio Ecuador, and seems to have offended FARC by talking about the link between drug trafficking and the theft of white gasoline.

There are numerous other documents available with respect to this case. These are a few ([1](#), [2](#), [3](#), [4](#), [5](#), and [6](#)). There are additional documents that are too large to be loaded on this server, including the forensics report, the police report, and the prosecutors' report. E-mail me at Gail Tverberg at comcast dot net if you would like these.

Myth 3. Chevron or Texaco has been harassing or intimidating Pablo Fajardo through threatening phone calls and break-ins to their office.

If the story of the death of Pablo's brother could be worked into an endless anti-Texaco publicity stunt, why not carry the whole process one step further? Accuse Texaco of threatening phone calls and break-ins. No one would ever be able to check these out. Letters to high level human rights organizations would be particularly impressive. According to an email I received from a contract at Chevron:

It is the same with their other public accusations [besides Wilson Fajardo death], which include attempted kidnapping and robbery, throughout this trial. In fact, in many of those purported cases they have not bothered to file police complaints, so there is actually no investigation. Instead, they have gone to the media or to international human rights groups with the sole intention of making false accusations to create the appearance of persecution without actually enduring any persecution whatsoever.

In each case that has been investigated you will find enormous holes. The robbery of computers, which they initially blamed on Chevron personnel, were carried out by members of the FDA against their own technical team because their expert refused to submit a false report during the Judicial Inspections. The alleged "kidnapping" attempt

against one of their family members was in fact a botched burglary attempt completely unrelated to the case, according to police who later investigated the incident. In this case, there actually was an investigation and we have the police report we can show you. Again, no mention of Chevron or anyone associated with Chevron.

While I don't have direct evidence to show that all of these allegations are false, I think one should categorize the statements regarding harassment as myths, unless Fajardo or the ADC can produce evidence to back them up.

Why would Pablo Fajardo and the ADC be so eager for favorable publicity? I think at least part of the reason is because they want the public to donate to their cause. They are [collecting donations](#) on their US web site. They are even offering tax receipts, suggesting that their activity is sanctioned by US tax officials. I wonder where their money is really going (pay US lawyers, pay US lobbyists, pay to "educate" journalists on their story, pay the "unbiased expert" in Ecuador), and who is auditing it. The ADC is a Non-Government Organization based in Ecuador.

Myth 4. When Texaco came to Ecuador, it had a huge negative impact on the lives of the people of Ecuador.

Texaco was granted a concession to look for and develop oil in Ecuador in 1964. Its first discovery of oil was in 1967, and oil began flowing about 1970.

