



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

**FEDERAL COURT RECOGNIZES IMPORTANCE OF A NEW YORK CITY
ENVIRONMENT LAWSUIT OVER GROUNDWATER CONTAMINATION
BY DECLARING IT A “FOCUS CASE”**

SUIT SEEKS TO RECOVER MORE THAN \$300 MILLION FROM PETROLEUM REFINERS WHOM THE CITY ALLEGES USED A GASOLINE ADDITIVE CALLED “MTBE” THAT POLLUTED GROUNDWATER IN QUEENS

Contact: Kate O’Brien Ahlers, Communications Director, (212) 788-0400, kahlers@law.nyc.gov

New York, Oct. 29, 2004 – The City of New York’s environmental “MTBE” action against the nation’s largest petroleum refiners, including ExxonMobil, Shell Oil, Chevron and others, moved one step closer to trial last week when Judge Shira Scheindlin of the U.S. District Court for the Southern District of New York ordered that the case be designated as a leading case for the more-than 115 lawsuits that comprise this multi-district litigation action (MDL). This designation, called a “focus case,” means that the City’s suit will be fast-tracked and will serve as a model for the other MTBE lawsuits.

The New York City Department of Environmental Protection (DEP) filed the case on Thurs., Feb. 26, 2004, to recover more than \$300 million in damages to its Jamaica, Queens-based groundwater well system that the petroleum refiners have caused by using the gasoline additive called “methyl tertiary butyl ether” (MTBE) in their product. MTBE is added to gasoline in an effort to oxygenate the gas and allow it to burn more cleanly. However, when petroleum products containing MTBE leak or spill into soil, the MTBE separates and pollutes groundwater, requiring sophisticated treatment to remove it.

“DEP has taken a number of preventive and remedial steps to make sure that residents and businesses do not receive water contaminated with MTBE,” said Doug Greeley, Deputy Commissioner for the DEP Bureau of Water and Sewer Operations. “These steps have been extremely expensive because of the invisible nature of MTBE in soil and groundwater, so we are pleased that the Court’s decision might help relieve DEP and City residents from this unfair burden even sooner.”

The City contends that the defendants added the MTBE to their gasoline product when they had reason to know that the MTBE could contaminate soil and groundwater if the gasoline ever leaked or spilled. With the help of the American Petroleum Institute’s MTBE Committee, many of the defendants publicly dismissed the health and safety concerns of MTBE and lobbied the U.S. Environmental Protection Agency to allow for the use of less expensive MTBE as an oxygenate even though suitable alternatives existed that posed far less risk to groundwater. The result: the City is now stuck paying the defendant’s groundwater clean-up bill. Recognizing that the “polluter pays principle” has been turned upside down, DEP joined the multi-district litigation action.

“The judge’s ruling is the first major recognition that the City’s case presents important issues for this MDL unique to a water purveyor and provider like DEP,” said New York City Corporation Counsel Michael Cardozo.

“Practically speaking,” added Scott Pasternack, a Senior Counsel in the Environmental Law Division who is the lead lawyer on the lawsuit, “the decision to designate *City of New York v. Amerada Hess, et al.*, as a leading case will expedite the discovery and briefing schedules while at the same time allow decisions in these areas to serve as a model for other lawsuits in the MDL. And with scientific data indicating that MTBE may cause significant adverse health impacts and may render such drinking water unfit for human consumption, the faster the case gets to trial, the faster that City residents can get the recovery they deserve.” Susan Amron, Deputy Chief, and Daniel Greene, Assistant Corporation Counsel, of the New York City Law Department’s Environmental Law Division are also working on the City’s case.

The three other selected focus cases include actions filed by the Orange County Water District in California, Suffolk County Water Authority in New York State, and United Water of New York. These cases were selected from more than 115 lawsuits in the MDL. Judge Scheindlin ordered the designation on Tues, Oct. 19, 2004.

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