

New Jersey Seeking to Recover Damages for Polluted Sites

By Anique Gonzalez

Global warming and its companion, environmental pollution, have been heavily discussed in the media recently. From scientists releasing doomsday reports to Al Gore's astonishing success at the box office with *An Inconvenient Truth* to the recent "Live Earth" concert to promote awareness of and create a solution for the global climate crisis, there seems to be no sign of the topic getting lost in America's, or the world's, consciousness.

As a result of this increased awareness, individual households, businesses, and governments are beginning to take action. The State of New Jersey, for example, recently filed 120 lawsuits in an attempt to recoup monetary damages from petrochemical and manufacturing companies the state said are responsible for environmental damage that resulted when their tanks containing a chemical known as MTBE leaked. (According to online encyclopedia Wikipedia, "MTBE, or methyl tertiary butyl ether, is almost exclusively used as a fuel component in motor gasoline. It is one of a group of chemicals commonly known as oxygenates because they raise the oxygen content of gasoline," enhancing effectiveness.) It should be noted that New Jersey's deputy general, Richard Engel, attempted to reach a settlement with several of the companies involved. However, he was unable to do so before the statute of limitations for filing suit expired.

All suits fall under the New Jersey Spill Compensation and Control Act. The act itself states "that the storage and transfer of petroleum products and other hazardous substances between vessels, between facilities and vessels, and between facilities, whether onshore or offshore, is a hazardous undertaking and imposes risks of damage to persons and property within this State." The compensation the state hopes to receive will be used to repair the damages caused by MTBE as well as cover revenue lost because of the inability to use affected sites.

Last month, the appellate division supported the state's attempt to hold corporations liable for their impact on the environment in *New Jersey Department of Environmental Protection v. Exxon Mobil Corp.* In its ruling, the court stated that loss-of-use damages are "consistent with the Spill Act's express terms, [are] harmonious with legislative intent, and [are] in keeping with the legislative directives articulated in the Act's recent amendments."

According to Department of Environmental Protection (DEP) policies, offending corporations must establish the extent of pollution they caused and for which they are responsible.

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After this step has been taken, the DEP has a maximum of five and a half years to regain compensation via a lawsuit if the companies involved do not provide the money necessary to refurbish the location on their own.

Thus far, the DEP has collected \$51 million on the path to restoring nearly 1,500 sites.

ON THE NET

State of New Jersey
www.state.nj.us

Methyl Tert-Butyl Ether (MTBE)
en.wikipedia.org/wiki/MTBE

Spill Compensation and Control Act
www.state.nj.us/dep/rpp/brp/dp/downloads/NJ_Spill_Act.pdf