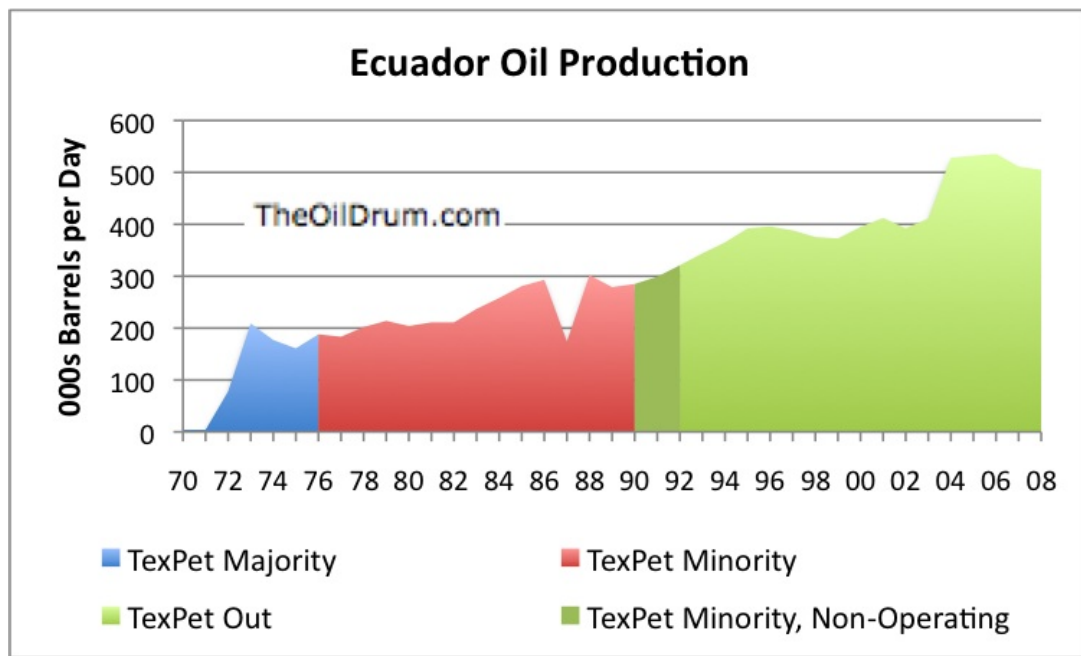


Figure 3. Ecuador oil production, based on EIA data. Includes all companies producing oil in Ecuador, so in later years includes more than TexPet and Petroecuador.

Figure 3 gives show the history of oil production in Ecuador. Texaco (or really Texaco's subsidiary Texaco Petroleum, abbreviated "TexPet") started oil production about 1970, and by 1973 had ramped production up to the production plateau of about 200,000 bpd for the particular fields it developed. By 1976, the government of Ecuador through its company Petroecuador had taken over 62.5% owner of the consortium, and TexPet became minority owner with 37.5% ownership. In 1990, Petroecuador became the lead operator, and by 1992 TexPet was completely out. Thus, TexPet's influence was greatest in the "blue" period, declining in the "red" period, and out by the

So how did the people of Ecuador fare when TexPet began production?

