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Brazil Sues Chevron Following Oil Spill

By Andrés Gaudín

"We place the highest priority on the health and safety of our workforce and protection of our assets and the environment...[We O]perate with industry-leading asset integrity and reliability." Until Nov. 8, 2011, it was unlikely that any Brazilian would have been aware of the existence of the Web page www.chevron.com, much less the page "The Chevron Way," containing the company's statements of principles. The company making the above statement is US oil giant Chevron, protagonist since that day of one of Brazil's worst environmental tragedies.

Now, thanks to operations that lacked both integrity and reliability and which produced a spill of at least 300 barrels of crude a day for eight days, the multinational will have to pay millions of dollars in fines and damages. Chevron has become accustomed to such emergencies; in Ecuador, the court found it guilty but so far it has evaded compliance with the verdict thanks to a legion of lawyers who know well how to move through the corridors of power.

The Brazil case seems to confirm environmentalists' fears: everything indicated that, after Nov. 8, 2011, the courts would exclude Chevron from the energy sector in a country that in the past year discovered what could be the largest oil reserves in the world. However, on April 11, 2012, a relatively unknown judge denied a motion from the Agência Nacional do Petróleo, Gás e Biocombustíveis (ANP) and ruled that Chevron could continue operating freely in the country.

After this ruling, Chevron and Transocean— owner and operator of the drilling rig at the site of the Frade field well—will only have to pay fines and be available to defend 17 of their high-ranking executives in court, including Chevron's South American director George Buck. Given that, in Brazil, environmental crimes are the only ones that allow for punishment of companies, Chevron and Transocean could be banned for up to five years.

Charges filed against companies, executives

Prosecutors filed criminal complaints against the two companies and 17 executives on March 21, charging them with "crimes against the environment" and "damage to the public patrimony." Buck and three other Chevron directors were also charged with "impeding the government's oversight responsibilities, failing to fulfill environmental obligations, presenting a disingenuous emergency plan, and misrepresenting the facts by altering documents [a video] presented to authorities in relation to the extent of the spill."

Each of the accused was fined US\$555,000—for the companies, the amount was US\$5.5 million—and could be sentenced to between 22 years and 32 years in prison. The defendants' situation was further complicated on March 15 when, even before they were formally charged, a new spill appeared at an Atlantic site near Frade field off the coast of Rio de Janeiro.

Before the final verdict, Chevron will have to pay fines of US\$27.3 million to both the ANP and the Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA). That is the maximum fine allowed under current law, an insignificant amount for a company like Chevron, which in 2011 had profits of US\$200 billion.

"This would suggest that it might be better for legislation to link the amount of the fine to the company's profits," said Minister of General Accounting Jorge Hage, who is sponsoring a bill to more vigorously punish corruption. "If the fines do not hurt the businesses' bottom line, their ethical behavior will not change."

Environmental organizations are also hoping that a proposal will be implemented that has been encouraged since offshore exploitation began: the formation of an independent commission to monitor companies' activities.

Companies that are "serial polluters"

Brazilian environmentalists and various international nongovernmental organizations (NGOs) say that they might sue Chevron for damage to the Atlantic flora and fauna. They mention precedents in some emblematic cases where action was taken "against oil companies for being serial polluters," explained Marina Silva, former environment minister—during the administrations of ex-President Luiz Inácio Lula da Silva (2003-2010)—and a 2010 presidential candidate for the Partido Verde (PV), in which she surprisingly took 19.3% of the vote. When environmentalists talk about emblematic cases, they often refer to the trial in Ecuador in which Chevron was found guilty and to Transocean's proven responsibility for the 2011 oil spill in the Gulf of Mexico.

On Feb. 14, 2011, an Ecuadoran judge issued a historic ruling against Chevron. The court ordered the company to pay US\$8.6 billion to the Frente de Defensa de la Amazonía (or double that amount if the multinational did not make a public apology). The ruling found the company responsible for not spending the money to prevent its operations in the South American country between 1972 and 1992 from causing damage, "using practices that would never have been accepted in its country of origin and that it knew were harmful."

The Corte de Justicia in Sucumbíos, a province in northeastern Ecuador whose principal economic activity is oil production, imposed the fine for environmental damages caused during those two decades in the Amazon. The crime consisted of discharging 18 billion barrels of toxic water in that region of exceptional biodiversity and leaving 627 pools of toxic residue, an ecological disaster that directly affected 30,000 people.

The decision ordered Chevron to pay US\$5.4 billion for soil cleanup, US\$1.4 billion for setting up health systems, US\$800 million to provide health plans and care to people with cancer, US\$600 million to clean up underground waters, US\$200 million for efforts to recover native species, US\$150 million for water-provision projects, and US\$100 million to address cultural damage. The total comes to US\$8.6 billion, or US\$17.3 billion, if the company fails to issue an ample and detailed apology.

Chevron appealed the verdict, but the sentence was upheld in February. The US oil company again refused to abide by the legal decision and announced that it would appeal, this time to an international arbitration tribunal, taking advantage of the terms of the 1997 Treaty of Reciprocal Protection of Investments.

"The Ecuadoran government is not afraid of Chevron's threats. Whether it likes it or not, Chevron will have to adjust to our laws to continue operating in the country. In this specific case, it is a legal aberration to try to apply a bilateral treaty that obviously was not in effect [between 1972 and 1992] when the environmental disaster occurred in our Amazonía," said Vicente Peralta, legal secretary in the Ecuadoran Ministerio de la Presidencia.

Regarding Transocean, environmentalists point out the company's responsibility in errors committed by British Petroleum (BP) and its subcontractors, which caused the worst offshore oil spill in US history, according to an official report released on Sept. 14, 2011, on the 2010 disaster in the Gulf of Mexico. At that time, Transocean, as owner and operator of the now-submerged Deepwater Horizon platform, was held responsible for errors in drilling the well and for inadequate security—negligence that cost the lives of 11 workers.

To illustrate the effects of such "irresponsible and criminal acts," Brazilian environmentalists mentioned the March 1989 Exxon Valdez oil spill, considered less serious than the Gulf of Mexico spill. After 23 years, 20 of the 30 affected animal species have not recovered. The Exxon Valdez ran aground in Prince William Sound, Alaska, spilling 37,000 tons of crude.

Transocean owns the Sedco 706 platform from which the well was drilled in Frade field for Chevron. Chevron's South American subsidiary said, "The pressure of the deposits was underestimated." Based on that incorrect information, the company used material that was unable to contain the crude. As a result, high-pressure oil was able to "kick" and surge into the well. Although while attempting to stop the spill they tried to close the well, the escape pressure fractured the valve, allowing the crude to escape and contaminating the Atlantic waters with still-undetermined effects, destroying the habitat of hundreds of animal and plant species. Environmental organizations said that the errors in Brazil are similar to those in the Gulf of Mexico, which would lead to the assumption that what happened is not an accident but a "persistent criminal practice whose objective is to reduce operating costs."