

Aguarico-04

1. Background

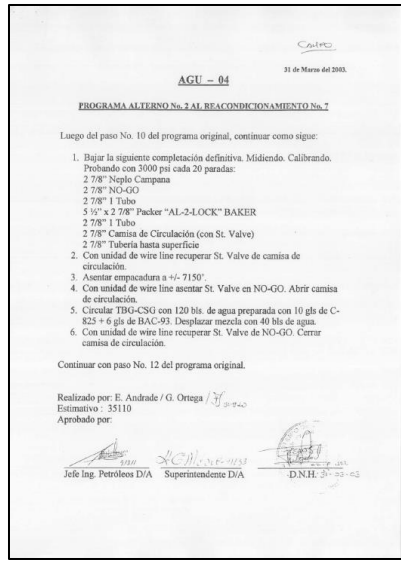
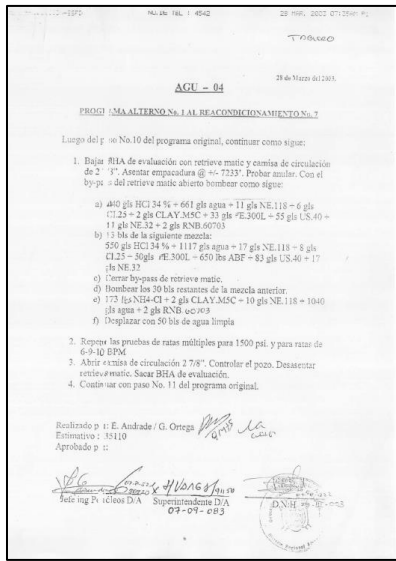
AG-04 was drilled in 1974 and operated as a producing oil well until it was temporarily abandoned in 1986. In the 1993 HBT-Agra audit (conducted for Petroecuador and TexPet), however, HBT identified the status of AG-04 as “producing”:

Table A - 1
Summary of Pre-Assessment Findings – Production Data

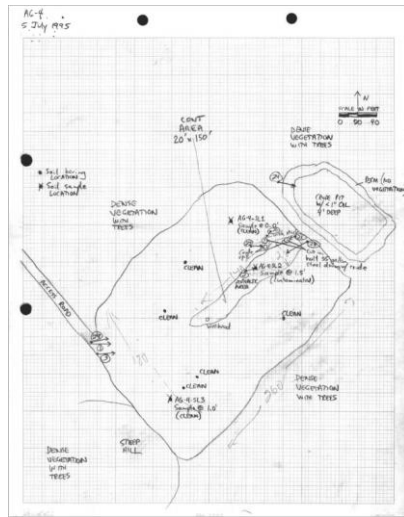
Site Identification		Description of Production Stations and Well Sites										
Field	Well Number	Well Status	Milestone Dates						Cumulative Production *			
			Spud	Completion	Production	Oil Barrels	Gas Cubic Feet	Water Barrels				
MM	DD	YY	MM	DD	YY	MM	DD	YY				
Producing = P Abandoned = A Water Inj. = W												
Blank if not available Assumed date												
* to June 10, 1990												
Aguarico												
Estacion												
AG1	P	3	4	69	4	1	69	2	74	11,695,699	3,133,783	931,476
AG2	P	7	18	70	8	8	70	2	74	1,806,721	669,284	866,159
AG3	P	7	30	73	8	25	73	12	75	5,529,412	1,374,369	1,244,636
AG4	P	6	25	74	7	19	74	10	75	730,071	173,898	73,775
AG5	P	9	24	73	10	9	73	2	74	7,641,120	1,724,618	694,210
AG6	P	3	2	74	3	18	74	4	74	429,756	92,761	3,416
AG7	P	8	11	73	8	28	73	1	74	1,787,314	452,745	497,362
AG8	P	8	30	73	9	14	73	1	74	1,382,050	390,135	526,594
AG9	P	2	21	74	3	2	74	4	74	8,315,760	2,096,544	1,878,167
AG10	P	1	22	80	2	7	80	8	80	7,279,359	1,543,597	2,469,301



In 2003, Petroecuador conducted a series of workovers that converted AG-04 into an injection well:



There was one pit and a separate area of soil contamination identified at AG-04 as part of the Fugro McClelland pre-remediation audit in 1992:



Project No. 9241 0055
Development Drilling and Production

Table 6-4. Well Site Pit Summary

Well No.	Estimated Pit Dimensions (ft)	Percent Oil Content	Oil Condition	Well Workover History	Remarks
AGUARCOC					
AG-2	50 x 80	30	DEG	January 1990	SL May 1990
	50 x 50	100	DEG	---	Pit recently burnt
AG-4	100 x 50	100	DEG	September 1988	SL August 1984 Pit recently burnt
AG-5	No Pit	---	---	January 1992	Pit recently closed, seeping oil
AG-6	75 x 75	100	DEG	July 1984	SL October 1983
AG-8	75 x 75	90	DEG	---	---
AG-10	75 x 175	100	SL DEG	April 1991	---
	60 x 45	100	SL DEG	---	---
	60 x 80	30	HV DEG	---	Contains water
ATACAN					
AT-2	60 x 250	30	SH	November 1981	Recently burnt
	50 x 50	30	SH	---	Recently burnt
	25 x 30	100	SH	---	---
	30 x 100	0	---	---	Contains water
AT-4	80 x 80	100	SH	---	---
ANCA					
AN-2	40 x 80	0	---	---	Contains water
AN-4	30 x 20	85	FS	---	Traces only recently closed
AN-6	50 x 80	100	DEG	---	---
AN-8	No Pit	---	---	---	---
AN-10	No Pit	---	---	---	---
AN-12	50 x 75	---	---	---	Pit recently closed, seeping oil

AB Abandoned SH Shallow
 DEG Degraded SI Shallow
 FS Fresh SL DEG Slightly Degraded
 HV DEG Heavily Degraded None listed

6-61

The Memorandum of Understanding (MOU) among TexPet, Ecuador, and Petroecuador in 1994 made it clear that TexPet was responsible only for the environmental issues included in the Scope of Work (SOW):

- a) *TEXPET shall not be responsible for the environmental impact or effects not included in the Scope of Work, and shall be released from any liability concerning such impact upon execution of the Contract for Implementing Environmental Remedial Work and Release of Obligations.*

The SOW contained Annexes that identified the sites at which TexPet was responsible for pit remediation (Annex 1) and the sites at which TexPet was responsible for soil remediation (Annex 3). AG-04 was not listed in Annex 1. AG-04 was listed in Annex 3:

ANNEX 1
LIST OF DRILLING SITES
FOR PIT CLOSURE

AG-1	SA-94
AG-2	SA-95
AG-3	SA-96
AG-5	SA-98
AG-8	SA-98
AG-9	SA-99
AG-10	SA-102
AT-5	SA-103
AU-17	SA-104
GU-1	SA-107
GU-3	SA-109
GU-4	SA-110
GU-5	SA-111
LA-1	SSF-W1
LA-2	SSF-6
LA-5	SSF-7A
LA-6	SSF-8
LA-6	SSF-9
LA-10	SSF-10A
LA-16	SSF-13A
LA-31	SSF-15A
LA-32	SSF-16
PA-3	SSF-18
SA-1	SSF-20
SA-3	SSF-21
SA-6	SSF-22A
SA-10	SSF-23
SA-11	SSF-A24
SA-18	SSF-25
SA-20	SSF-27
SA-21	SSF-29
SA-22	SSF-JDA
SA-33	SSF-B31
SA-38	SSF-A33
SA-49	SSF-40
SA-51	SSF-41A
SA-51	SSF-44

[seal]

ANNEX 3
LIST OF THE DRILLING SITES FOR THE
REMEDIATION OF SOIL WITH
HYDROCARBON CONTAMINATION

AG-4
AG-5
AG-6
AG-7
AG-8
SA-15 (WIW2)
SA-25
SA-35
SA-65
AT-5
AT-6
SA-90 (WIW6)
SA-99
SA-111
CO-2
CO-3
CO-11
LA-6
LA-7
PA-3
SSF-17 (WIW11)
SSF-37
SSF-40 (WIW8)
SSF-43
SSF-50
SSF-WIW2
SSF-WIW4

[seal]

The soil at AG-04 was remediated between September and October of 1996, and inspected by the ROE on September 11, 1996 (ACTA No. 23-RAT 96). The Inspectors from the National Hydrocarbons Bureau and Petroproduccion certified TexPet's soil remediation at AG-04 as complete on March 14, 1997, and on March 20, 1997, the Ecuador Ministry of Energy and Mines issued an Acta approving and accepting TexPet's work at AG-04 as complete:

2. Pits Approved (Resampled)

SA 67.1	SA 67.3	SA 86.1
SA 33.2	SA 37.3	SA 33.1
SA 6.1	SA 10.1	SA 20.1
SA 63.1	SA 66.2	SA 88.2
SSF 30A.2	SA 58.2	SSF 23.1
AU 17.2	AU 19.2	SA 58.3

NOTE: Attached is the report dated January 27, 1997 submitted by Environmental Resource Management, Inc. (ERM), which was appointed Arbitrator to resolve the dispute related to the resampling of these pits; this report contains photographs of each of the pits resampled, as well as the individual laboratory analyses. Also attached is a letter dated February 3, 1997, signed by Alfonso Fernández, P.E. from the Office of the Undersecretary of Environmental Protection and Carlos Quiroz, P.E. from Texaco Petroleum Company, as well as the Certificate dated March 14, 1997, signed by the inspectors from the National Hydrocarbons Bureau.

