

Exxon Additive Fouled New York Groundwater, Jury Told (Update2)

By Thom Weidlich

Aug. 4 (Bloomberg) -- **Exxon Mobil Corp.** used a gasoline additive it knew would poison groundwater, a lawyer told jurors at the start of a trial in which New York City seeks millions of dollars plus punitive damages from the biggest U.S. oil company.

The use of the chemical MTBE to reduce air pollution contaminated water in Queens, New York, adding to the cost of a water-treatment plant the city wants to build, an attorney for the city told a federal court jury today in opening statements.

"We will show you that Exxon and Mobil, before they merged, knew that MTBE would be a new and dangerous compound introduced into the nation's groundwater," **Victor Sher**, a lawyer for New York, told the jury.

U.S. District Judge **Shira Scheindlin**, who is presiding over the trial in New York, last month dismissed 33 companies that settled the case with New York, including **BP Plc**, **Chevron Corp.**, **ConocoPhillips**, **Hess Corp.** and **Royal Dutch Shell**. Exxon Mobil, based in Irving, Texas, is the lone holdout.

The companies settled for a total of \$13.7 million, according to Connie Pankratz, a spokeswoman for the city.

The case is part of larger litigation over **MTBE**, or methyl tertiary butyl ether. More than 70 lawsuits filed by water providers and state and local governments were consolidated before Scheindlin for pretrial information-gathering, according to an industry [Web site](#).

Six Wells

The trial concerns six wells, five of which New York says are poisoned with MTBE, in and near Jamaica in the Borough of Queens. The city says it wants to build a water-treatment plant there called Station 6 that will treat 10 million gallons a day.

Exxon's position is that the city doesn't intend to build the water-treatment plant, and that the six wells were turned off and are unusable because of contaminants other than MTBE.

"What this case is about is whether the city will turn on wells that were abandoned 30 years ago for PCEs, which is dry-cleaning fluid," **Peter Sacripanti**, a lawyer for Exxon Mobil at McDermott Will & Emery in New York, told jurors in his opening statement.

The wells are "located in an industrial cesspool that has nothing to do with MTBE," he said. The groundwater contains pharmaceutical and human waste, dry-cleaning fluid from a company once located near the site and 70,000 gallons of diesel fuel spill at a nearby bus depot, he said.

"They will never, ever build Station 6," Sacripanti told jurors.

Exxon and Mobil, which merged in 1999, began to use MTBE in the 1980s to boost octane, Sher said.

'Widespread Pollutants'

"MTBE became one of the most widespread pollutants in water throughout the country," he said. "We will show you evidence that will prove Exxon Mobil knew before it decided to use this product in gasoline that it would cause exactly this kind of problem."

The U.S. Congress amended the Clean Air Act in 1990 to require companies to add an oxygenate to gasoline to cut down on air pollution. Oxygenates such as MTBE are chemical compounds that raise the oxygen content of gasoline to make it burn cleaner and more efficiently.

"The Clean Air Act effectively required and necessitated the use of MTBE because no feasible alternative was available," Exxon Mobil wrote in court papers.

Exxon could have used ethanol as an oxygenate in New York, Sher said. It used MTBE to save three cents per gallon, he said. "They chose making money over protecting the public's health and the environment."

Engine Parts

Sacripanti said that in the mid-1980s Exxon didn't use ethanol because 55 percent of its producers were going out of business and studies showed it hurt engine parts. Once engine parts evolved to be able to take ethanol, the company used both MTBE and the corn-based product, the latter especially in the Midwest, where it was more available, he said.

"Ethanol didn't work as well as MTBE in cleaning air," Sacripanti said. "Ethanol wasn't a more feasible nor better alternative."

After states began banning MTBE in 2000, ethanol production increased to meet its demand, Sher said. "There was plenty of ethanol," he said.

The city argues MTBE renders water undrinkable and poses health threats such as dizziness, nausea and nervous-system disorders. It makes water smell and taste like turpentine, according to the complaint.

Sher said it can also cause cancer.

"It's water that the city's residents will need to drink, cook, wash their babies in," he said.

'Not a Carcinogen'

"MTBE is not a carcinogen," Sacripanti said. "People are trying to take up the temperature in this case."

The MTBE removal would add \$54 million to \$70 million in capital costs and \$120 million to \$258 million in operating and maintenance costs over 40 years, according to a report for the city by the environmental consulting firm Malcolm Pirnie Inc. Last month, White Plains, New York-based Malcolm Pirnie was acquired by [Arcadis NV](#), based in Le Arnhem, Netherlands.

Sacripanti said Malcolm Pirnie originally recommended the city shut down the six wells. It changed its mind because it realized it could get millions in consulting fees on the project, he said. It billed the city tens of millions of dollars after it changed its recommendation, Sacripanti said.

Amy Bowman, a spokeswoman at Malcolm Pirnie, didn't immediately return a call for comment.

Pilot Plant

Robert Chapman, another lawyer for New York, told jurors the evidence will show the city has plans to build the water- treatment plant, and that it was through its pilot plant that it discovered the presence of MTBE.

Chapman is a partner at Greenberg Glusker Fields Claman & Machtinger LLP in Los Angeles.

The Exxon Mobil trial, expected to last three months, is divided into four phases. The first is to decide whether the city intends to build the plant within 15 years and use it within the next 25.

The second is to decide whether MTBE will be in the wells when the project is completed or when the wells are turned on. The third is to decide whether Exxon Mobil is liable for poisoning the water and, if

so, how much it should pay. If the company is found liable, the fourth phase will decide what if any punitive damages will be imposed.

The case is City of New York v. Exxon Mobil Corp., 04-cv- 3417, grouped with others in the master-file case, In Re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, 00-cv-1898, U.S. District Court, Southern District of New York (Manhattan).

To contact the reporter on this story: **Thom Weidlich** in U.S. District Court in New York at tweidlich@bloomberg.net.

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