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PEMEX Files New LawsUIT against US Companies for Acquiring Stolen Fuel

By Carlos Navarro

The state-run oil company PEMEX has filed a fresh lawsuit against a dozen US energy companies, alleging that they acquired and resold fuel that Mexican criminal organizations stole in Mexico. The suit, presented by PEMEX subsidiary Pemex Exploración y Producción (PEP) in a court in the Southern District of Texas, is directed at several prominent companies, including Royal Dutch Shell Plc, ConocoPhillips, Sunoco Partners, Marathon Petroleum, and others.

PEMEX has tightened security to prevent fuel theft, but the company's efforts have fallen short because of widespread corruption and the remoteness of many of its facilities. PEMEX, the only company allowed to market petroleum products in Mexico, has suffered significant losses because of thefts of refined products, from gasoline to natural gas condensates. The company recently estimated the value of stolen products on the black market at about 3.5 billion pesos annually (US\$265 million).

PEMEX wanted to add companies to 2010 suit

PEMEX moved to file the new lawsuit on April 10 after US District Judge Simeon Lake denied a motion to add the large companies to a prior lawsuit in 2010. In the earlier suit, PEMEX sought US\$300 million from several companies that had acquired and resold natural gas condensate stolen in Mexico. In 2011, Mexico filed a second lawsuit against several other companies alleged to have acquired products stolen from PEMEX.

"The addition of new defendants would add new and complex issues to an action that is already protracted and complicated," Lake said in denying permission to add some of the new plaintiffs to the 2010 lawsuit, primarily larger companies like Shell and ConocoPhillips. The judge did rule, however, that PEP would be allowed to add a handful of smaller companies to the 2010 suit, including Plains Marketing LP, RGV Energy Partners LLC, and St. James Energy Operating Inc. to the case. Lake said these companies were already tangentially involved through related parties.

The 2010 and 2011 lawsuits remain pending, although there have been some developments. Five individuals named in the 2010 original lawsuit have pleaded guilty to US criminal charges linked to the smuggling scheme. But none of the people convicted were employed by BASF or Murphy, the largest of the US firms defending the accusations.

The new case, which is almost identical to the original 2010 filing, alleges the US trading arm of Royal Dutch Shell, STUSCO, was the largest marketer of the condensate, trading at least US \$150 million of the fuel but without knowing it was stolen.

"Some of the defendants knew, or at least should have known, they were trading in or transporting stolen condensate," PEP said in the documents filed in the US court. "Others were ignorant that they were purchasing stolen goods. In either case, however, the defendants took possession of Mexico's sovereign property."

Fuel theft remains major problem

Since 2006, criminal organizations have stolen at least US\$300 million in condensate from the Burgos Field by hijacking Pemex tankers at gunpoint and by stealing the fuel from its 52 transfer-and-delivery systems. The thefts are thought to be carried out by a variety of organizations and individuals, although the most prominent group is the Zetas drug cartel.

PEP claims that the thefts at times reached up to 40% of condensate produced at the Burgos field, which includes the northeastern states of Tamaulipas, Nuevo León, and Coahuila. The complaint said the thieves have also allegedly kidnapped and threatened PEP officials and "built tunnels and even their own pipelines to facilitate the thefts."

In addition to filing lawsuits in the US, the Mexican government has taken steps at home to try to halt, or at least slow down, the theft of condensate. Authorities have brought criminal charges against 140 individuals, including two agents of the Aduana México, who are accused of allowing tanker trucks containing the stolen condensates to cross into the US with counterfeit documents. "Dozens of tanker trucks involved in the scheme, some filled to capacity with stolen PEP condensate, were seized," said a PEMEX statement.

Authorities expressed frustration that the practice continues despite the crackdown. "Even though PEP and the government have conducted extensive and costly operations, they have been unable to stop the cartels' theft of Mexican condensate. These organizations are relentless and well-funded. And as long as there is a market for stolen condensate in the US, the thefts will continue."

While the lawsuits in the US deal primarily with the theft of natural gas concentrates, criminal organizations and enterprising individuals have also stolen other refined products from PEMEX, including gasoline from the company's vast network of pipelines. Much of this stolen gasoline is sold on the domestic black market.

Prevention efforts mostly ineffective

PEMEX has implemented several security measures to prevent thefts, but these have only been mild deterrents. These efforts include a joint campaign with the Secretaría de la Defensa Nacional (SEDENA) to assign soldiers to guard fields and other sensitive installations. PEP has also created an anonymous hotline for citizens to report the looting and installed security cameras and an "elaborate electronic system" to detect pressure losses when fuels are stolen.

"Military and private helicopters await any electronic notification of suspicious drops in pressure or other suspicious activities, but the Burgos Field is so expansive that many times it is impossible to get to the theft locations in time to stop the criminals," said PEMEX officials about the operations in northeastern Mexico.

PEP said its efforts to prevent theft of condensates are also hampered by the proximity of the Burgos field to the Mexico-US border. The thieves are able to easily escape into the US with the stolen product before Mexican authorities can catch up with them.

A major problem is that most of the thefts, including the misappropriation of fuel from pipelines and the hijacking of tanker trucks, are conducted by large criminal organizations, including the Zetas, the Sinaloa cartel, and La Familia, a Michoacán-based organization that operates in many central and western states. "Thefts continued during the past year on our national pipeline network because of the participation of criminal bands, which are associated with heavily armed groups," said PEMEX.

In the cases where fuel is taken by a group of individuals, the theft creates a dangerous situation because the thieves generally lack technical expertise. This was the case with a fatal pipeline explosion in Puebla in 2011. More recently, three fires resulted from attempted thefts of pipelines in Jalisco in March and April of this year, but no casualties were reported. And an attempt by individuals to pilfer oil from a pipeline in Hidalgo state in April resulted in a dangerous leak, which PEMEX quickly repaired.

Mexican authorities have launched a campaign to prosecute the gasoline thieves, but the effort has become almost an insurmountable task because of the large number of cases that must be handled. In the past five years, the Procuraduría General de la República (PGR) has opened more than 2,000 investigations and has filed charges against 325 individuals for stealing fuel from PEMEX pipelines. Some individuals arrested in the government's investigations have been PEMEX employees.

The PGR has conducted the majority of its investigations in five states—Sinaloa, Veracruz, Nuevo León, Puebla, and Tamaulipas—but operations have also been dismantled in the state of Guanajuato and in the Federal District. Still, prosecution efforts have not been a deterrent because the number of new thefts has continued to increase. PEMEX said there were more than 5,000 thefts in 2011, an increase of more than 50% from the same period in 2010. The fuel taken is valued at about 6 billion pesos (US\$454 million), said the company.

The trend continued into the early part of this year, with more than 341 cases of theft detected during January and February. Authorities said the thieves took the equivalent of nearly 590,000 barrels of oil, with many of the thefts occurring in Veracruz, Sinaloa, Baja California, and Jalisco

states. [Pesodollar conversions in this article are based on the Interbank rate in effect on April 18, 2012, reported at 13.16 pesos per US\$1.00.]