3. Remediation of Contaminated Soil

3.A Abandoned Installations/Tables 3.3 and 3.4 - RAP

SA 54	SA 57	SA 67
SA 94	SSF 55	YUCA 2


3.B Well Pads/Tables 3.3 and 3.4 - RAP

AG 4	AG 5	AG 7
SA 15	SA 25	SA
AT 5	SA 90	SA 99
SA 111	CO 2	CO 1.1
LA 6	LA 7	SSF 17
SSF 43	SSF 50	SSF WIW4


[initials]

2. Petroecuador identifies the pit at AG-04 as Petroecuador's responsibility

In 2006, Petroecuador identified the pit at AG-04 as a pit it was responsible for remediating under the PEPDA (Project to Eliminate Pits in the Amazon District) program. It listed the AG-04 pit for "characterization and monitoring":



PETROPRODUCCION
FILIAL DE PETROECUADOR



PEPDA
PROYECTO DE ELIMINACION DE PISINAS

2. ACTIVIDADES REALIZADAS EN BASE AL PLAN DE MANEJO AMBIENTAL

Actividades de la Eliminación de Piscinas Contaminadas y Limpieza de Derrames

ACTIVIDAD	DEPTO. RESPONSABLE	ENCARGADO DIRECTO	NO ENCARGADO A CARGO A CARGO	DEPTO. RESPONSABLE	REGISTRADOR	IMPRESOR
Caracterización de piscinas existentes y monitoreo de agua	PEPDA	[Name]	[Name]	PEPDA	[Name]	[Name]
Observaciones:	<p>Piscinas en las que se actualmente se realiza esta actividad: 33 Piscinas caracterizadas y monitoreadas (línea base): SA-17, SA-118, SA-Profundo-01, SA-Profundo-02, AG-04, SSF-05, SSF-14, SSF-22-A-1, SSF-22-A-2, SSF-22-A-3, SSF-22-B, SSF-38, SSF-41-1, SSF-41-2, SSF-63, SSF-66, SSF-81, SSF-88-2, VHT MCHEROS-02, YL-01, AU-21-3, AU-CENTRAL-01, AU-CENTRAL-04, AU, EST BUR-01, YU-04, YU-08, YU-09, YU-CENTRAL-02, YU-CENTRAL-03, RY-01, EST. CONONACO-01, EST. CONONACO-02.</p> <p>4 Piscinas en proceso de recolección de desechos: SSF-23-1, SSF-38, AU-21-2, AU-36-3, SSF-SUROESTE-01</p>					
Revisión y Transferencia de Pisos	PEPDA	[Name]	[Name]	[Name]	[Name]	[Name]
Observaciones:	[Empty]					

Petroecuador set out its plan for remediating the pit at AG-04 in a document dated February 21, 2006, from Petroproduccion to DINAPA (Ecuador's National Directorate of Environmental Protection). That plan identifies the size of the AG-04 pit, the amount of the material to be remediated, and identifies on a map the location of the pit to be cleaned by Petroecuador. The plan also indicates that cleanup of the pit at AG-04 would only take three months. The cleanup plan is approved by DINAPA on March 19, 2006:

TRANMITIDO CON OF 328 - 19/04/06 y MEMO 358 - 10/08/06 - 2006
SE PROCEDE EL PROCESO DE REMEDIACION CON LAS PISCINAS CONJUNTO
ONNES, ENC. JARAMA
19/04/06
PE 241 -06

3. Donziger and Fajardo seek to stop the cleanup of AG-04

The Lago Agrio plaintiffs met with members of the Correa government to try to stop the PEPDA program. They ultimately developed a plan to halt the PEPDA remediation that they called their “Anti-PEPDA” plan:

PLAN ANTI-PEPDA

Premisas

- La remediación es necesaria (es un derecho de las personas y una obligación del Estado con sus ciudadanos)
- No podemos oponernos a la remediación como tal, pero sí exigir una remediación bien hecha. Si nos oponemos, no podemos pedir al Estado detener la obligación con sus ciudadanos, aunque el Estado no es en realidad el responsable.
- Yanuseli considera que Ecuador está cumpliendo el Contrato de 1995
- Existe mala utilización de fondos públicos
- El Estado debería tener derecho a recuperar los costos
- El Estado debe dejar constancia del uso de todo lo ganado (con una buena memoria)

