



News
Technology
Markets
Personal Journal
Opinion
Weekend & Leisure

Home Page
Take A Tour
Subscribe
In Today's Paper
Portfolio
Setup Center
Site Map
Help
Contact Us

GLOBAL VIEW

Amazonian Swindle

By Bret Stephens

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Ecuador has a huge environmental problem courtesy of Big Oil. Since 1990, there have been at least 800 recorded oil spills in the country, including 117 in the first nine months of 2006 alone. Their cumulative volume easily exceeds three million gallons. Scores of spills have never been cleaned up, posing severe health risks for the local population. Rainfall in the area is said to smell like car exhaust.

Small wonder, then, that when actress Daryl Hannah ventured into the Ecuadorean Amazon in June to have herself photographed dipping her hand into a lake of black sludge, she characterized the situation as "potentially the biggest environmental case ever." Only one problem: The supposed villain in the plot, Texaco -- now merged with Chevron -- ceased operations in Ecuador in 1990.

Yet such details are rarely allowed to get in the way of a noble cause -- or a multibillion dollar class-action. The source of many, if not all, of the spills mentioned above is state-owned PetroEcuador, described by the Latin Business Chronicle as "widely seen as one of the most inefficient state oil companies in Latin America." In 2006, Miguel Muñoz, Ecuador's Energy Minister, admitted that "for over 30 years, PetroEcuador has done absolutely nothing to remediate those pits under its responsibility." He also acknowledged that the company's obsolete and underfunded pipeline system "is one of the most important causes of spills we face now."

So how come Chevron is in this picture? Plaintiffs lawyer Steven Donziger says it's because Texaco "made all the decisions about technologies and methods" and did "substandard work compared to what they were doing elsewhere." An alternative explanation, as bank robber Willie Sutton might have said, is because Chevron is where the money is.

Some background: In 1964, Ecuador invited Texaco Petroleum (or Texpet, a subsidiary of Texaco) to prospect for oil in the country's Amazonian hinterlands, which it discovered three years later. By the mid-1970s, PetroEcuador became the majority owner in a consortium with Texpet, and gradually increased its stake until it assumed full control in 1990. An independent environmental audit conducted shortly thereafter concluded that Texpet had abided by existing environmental regulations and industry practices, though it recommended Texaco invest \$13.2 million in remediation efforts to undo localized damages. Texaco ended up spending \$40 million on the project. In 1998, the government of Ecuador formally "absolved, liberated and forever freed" Texaco from "any claim or litigation by the Government of Ecuador concerning the obligations acquired by Texpet."

That might have been it. But in 1993, an Ecuadorean-born, Massachusetts-based "international human-rights lawyer" named Cristobal Bonifaz filed a \$1.5 billion suit

against Texaco on behalf of indigenous Ecuadorean tribes. The case was dismissed in 1996, and again in 2001, on jurisdictional grounds. Mr. Bonifaz then brought the suit to Ecuador, pursuing it there until he was fired by his own "clients" in 2006. Undeterred, Mr. Bonifaz brought the case again in San Francisco -- Chevron's home turf -- on behalf of new clients whom he claimed had contracted cancer from exposure to Texaco's sludge. In August, the California court threw out the suit on the grounds that at least three of the plaintiffs didn't have cancer at all and fined Mr. Bonifaz \$45,000. "The sad fact," opined the court, "is that counsel's haste to sue and lassitude in investigation imposed a real and unnecessary burden on defendants, our judicial system and, truth be told, the three plaintiffs, who never even realized litigation would be brought in their name in the United States."

Meanwhile, the case in Ecuador moved forward. In 2003, it got a PR boost when Atlanta-based toxics specialist (and then-plaintiffs' expert) Dave Russell was quoted in this newspaper as saying the ecological fallout was "larger than the Chernobyl disaster" and could cost \$5 billion to clean up. Mr. Russell has since reconsidered that view, telling me yesterday that the estimate was a "first guess," prepared "after a brief four-day survey of the jungle based solely upon visual examination without any laboratory confirmation of contamination."

As originally envisaged, the Ecuadorean trial was to have proceeded in two stages, beginning with a finding of fact and, only when that was completed, an assessment of potential damages and liabilities. According to Chevron, the trial descended to farce when the court allowed the case to move to the second stage without properly concluding the first. Nor was Chevron reassured when Ecuador's radical new president, Rafael Correa, began actively campaigning for the plaintiffs. "Let the whole world be witness to the atrocities Texaco caused," he said in a typical blast.

Those "atrocities" now include charges of dumping 18 billion gallons of "toxic waste" into the Amazon and committing genocide against several native tribes. The problem with those charges is that at least one of the tribes, the Cofan, has tripled in number in the last 50 years, according to anthropologist Eduardo Bedoya. As for the toxic waste, it turns out to be so-called produced water extracted along with oil and gas. According to a definitive 2004 study by the Argonne National Laboratory, "produced water ranks first on the list of wastes that are generally exempt and warrant no regulation under Subtitle C of the RCRA [Resource Conservation and Recovery Act]."

Little of this is likely to make much of an impression on the legion of true-believing mermaids and self-interested NGOs and lawyers looking for a fat settlement. (In a phone interview, Mr. Donziger allows that there is "a way out of this for everybody and I'm confident there's a sweet spot.") Which is a pity, because there really is an ecological disaster happening in Ecuador whose causes need to be understood and addressed -- even if the culprit isn't the usual suspect.

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