

GOP backs firms' liability relief from MTBE lawsuits

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Chemical and petroleum industry manufacturers of the gas additive MTBE have support of powerful Republicans for a provision in a federal energy bill offering relief from potential liability over polluted water supplies.

The liability exemption is part of the comprehensive energy bill before a congressional conference committee attempting to resolve differences between Senate and House of Representatives versions. The energy package may come to a vote by both bodies before the end of next week.

The provision would give makers of MTBE immunity from growing legal claims that the gasoline additive fouled water supplies across the country. Current cleanup costs have been estimated at \$29 billion. Among the backers of the provision is House Majority Leader Tom Delay of Texas, where most MTBE is made.

In 1990, amendments to the federal Clean Air Act required the addition of oxygenates -- either MTBE (methyl tertiary butyl ether) or ethanol -- in gasoline as a way to reduce air pollution for regions with smoggy skies. But within years the ether product was leaking from underground storage tanks into groundwater, creating plumes miles long.

In California, MTBE has been found in 97 drinking water sources, double the 48 detected as recently as two years ago. Gov. Gray Davis has banned its use starting in 2004. Los Angeles, El Dorado, Kern, San Diego, Alameda and San Francisco counties have the greatest number of MTBE-tainted drinking water sources, which have been shut off.

Last year, the South Tahoe Public Utility District used the legal argument that MTBE is a defective product in its successful lawsuit against five oil companies.

But supporters of the liability exemption argue that MTBE manufacturers should not be held responsible for such claims because the government required the use of MTBE.

"These are products that are mandated by law. It's ridiculous that you can say that a product certified by the U.S. Environmental Protection Agency for use in a clean-air program can become the basis of liability just because you manufacture it," said Scott Segal, a lawyer who represents MTBE manufacturers in Washington, D.C.

But opponents of the measure argue that the EPA offered a choice of MTBE or ethanol, and that MTBE manufacturers knew the risks. Internal documents unsealed in court cases show that the oil companies knew about possible groundwater problems as early as 1981 yet continued to promote the product.

A broad coalition of 14 state attorneys general, including California's Bill Lockyer, the U.S. Conference of Mayors and Cities, the Association of Metropolitan Water Agencies and the American Waterworks Association are lobbying against the provision.

Vic Sher, a San Francisco attorney who represents South Lake Tahoe, Santa Monica, New Hampshire and other jurisdictions affected by MTBE pollution, called the provision "an effort to immunize the companies that are responsible for the problem from the costs of dealing with it and to shift those costs to the drinking public."

Under federal gasoline regulations, the registration of MTBE as a gas additive can't be used to indicate endorsement, approval or certification by the EPA or any other federal agency, he said.

"Companies have a responsibility of their own to make sure that their products don't cause environmental destruction," Sher said. "They cannot hide behind permission from the government to avoid that responsibility."

In Congress, two Republican chairmen of the House and Senate Energy and Commerce committees -- Louisiana Rep. Billy Tauzin and New Mexico Sen. Pete Domenici -- have been trying to reconcile differences between the bills. The Senate version doesn't include the MTBE liability exemption.

Democrats say Republicans are ending years of bipartisan cooperation by shutting them out of the consultations. Last week, Democratic Sens. Dianne Feinstein and Barbara Boxer circulated a letter urging the conferees to oppose the MTBE provision.

In response to the provision, New Hampshire, Sacramento County, California American Water Co. in Monterey County and dozens of other water districts and cities have filed lawsuits in the past few weeks in an attempt to pre-empt language in the energy bill that would void their claims.