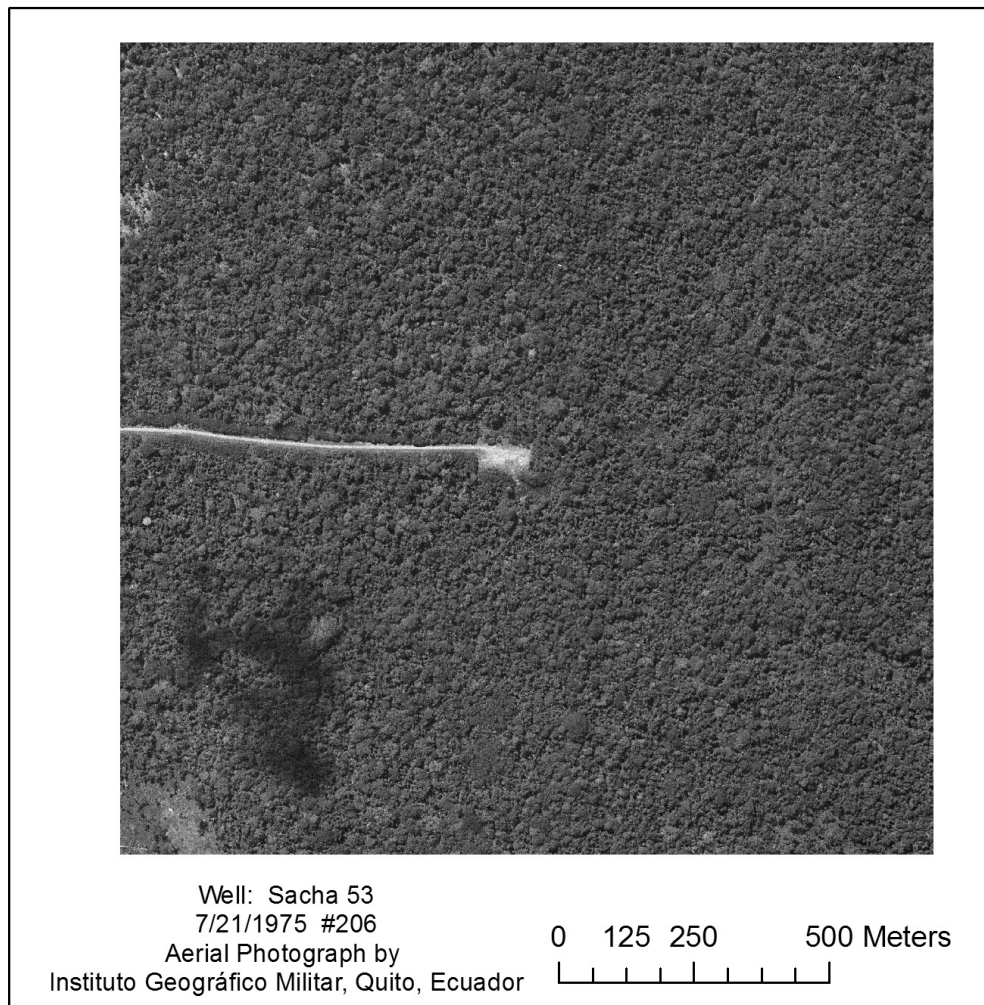


Figure 4 Site Pozo Sacha 53 in 1975, after TexPet completed its physical infrastructure

Figure 4 shows an areal photograph of one of the well sites, taken in 1975, after production was ramped up by TexPet. As one can see, the footprint is very small. The surrounding land is still virgin forest. It is hard to see why the infrastructure by itself would have had huge impact on Indians living nearby.

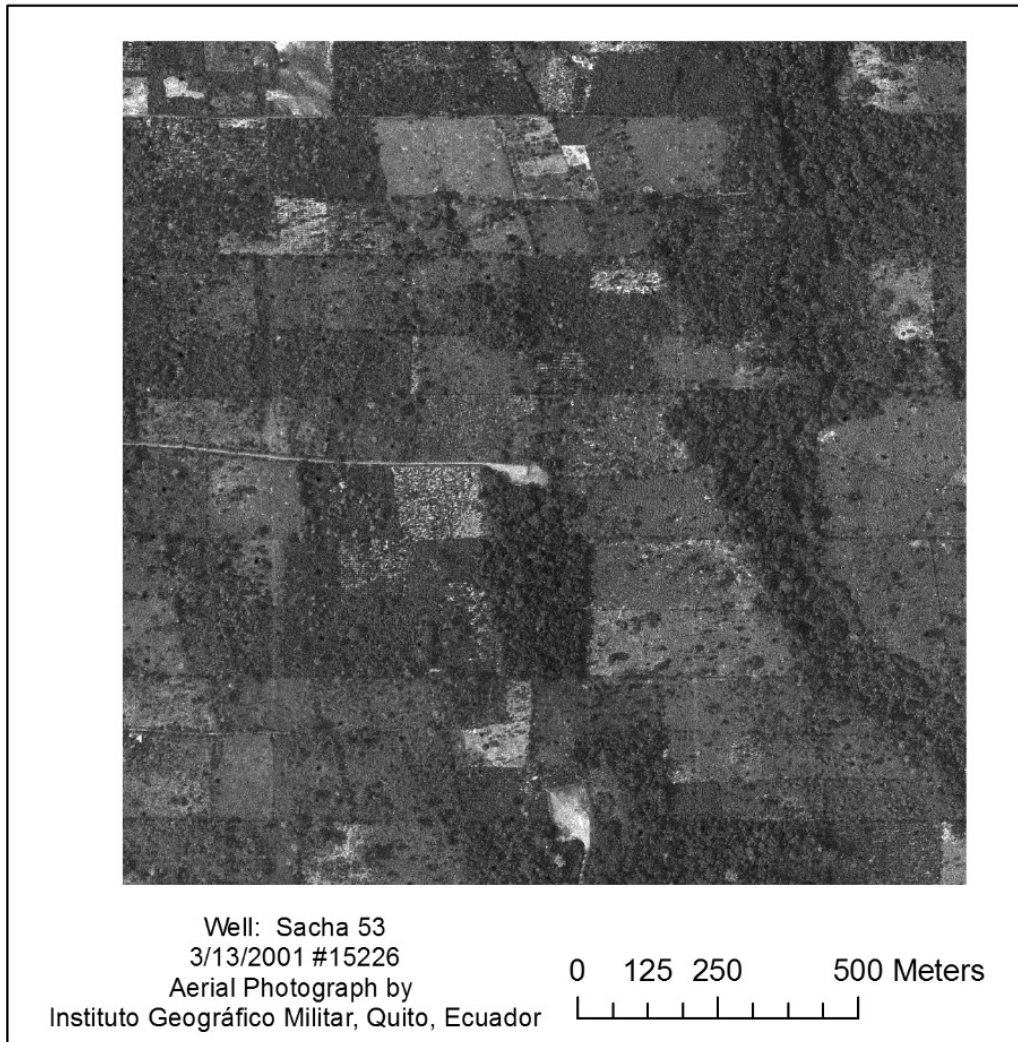


Figure 5 Site Pozo Sacha 53 in 2001, after the government completed its resettlement to develop agriculture in the area

