

Posted on Sun, Oct. 05, 2003

## Coalition sues fuel firms over water-pollution threat

By Chris Bowman

SACRAMENTO BEE

**SACRAMENTO** - The Sacramento County District Attorney's Office and 10 local water utilities are suing the nation's major gasoline producers to pay for the cleanup of MTBE-polluted groundwater.

The lawsuit, filed Thursday in Sacramento Superior Court, is believed to be the first of its kind to claim damages for threatening drinking water wells, rather than actually contaminating them.

District Attorney Jan Scully's decision to join the lawsuit on behalf of the public at large brings a set of legal weapons unavailable to the water suppliers.

Last week, county supervisors, privately informed of the impending lawsuit, granted Scully's request for money to staff six positions for work exclusively on the MTBE case, an unusually large contingent to fight what is expected to be a long and arduous battle.

The water utilities allege in the suit that the oil companies knew about the risk to drinking water from MTBE years before they doubled the chemical's volume in gasoline to meet clean-air laws, yet went ahead and marketed the product as better for the environment.

The lawsuit seeks to obtain from the oil industry "all necessary funds to investigate, monitor, prevent, abate, treat and contain" MTBE pollution of groundwater in the county and of any wells that may become contaminated in the future.

It seeks civil penalties that the District Attorney's Office can pursue for violation of the state's laws for protection of and safe disposal of hazardous waste.

"This is a very extensive piece of litigation," said Albert Locher, assistant chief deputy district attorney.

"The last time I remember doing something of this scale was more than 10 years ago," Locher said, referring to charges of forgery and grand theft brought against former Sacramento County Supervisor William Bryan, who was convicted and sentenced to three years in state prison.

The legal action comes as Congress debates whether to protect the makers, distributors and users of MTBE from liability for environmental cleanup.

The immunity provision is buried in a wide-ranging energy bill being considered by Congress.

Key lawmakers supporting the protection, including House Majority Leader Tom DeLay, R-Texas, are from states along the Gulf of Mexico where most U.S.-produced MTBE is made.

The Sacramento County lawsuit aims to ensure that the region does not suffer the fate of South Lake Tahoe, Santa Monica and other communities where MTBE has rendered well water undrinkable, put land off-limits to development and saddled local residents with costly cleanups, said Vic Sher, an attorney representing the local water utilities.

"This is a proactive, protective approach to eliminate the threat to the county's drinking water ... and to make sure the costs of that 'ensurance' are borne by the companies responsible for the problem," Sher said Friday.

Sher was a lead attorney for the South Tahoe Public Utility District, which won \$69 million in settlements. The jury in the case last year found gasoline containing MTBE was a "defective product" that oil companies knew would endanger drinking water supplies.

MTBE (methyl tertiary butyl ether) escapes mainly from underground tanks and pipes feeding gasoline pumps. Although not as toxic as other gasoline components, such as benzene and toluene, MTBE has proved to be a groundwater menace in other ways.

The water-loving compound moves faster underground than other fuel ingredients, does not biodegrade as easily and requires special treatment to remove from water. Minuscule amounts can spoil large volumes of water. Consumers detect the turpentine-like taste and odor long before concentrations reach levels of health concern, scientists say.

California and several other states have banned MTBE from gasoline after finding that its threat to water supplies outweighed its purported environmental benefit of making fuel cleaner-burning.

During the South Lake Tahoe trial, MTBE producers maintained that refiners were aware of the hazards of leakage of MTBE gasoline, while oil company officials said they routinely advised distributors and dealers of how to store the fuel safely.

Refineries have removed MTBE from about 80 percent of the state's gasoline and have until year's end to eliminate the rest of it, said Claudia Chandler, spokeswoman for the California Energy Commission.

But MTBE's legacy is expected to live underground for years.

Sacramento County alone has at least 221 sites known to be contaminated with the compound, state water enforcement officials said.

Defendants named in the suit include Unocal Corp.; ConocoPhillips Co.; Citgo Petroleum Corp.; ChevronTexaco Corp.; Shell Oil Co.; Exxon Mobil Corp.; Ultramar Inc.; Atlantic Richfield Co.; and Lyondell Chemical Co. of Houston, the largest domestic producer of MTBE.