



MONADNOCK
LEDGER-TRANSCRIPT

Published on the *Ledger Transcript* (<http://www.ledgertranscript.com>)

[Print this Page](#)

MtBE: The gas additive that is hard to remove

By Jason Reimers

Friday, April 24, 2015

(Published in print: Tuesday, April 28, 2015)

I barely remember leaded gasoline. All I really remember is being in the backseat of my mother's Pinto and the question being posed: "Leaded or unleaded?" Lead is harmful to humans, so the federal Clean Air Act required that lead be phased out of gasoline in the late 1970s.

The Clean Air Act required that some type of oxygenate be added to gasoline to replace the lead. Oxygenates cause fuel to burn more cleanly and therefore result in cleaner vehicle emissions. Unfortunately, the particular oxygenate that the gasoline industry chose was methyl tertiary-butyl ether, otherwise known as MtBE. MtBE is possibly carcinogenic to humans and very difficult to clean up once it has contaminated groundwater.

Over the years, gasoline containing MtBE leaked into the ground from aging underground gasoline storage tanks at gasoline stations (and elsewhere). MtBE is very water soluble and mobile, which means that it travels further than other gasoline components once it leaks into the ground. Whereas contaminants that are less water soluble are more likely to remain in the soil after leaking into the ground, highly water-soluble MtBE spreads throughout the groundwater system faster and in higher concentrations because it remains in the water.

New Hampshire banned the use of MtBE in gasoline in 2007, but not before MtBE contaminated water wells throughout New Hampshire. Approximately 13 percent of public water supply wells in New Hampshire are contaminated with MtBE, and wells continue to be tested.

New Hampshire spent over 10 years suing gasoline companies for the damage caused by MtBE. The state settled with 15 of them for a total of \$136.5 million. The holdout was ExxonMobil, which went to trial in 2013 in Merrimack Superior Court. After a three-month trial — the longest civil trial in New Hampshire

history — the jury took only two hours to decide that ExxonMobil negligently supplied 2.7 billion gallons of MtBE to New Hampshire.

One particularly compelling piece of evidence introduced by the state at trial was an internal ExxonMobil memo indicating that ExxonMobil knew as early as 1985 that MtBE posed a serious environmental threat. ExxonMobil was advised in the memo not to add MtBE to gasoline nationwide. Despite this warning, ExxonMobil continued to add MtBE to gasoline throughout the country. In places like New Hampshire, where the geology is composed of fractured bedrock, the risk to clean drinking water was particularly high, as opposed to certain parts of the country that have, for example, a layer of clay that would prevent the MtBE from reaching the groundwater.

As a result of the jury's verdict, ExxonMobil was ordered to pay \$236 million to New Hampshire. To put this figure in perspective, ExxonMobil's profits in 2012 were approximately \$123 million per day. Instead of dedicating less than two days of its 2012 profits to cleaning up New Hampshire's groundwater, ExxonMobil appealed the jury's verdict.

Oral arguments before the New Hampshire Supreme Court are scheduled for May 21. In almost every other case that the Supreme Court hears, each party gets 15 minutes to make their oral arguments. In the MtBE case, each side will have one hour to try to convince the justices. You can watch the arguments in person or via the court's website.

For the appeal, ExxonMobil has brought in legal firepower in the form of former U.S. Solicitor Gen. Paul Clement. (The solicitor general represents the federal government in cases before the U.S. Supreme Court in which the federal government is a party.)

You might be wondering what the state is doing with the \$136.5 million that it received from the settlements with the other gasoline companies. For starters, use of the money is governed by court orders, so the Legislature cannot use it to balance the state's budget. Rather, the money must be used to clean up the MtBE and provide clean water to those people and towns with contaminated wells.

A portion of the \$136.5 million has been used to fund the new MtBE Remediation Bureau at the Department of Environmental Services. Hopefully the Supreme Court will uphold the jury's verdict so that the Bureau will be adequately funded to clean up the enormous MtBE mess that lurks in our groundwater. It won't go away on its own.

It is unfortunate that the gasoline industry did not use a different gasoline additive when it learned of MtBE's dangers decades ago.

Jason Reimers is an attorney with BCM Environmental & Land Law, PLLC, in Concord, and a member of the Board of Directors of the New Hampshire Lakes Association.

Source URL:<http://www.ledgertranscript.com/news/environment/16640146-95/mtbe-the-gas-additive-that-is-hard-to-remove>