Figure 5 shows the same area, after the government of Ecuador completed its community resettlement plan. Families were given 50 hectare (124 acre) plots to farm, with the requirement that they clear the trees on at least half of the land. The families moving to this land were farmers, not workers in petroleum fields. This activity was much more disruptive to native peoples than the oil drilling.

Life expectancies have risen dramatically over the years, and are now very close to US life expectancies. According to IndexMundi, the 2008 life expectancy at birth is [estimated to be](#) 76.81 years. The corresponding [US life expectancy](#) is 78.14 years.

If one looks back, there has been a huge improvement in life expectancy. According to [Globalis](#), the life expectancy for men in Ecuador was 50.1 years in 1960; 55.4 in 1970; 59.7 in 1980 and 64.7 in 1990. If oil production was having a terribly detrimental impact on life expectancy, it is hard to see it from the data.

Myth 5. The pits shown on television and featured in magazine articles are Chevron's responsibility to remediate.

ADC has been taking reporters on tours and giving them the impression that the pits they are showing them are Chevron's responsibility to clean up. In every instance I am aware of, the pits that have been shown are those that are Petroecuador's responsibility to clean up, rather than the responsibility of Chevron.

Petroecuador Has Drilled 463 Wells in the Former Concession Area Since Texpet Left

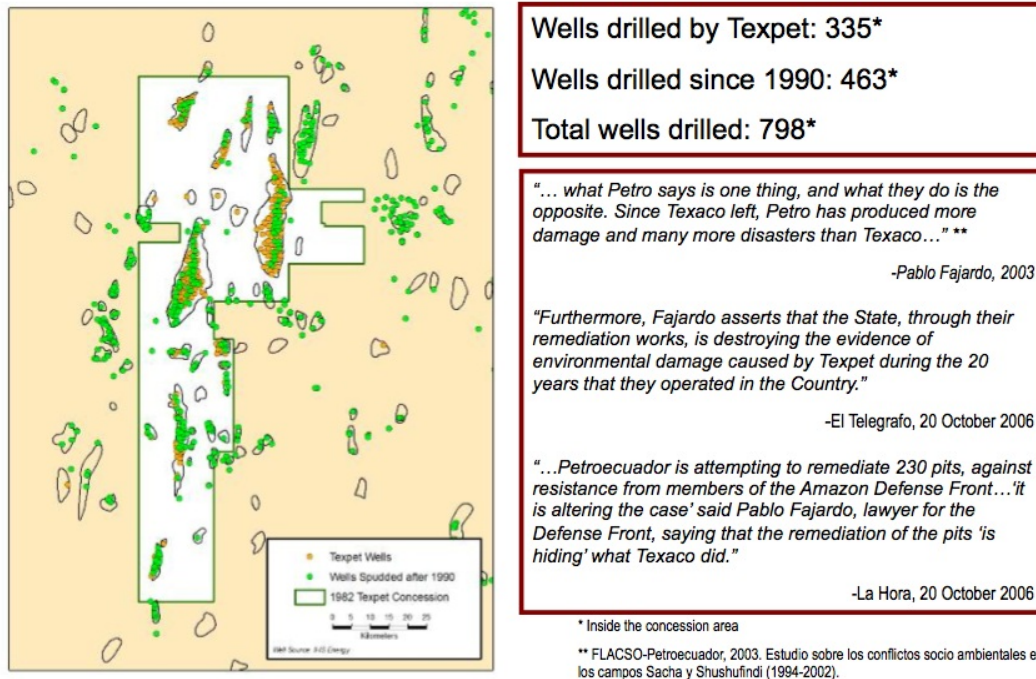


Figure 6 Map of Well Sites

On the map above, the wells drilled prior to 1990 are shown in brown; the wells drilled subsequent to 1990 are shown in green. Since Chevron and TexPet had nothing whatsoever to do with the wells drilled since 1990--the green dots--there is no way the pits associated with these wells are Chevron's responsibility.

