



# MTBE Fact Sheet

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## Groundwater Contamination Lawsuit Settlement

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### **Case Summary**

The largest grouping of Methyl Tertiary Butyl Ether (MTBE) cases in U.S. history have been partially settled for a substantial cash settlement (see Press Release) (plus a 30-year commitment to future well treatment for qualifying wells) between plaintiffs in 17 states and the bulk of the nation's leading gasoline providers. The case centered on the defendants' manufacturing, marketing, distributing and storing of MTBE, a gasoline additive and groundwater contaminant that renders water non-potable and a potential health hazard. The settlement stems from a federal Multi-District Litigation (MDL) in New York established to hear MTBE cases nationwide. The MDL is comprised of cases that were originally filed in 17 different states.

## **Plaintiffs**

Plaintiffs include 153 public water providers – municipalities, water agencies and private water companies whose water is contaminated with MTBE and who have asserted legal claims against the oil industry seeking the costs of well treatment to rid drinking water of MTBE.

## **Defendants**

Settling Defendants in the case include BP Amoco, Atlantic Richfield, Chevron, ConocoPhillips, Shell, Marathon, Valero, CITGO, Sunoco, Hess, Flint Hills, El Paso Merchant Energy, and Tesoro. Conspicuously absent from the settlement is Defendant ExxonMobil. ExxonMobil has refused to settle and faces the first of numerous trials over MTBE starting in September.

## **Plaintiffs' Attorneys**

Co-Lead counsel for plaintiffs nationwide is Scott Summy, a shareholder in Dallas-based Baron & Budd, P.C. and Head of the firm's Water Contamination Section, who has worked on MTBE contamination litigation cases for 13 years. Baron & Budd, headed by Russell Budd, is a nationally recognized leader in environmental law. The firm's Water Contamination Practice team includes shareholders Celeste Evangelisti, Cary McDougal, Stephen Johnston, Laura Baughman and Carla Burke.

In this settlement, Baron & Budd has been assisted by the New York City-based law firm Weitz & Luxenberg P.C., in the MDL cases arising outside of California, and the San Francisco-based law firm, Sher Leff LLP in the MDL cases arising in California.

## **Plaintiffs' Claims**

- 1) Defendants who manufactured and/or distributed gasoline containing MTBE knowingly sold a defective product that leaked into groundwater, contaminating nearby public water wells;
- 2) Defendants knew about MTBE's inherent environmental risks and about hundreds of thousands of leaking underground fuel tanks (LUFTs) in early 1980s;
- 3) Defendants sought to discredit such evidence and withhold risk information from government regulators, those companies that transported and stored gasoline containing MTBE and the public; and
- 4) Defendants have attempted to avoid responsibility for investigation and water treatment expenses.

### **Facts about MTBE**

Methyl Tertiary Butyl Ether, a gasoline additive, was developed in the late 1970s as an anti-knock (octane increasing) agent. It was used extensively in the 1980's. The Clean Air Act Amendments of 1990 adopted an oxygenate requirement for gasoline sold in cities with smog problems. The U.S. oil companies primarily chose to keep using MTBE to comply with this requirement, rather than other oxygenates, including ethanol. America's oil companies chose to increase the usage of MTBE over other oxygenates such as ethanol. Because of MTBE's unique properties – its high solubility in water that allows it to travel over long distances from the source of a fuel leak and its relatively high persistence (slow biodegradation) in below-surface water – the chemical compound poses a current and potential environmental threat to public drinking water supplies. As a result, MTBE has been banned by 25 states, including California and New York, which had accounted for 40% of total MTBE consumption in the U.S. At levels as low as 1 part per billion, MTBE can be problematic. Only a few drops of MTBE, for example, can contaminate an Olympic-size pool filled with purified water giving it a turpentine-like smell and taste. The most effective method for water treatment of MTBE is granular activated carbon (GAC).

Today, MTBE has been largely replaced nationwide by ethanol.

### **History of Litigation**

The quick dissolving and difficult-to-clean nature of MTBE and the likelihood of MTBE contamination of groundwater from leaking fuel tanks was known by the oil companies in the early 1980's, according to internal documents uncovered by Summy and colleague Celeste Evangelisti, in 1998 (Communities For a Better Environment vs. Unocal Corporation). The first MTBE contamination lawsuit in the United States was brought by Scott Summy on behalf of Wilmington, North Carolina residents. Conoco Oil settled with residents of the park in 1997 for a confidential amount. Subsequent suits have been filed against gasoline manufacturers and distributors involving the contamination of drinking water in Lake Tahoe and Santa Monica. In 2001, Summy and Evangelisti received the "Attorneys of the Year" Award for Environmental Law from California Lawyer for their work on MTBE water contamination litigation.

### **Potential Health Risks**

According to the EPA's Advance Notice of Proposed Rulemaking to Eliminate or Limit the Use of MTBE in 2000, the fuel additive was classified as a "possible" human carcinogen and a "known" animal carcinogen under its 1986 cancer risk assessment guidelines based on animal studies involving high levels of exposure. A subsequent assessment by the Office of Science and Technology Policy and the Health Effects Institute in 1997 generally supports the EPA's view on potential carcinogenic hazard.

### **Summary of Partial Settlement**

The majority of the country's oil refiners have agreed to pay a substantial amount to the Plaintiffs to address public drinking water wells that are contaminated with MTBE. The settlement also provides for well protection and requires the Settling Defendants to pay their share of treatment costs for wells owned or operated by the Plaintiffs that become contaminated by MTBE in the future and qualify for treatment over the next 30 years. Approximately 3,385 of public drinking water wells are owned or operated by the Plaintiffs and are entitled to the well protection. Overall, approximately 7 million individuals consume water from the drinking water systems owned or operated by the Plaintiffs.