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MTBE settlement could grow, lawyers say

by [Chris Amico](#)

SACRAMENTO, Calif. (Legal Newsline)--Oil companies have agreed to pay \$422 million in clean up costs to settle lawsuits over their use of MTBE, a gasoline additive blamed for contaminating water supplies.

Lawyers for the plaintiffs say the payout could grow. A lot.

In addition to the initial cash settlement, the companies agreed to pay 70 percent of the cost to treat any new contaminated wells.

That part of the agreement covers some 3,000 where MTBE has never been detected. More than one-third of those wells are in California: [See below](#)

"It just depends on how many of those wells get hit in the future, which nobody really knows. But certainly it's very expensive to clean this stuff up," Scott Summy, the plaintiffs' lead attorney, told Legal Newsline.

"If you had 5 percent of them get hit, that could get very expensive," added Summy, a partner with the Baron & Budd law firm in Dallas.

MTBE, or methyl tertiary butyl ether, was used in gasoline to make it burn cleaner and reduce air pollution. But the chemical began showing up in ground water. At low levels, it gives water an offensive taste and odor.

Because of its unique chemical properties, MTBE can get into ground water quickly and spread much farther than other additives, such as ethanol, which is also used for the same purpose.

Soil won't absorb MTBE, and the chemical has an affinity for water and will flow with underground currents.

"In some instances it can travel several miles, Summy said. "If you have a water well nearby that's pumping, it'll pump the contamination into the well."

Plaintiffs, who are water companies whose wells have had MTBE detected in them, call the second part of the settlement a kind of insurance policy. If the chemical shows up in another well, lawyers explained, they can collect without having to return to court.

"It was kind of a mutual thing," Summy said, explaining how the deal emerged.

"These defendants, I've sued them a number of times now. They know that wells get hit in the future. At the same time my clients don't want to sue them again. Everyone's realizing there's a lot of MTBE left in the ground out there."

Attorneys say its almost impossible to put an upper limit on the potential cost if more contamination is found. It could also be nothing.

"It's kind of like a bet," said Vic Sher, who also represented plaintiffs in the case.

The oil and chemical companies, he said, believe MTBE is a solved problem, or that it will be soon.

If they're right, they won't have to pay any more to the 156 water companies with whom they just settled (other cases remain open).

However, if they're wrong, and MTBE continues to find its way into wells, the costs could rise quickly.

"The cost can range in general terms from one million dollars for a small well with low levels (of MTBE) that won't last long, to tens of millions for a large well with high levels that last a long time," Sher said in an interview from San Francisco.

California companies received the largest portion of the settlement.

In all, 11 California plaintiffs will receive more than \$78 million, plus potential future treatment of nearly 1,100 wells, including:

California Water Service Co. (\$49.7 million; 27 currently contaminated wells; 786 future wells)

Riverview Water District (\$11.4 million; 4 currently contaminated wells; 3 future wells)
California American Water Co. (\$8.03 million; 3 currently contaminated wells; 184 future wells)

M&P Silver Family Partners (San Diego County); \$3.9 million; 2 contaminated wells; 0 future wells)

Quincy Community Services District (\$2.66 million; 1 currently contaminated well; 5 future wells)

City of Riverside (\$1.01 million; 4 currently contaminated well; 100 future wells)

Citrus Hts Water District (\$264,000; 0 currently contaminated well; 5 future wells)

Del Paso Manor Water District (\$264,000; 0 currently contaminated well; 8 future wells)

Fair Oaks Water District (\$264,000; 0 currently contaminated well; 9 future wells)

Florin Resource Conservation District (\$264,000; 0 currently contaminated well; 15 future wells)

Rio Linda Elverta Water District (\$264,000; 0 currently contaminated well; 12 future wells)