With respect to the pits associated with the brown dots, a Remediation Action Plan was developed in 1995, overseen by Petroecuador and the Republic of Ecuador. TexPet was assigned its share of the pits (about 37.5%, based on its participation in the consortium). TexPet remediated the pits it was assigned. The remediation of these pits took three years (1995 to 1998) and cost \$40 million. Each of the pits was signed off individually. When the overall group was completed, TexPet was given a document releasing it from further liability. This is an [English-language version of the document](#)--the Spanish version was what was actually signed.

Petroecuador was still using many of the pits it was assigned, so elected not to clean them up at that time. It has since started the clean-up. Petroecuador posted this advertisement in a newspaper 2006, indicating it was looking for workers to work on its assigned brown dot sites.



PETROPRODUCCION ELIMINARA 264 PISCINAS CON DESECHOS EN LA AMAZONIA



logías apropiadas. Además tiene un componente social como la generación de fuentes de trabajo para los habitantes de las zonas en la que se encuentran las piscinas.

En una fase inicial, se trabajó en la supresión de todas las piscinas abiertas en el Campo Sacha, Provincia de Orellana, en jornadas de nueve horas y media diarias y siete días a la semana, ampliándose este trabajo hacia Shushufindi, Víctor Hugo Ruales, Sansahuari, Cuyabeno y Auca.

Uno de los componentes esenciales de este proyecto, es la Planta de Tratamiento y Recuperación de Crudo Intemperizado – PTRCI que tiene un costo de alrededor de tres millones y medio de dólares y se encuentra instalada en la parte posterior de la estación Sacha Central con capacidad de tratar hasta 1028 barriles por día de crudo de 18 grados API.

PROCEDIMIENTOS

El procedimiento para la eliminación de piscinas contaminadas abiertas y con contenido de crudo, se realiza en diferentes etapas previo a la autorización del propietario de la finca en la que se encuentra la piscina.

Etapa 1. Desbroce, recolección y lavado de desechos sólidos

Se utilizan diversas herramientas, abundante mano de obra de los finqueros de la zona, a través de convenios entre las municipalidades, finqueros y el proyecto.

Etapa 2. Tratamiento, succión y transporte de fluidos

El producto que queda en las piscinas: petróleo, agua y sólidos forman una capa pastosa, que es tratada con reductores de viscosidad biodegradables debidamente certificados para facilitar la succión y transporte hasta la planta de tratamiento y recuperación.

Etapa 3. Tratamiento y recuperación de crudo

El proceso se desarrolla en la planta, cuya capacidad de almacenamiento es de 2.000 barriles y posteriormente se lo almacena en los tanques de oleoducto.

Etapa 4. Limpieza y remediación de suelos contaminados

Consiste el lavado de la vegetación contaminada y de las piscinas con productos desengrasantes biodegradables certificados

y calificados, hasta que los resultados de laboratorio consideren a estos suelos como limpios.

Etapa 5. Monitoreo de descontaminación

Esta etapa contempla el muestreo de agua, crudo, suelos, emisiones gaseosas, presencia de hidrocarburos aromáticos polícíclicos, presencia de hongos y bacterias que son analizadas en laboratorios certificados de la Amazonía y Quito.

Etapa 6. Taponamiento y reconformación

Los resultados de los análisis determinan los límites permisibles y establecidos en la Reglamentación Ambiental, que sirven para taponar definitivamente la piscina en proceso de remediación.

Etapa 7. Revegetación del área de la piscina remediada

La última etapa del proceso es la revegetación del área de la piscina, se ejecuta bajo la dirección técnica del personal de los viveros forestales de Petroproducción, utilizando las plántulas de especies nativas de la zona.

No obstante lo más destacado del proyecto, es el entusiasmo y creatividad del personal de Petroproducción y de los comuneros que participan en la elaboración de herramientas, construcción de tanques especiales, hornos o el reciclaje de bombas, maquinaria, etc. para responder al compromiso empresarial de la protección del medio ambiente.