Acciones previstas
 Se prevén las siguientes acciones por mala utilización de recursos públicos:

1. **Denuncia ante la Comisión de Control Cívico de la Corrupción**
 Presentar una denuncia ante la Comisión a nombre del FEA, basada en los resultados del examen preliminar de laboratorio. La denuncia es para que investiguen.
 Responsable de la redacción: ¿??
2. **Inspección judicial como diligencia previa**
 Pedir una Inspección Judicial como diligencia previa a uno de los sitios "remediados" por Petroecuador (zona 14). Esto como paso previo a una eventual demanda.
 Alejandro Ponce preparará el pedido.
 Será firmado por: ¿??
3. **Denuncia glosa en la Contraloría**
 Presentar una denuncia en Contraloría, basada en los resultados de la inspección judicial que se pedirá como diligencia previa.
4. **Proyecto de Ley Superfund**
 Se pretende crear un mecanismo similar al Superfund en el Ecuador con el propósito de que el Estado pueda utilizarlo para cobrarle a Texaco por lo que está ganando al remediar lo que ellos contaminaron. Con este objetivo se plantearán dos temas:
 1. Reformar la Ley de Gestión Ambiental para que con los fondos CEREPAS de ambiente se cree una instancia equivalente al superfund (CERELA). El propósito es que el gobierno pueda cumplir con su obligación de salvaguardar la salud de la población, pero sin empobrecerse indebidamente, sino haciendo pagar al responsable.

A letter signed by Richard Cabrera was sent to the court, claiming that the PEPDA remediation at a list of sites including AG-04 should stop to “prevent any alterations to the sampling sites”:

[Handwritten: 131.336
131.336
131.336]

One hundred thirty-one thousand, three hundred thirty-six - (illegible initials)

Nueva Loja, July 12, 2007

TO: THE PRESIDENT OF THE SUPERIOR COURT OF PETROECUADOR

RICHARD CABRERA VEGA, Expert qualified by order of the President of the Superior Court of Petroecuador, on March 19, 2007 at 8:30 a.m., was appointed as an expert in the case of Proceedings No. 002-2003 filed against Chevron in his capacity as joint counsel of record for Manantzen and state.

In order to prevent any alterations to the sampling sites that you please send an official letter to the Office of the Executive President of Petroecuador, with a copy to the Executive Vice President of Petroproduccion, in which that state-owned Ecuadorian company is earnestly requested to suspend any activities performed directly by it or through the PEPDA project or other contractors, which could affect or alter the current state of each of the pits and areas of influence of the wells considered for the sampling carried out for the expert's assessment. The list of such sites is as follows:

In order to prevent any alterations to the sampling sites for the expert assessment, I ask that you please send an official letter to the Office of the Executive President of Petroecuador, with a copy to the Executive Vice President of Petroproduccion, in which that state-owned Ecuadorian company is earnestly requested to suspend any activities performed directly by it or through the PEPDA project or other contractors, which could affect or alter the current state of each of the pits and areas of influence of the wells considered for the sampling carried out for the expert's assessment. The list of such sites is as follows:

Table 1: Sites for Comprehensive Inspection

Aguarico 01	Coca 01	Sacha 19	Shushufindi 32
Aguarico 02	Condon 01	Sacha 20	Shushufindi 33A
Aguarico 04	Cononaco 02	Sacha 22	Shushufindi 34
Aguarico 05	Cononaco 03	Sacha 25	Shushufindi 35
Aguarico 06	Culobas 01	Sacha 36	Shushufindi 39
Aguarico 07	Charapa 01	Sacha 39	Shushufindi 43
Aguarico 08	Dumpeo 01	Sacha 41	Shushufindi 46
Aguarico 09	Ezo 01	Sacha 45	Shushufindi 50
Aguarico 10	Genanta 01	Sacha 48	Shushufindi 51 B
Atacapa 01	Genanta 04	Sacha 49	Shushufindi 55
Atacapa 05	Genanta 08	Sacha 50	Shushufindi 56
Auca 02	Lago 01	Sacha 54	Shushufindi 57 B
Auca 03	Lago 03	Sacha 56	Shushufindi 58
Auca 04	Lago 05	Sacha 59	Shushufindi 59
Auca 05	Lago 12	Sacha 62	Shushufindi 61
Auca 07	Lago 08	Sacha 67	Shushufindi 63
Auca 09	Lago 16 B	Sacha 74	Shushufindi 66
Auca 11	Lago 20	Sacha 76	Shushufindi 69