Esta acción conjunta, que inició en julio del 2005, permite también abaratar los costos de la remediación en un 30% frente a lo que establecen las empresas privadas, mejora las relaciones empresa-comunidad, que se mantienen en las áreas operativas en la Amazonía.

Mediante el proyecto PEPDA Petroproducción ha logrado la recuperación de 100 piscinas, devolviendo a la naturaleza su vida inicial con la ploriferación de la fauna y la flora propias de la región.



El Proyecto "Eliminación de Piscinas en el Distrito Amazónico" – PEPDA, es una propuesta de Responsabilidad Socio-Ambiental concebida y ejecutada por técnicos Petroproducción en beneficio de la Región Amazónica.

En 1965, el Consorcio Texaco-Gulf inició sus operaciones hidrocarburíferas para explorar un área aproximada de 400 mil hectáreas en la Amazonía ecuatoriana, lo que generó impactos de diversa naturaleza que aún no han sido solucionados de manera definitiva.

Parte de este problema, son las 430 piscinas con desechos de petróleo mezclados con agua, productos químicos y lodos de perforación, que fueran abandonadas por más de 30 años y que hoy generan fricción entre la Empresa estatal y las comunidades y organizaciones amazónicas de las provincias de Orellana y Sucumbios.

Mediante un acuerdo suscrito en 1995 entre el Estado ecuatoriano y la empresa Texaco, esta inicia un plan de Remediación Ambiental para corregir los efectos de su operación, al remediar 165 piscinas. La empresa Estatal PETRO-ECUADOR a través de su Filial Petroproducción continúa la limpieza de las 264 piscinas restantes que no fueron intervenidas por Texaco.

MENOS PISCINAS CONTAMINADAS

El Proyecto "Eliminación de Piscinas Contaminadas en el Distrito Amazónico" – PEPDA y Limpieza de Derrames, es un plan en marcha que busca eliminar todas las piscinas contaminadas en sus áreas de operación, utilizando equipos y tecno-

Figure 7 Petroecuador Advertisement for Workers to Clean Up Assigned Sites - (Click for larger image)

When I was visiting in Ecuador, I had the opportunity to see a number of pits--some cleaned up by TexPet and some assigned to Petroecuador. The sites that TexPet had cleaned up were pretty much invisible.



Figure 8 Cattle grazing on one site cleaned up by TexPet in 1995- 1998

Figure 8 shows one site which had been cleaned up, and now had cattle grazing on it. We saw others as well--one pit was remediated to a palm oil plantation and another had been remediated back to rain forest. The type of remediation for each pit was determined by the needs of land owners. Without geographical coordinates to tell where the pits had been there, it would have been impossible to detect where the former pits had been.



Figure 9 - Unremediated site from pre-1990 (Petroecuador's responsibility to clean up)

We also had the opportunity to see an unremediated pit that dated from 1990. It was a site that had been assigned to Petroecuador to clean up. Petroecuador had chosen not to continue using the site, but had also failed to clean it up. In the 19 years since 1990, any volatile hydrocarbons had long since vaporized. What was left looked very much like asphalt. We threw a large stone so it hit the surface. It simply landed on top of the asphalt-like substance. We did not try to walk on it because we did not have boots, and did not know if there would be a spot that would not hold our weight and would have water underneath. We heard that others had walked on top.

Clearly neither of these types of sites would be helpful to the cause of the ADC for showing journalists. So what did the ADC do? It found pits that Petroecuador had been using more recently, and had not cleaned up. The journalists didn't know any better, and fell for their story. That is why one sees all of the photos of yukky looking Petroecuador pits in all of the journal articles and television articles about the lawsuit against Chevron. I expect the photos Ben Barnes showed Obama were also of recently used Petroecuador pits, that he represented as Chevron's responsibility to clean up.



Figure 10 Site where Petroecuador workers were cleaning up assigned pit

We also stopped and talked to Petroecuador workers at a site they were cleaning up. We asked them questions about how far out from the pit it was necessary to dig to get all the hydrocarbons, and about their general technique. Everything we were told indicated that they were using exactly the same clean-up technique that TexPet had used in 1995 to 1998, that ADC is now criticizing.

I will have to finish the rest of the story later. There is at least this much more to tell, but the post is getting too long, and web page would never open if I kept adding graphics to this page.



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