[Circular stamp: SUPLENTE DEL JUEF DE JUSTICIA - NUEVA LOJA
SECRETARÍA DE LA PRESIDENCIA DE LA REPÚBLICA
CERTE INTERMARK VER. JD]

[Stamp: Aguarico 02
Aguarico 04
06]

Expert Gerald McMenamin examined this letter and concluded that it was among 29 communications with the Ecuador court that were written by Pablo Fajardo but filed under Cabrera's name:

10.4 QUESTIONED Cabrera Filings

No.	Date	File No.	Probable Author	Summary
003	2007.06.25	CL1208-130640	Fajardo	Ing. Cabrera presents the Court with his plan of activities and requests payment to start work. He asks for cooperation from the litigating parties so as to "avoid obstacles and problems and thereby satisfactorily conclude the work I have been asked to perform."
011	2007.07.12	CL1215-131336	Fajardo	Filing specifying sites that will be included in the Peritaje Global and asking that Petroecuador's or PEPDA's activities (i.e., remediation) be halted at sites.
012	2007.07.12	CL1215-131338	Fajardo	Filing complaining to the court about incidents and pressure received from Chevron during site inspections and refers to "the complete and absolute impartiality with which I must act in carrying out the expert evaluation..."
015	2007.07.23	CL1221-131971	Fajardo	Ing. Cabrera filing in which he gives notice of future well-site inspections.
016	2007.07.23	CL1221-	Fajardo	Letter stating "I should clarify that I do not have any relation or agreements with the plaintiff, and it seems to

DECLARATION OF GERALD R. MCMENAMIN

I, Gerald R. McMenamin, declare as follows:

I am Professor Emeritus of Linguistics and former Chair of the Department of Linguistics at the University of California, Riverside. I have been asked to examine the communications with the Ecuadorian court that were filed under the name of Richard Cabrera VEGA, and have concluded that they were written by Pablo Fajardo. I have reviewed the communications and have concluded that they were written by Pablo Fajardo. I have reviewed the communications and have concluded that they were written by Pablo Fajardo. I have reviewed the communications and have concluded that they were written by Pablo Fajardo.

10.4 QUESTIONED Cabrera Filings

No.	Date	File No.
003	2007.06.25	CL1208-130640
011	2007.07.12	CL1215-131336
012	2007.07.12	CL1215-131338
015	2007.07.23	CL1221-131971
016	2007.07.23	CL1221-

When, in 2009, Petroecuador wanted to re-start remediation efforts, Donziger wrote to the Ecuadorian plaintiffs’ lawyers that they had to “go to Correa and put an end to this shit once and for all”:

<p>From: Steven Donziger [sdonziger@gmail.com] Sent: Monday, June 22, 2009 4:16 AM To: Juan Pablo Saenz Cc: Pablo Fajardo 2; Julprieto; Luis Yanza; renatog85; mey_1802 Subject: Re: WORRISOME</p> <p>You have to go to Correa to put an end to this shit once and for all</p> <p>2009/6/22 Juan Pablo Saenz <juansaenz@hotmail.com></p> <p>Of course you have to go to the source, but it's essential that there be a public record of our position on the matter.</p> <p>Juan Pablo Saenz M. Cm: 6532227353</p>	<p>7533 83775 www.org 01-2009-132045-0000</p>
<p>From: Steven Donziger [sdonziger@gmail.com] Sent: Monday, June 22, 2009 4:16 AM To: Juan Pablo Saenz Cc: Pablo Fajardo 2; Julprieto; Luis Yanza; renatog85; mey_1802 Subject: Re: WORRISOME</p> <p>You have to go to Correa to put an end to this shit once and for all</p>	
<p>Juan Pablo Saenz M.</p>	<p>That the remediation be aimed at Campo Libertador, which is the field that needs it most. Also get her to commit to conducting the remediation with stricter standards and in a broader area of action. Point out what happened with PEPDA—show her that that was a disaster. Get her to form an investigative commission; IN DEPTH samplings, at the pits that PEPDA remediated, to demonstrate that that job was done badly and that the [Ministry of the Environment] can't make the same mistake.</p> <p>In short, if we don't act, Chevron will take advantage of this and really screw us. This is my humble opinion.</p>

Despite Petroecuador having identified the pit at AG-04 as a pit for which it was responsible, and despite having a plan to remediate the pit approved by DINAPA in March of 2006, Petroecuador has not conducted remediation of the pit at AG-04.