

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

OFFICE OF NATURAL RESOURCE RESTORATION

Notice to Receive Interested Party Comments on Proposed Site Remediation and Natural Resource Damages Consent Order in *In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, MDL 1358 Civil Action No. 08 Civ. 00312 (SDNY) (VSB); and *New Jersey Department of Environmental Protection v. Amerada Hess*, Civil Action No. 15-6468 (DNJ) (CPO)

Take notice that the New Jersey Department of Environmental Protection, its Commissioner, and the Administrator of the New Jersey Spill Compensation Fund (collectively “NJDEP” or “Plaintiffs”) hereby give notice of a proposed settlement of Statewide claims related to contamination to waters of the State caused by the gasoline additive methyl tertiary butyl ether (MTBE).

The NJDEP hereby proposes to enter a Judicial Consent Order with Cumberland Farms Inc. (CFI), and Gulf Acquisition LLC and Gulf Oil Limited Partnership (collectively, “Gulf”). Gulf Acquisition LLC is no longer an existing entity. CFI and Gulf will be collectively referred to herein as “Settling Defendants.” In June 2007, the NJDEP instituted lawsuits against nearly 50 companies, alleging that those companies were responsible for contamination of waters of the State of New Jersey caused by MTBE. The defendants included MTBE manufacturers and refiners, as well as major brand marketers of gasoline containing MTBE. The defendants also included companies within the chain of distribution of gasoline containing MTBE in the State of New Jersey. The NJDEP has identified more than 6,000 sites where MTBE has been

detected in the waters of the State.

In that litigation, the State asserted claims pursuant to the Spill Compensation and Control Act (WPAC), N.J.S.A. 58:10-23.11 through 23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 through 20, and the common law, alleging that the defendants, including the Settling Defendants, were liable to the public for injuries to the natural resources of the State and required to remediate due to their discharges of MTBE, which is defined pursuant to New Jersey law as both a hazardous substance and pollutant. In that litigation, the State asserted claims pursuant to the Spill Compensation and Control Act (WPAC), N.J.S.A. 58:10-23.11 through 23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 through 20, and the common law, alleging that the defendants, including the Settling Defendants, were liable to the public for injuries to the natural resources of the State and required to remediate due to their discharges of MTBE, which is defined pursuant to New Jersey law as both a hazardous substance and pollutant.

This matter originated in Mercer County Superior Court, Docket No. MER-L-1622-07, but was removed to the United States District Court for the District of New Jersey and later consolidated as part of the multidistrict litigation in the United States District Court for the Southern District of New York, MDL No. 1358 (VSB) (MDL). The MDL Judicial Panel later transferred bellwether sites, identified by the parties, back to the District of New Jersey for trial. Until this agreement is finalized, only the Bakers Waldwick site remains as a bellwether site, and CFI and Gulf are the only defendants at that site. Similarly, Gulf, CFI, and Exxon Mobil are the only remaining defendants in the Statewide claims for damages, which are currently still pending in the MDL in the Southern District of New York pending this agreement. This proposed agreement will not affect the State's claims against Exxon Mobil.

NJDEP pursued litigation against the Settling Defendants for the contamination caused by MTBE because of the Settling Defendants' role as distributors of MTBE gasoline and their ownership and/or operation of gasoline service stations/facilities across the State. The NJDEP alleged in its filed complaint that MTBE, a "hazardous substance" as defined by the Spill Act at N.J.S.A. 58:10-23.11b and a "pollutant," as defined by the WPCA at N.J.S.A. 58:10A-3n, had been discharged into the environment, specifically into New Jersey's waters, a natural resource of the State. MTBE contamination is being remediated at these Sites, including their off-site impacts, to below the groundwater quality standard of 70 parts per billion (ppb) under the supervision of a licensed site remediation professional (LSRP).

Following years of litigation, motion practice, and negotiations, the Settling Defendants agreed to resolve their alleged liability to the public by paying, jointly and severally, a total of \$18.5 million in settlement of both the site-specific and Statewide natural resource damages (NRD) claims brought by the NJDEP. This settlement only concerns MTBE contamination and does not address contamination by any other hazardous substances, pollutants, or contaminants unless comingled with MTBE. The Settling Defendants' remediation obligations, if any, are not affected by this settlement.

Pursuant to the proposed agreement, the NJDEP would generally release and covenant not to sue the Settling Defendants for causes of action based on Settling Defendants' liability to the NJDEP: (i) under the common law with respect to MTBE discharges that threaten or affect the waters of New Jersey; (ii) in equity (except as reserved pursuant to the agreement) with respect to MTBE discharges that threaten or affect the waters of New Jersey; (iii) under theories of products liability with respect to MTBE discharges that threaten or affect the waters of New Jersey; or (iv) pursuant to any applicable Federal or State statute, regulation or order where such liability is

premised upon Settling Defendants’ “upstream activities,” as defined by the agreement (which includes the manufacture, distribution, purchase, trading, or branding of MTBE gasoline, prior to the effective date of the Judicial Consent Order), with certain exceptions. Pursuant to the proposed agreement, the NJDEP would generally release and covenant not to sue the Settling Defendants for causes of action based on Settling Defendants’ liability to the NJDEP: (i) under the common law with respect to MTBE discharges that threaten or affect the waters of New Jersey; (ii) in equity (except as reserved pursuant to the agreement) with respect to MTBE discharges that threaten or affect the waters of New Jersey; (iii) under theories of products liability with respect to MTBE discharges that threaten or affect the waters of New Jersey; or (iv) pursuant to any applicable Federal or State statute, regulation or order where such liability is premised upon Settling Defendants’ “upstream activities,” as defined by the agreement (which includes the manufacture, distribution, purchase, trading, or branding of MTBE gasoline, prior to the effective date of the Judicial Consent Order), with certain exceptions.

The proposed Judicial Consent Order would constitute a judicially approved settlement pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f(b), and the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9613(f)(2), for the purpose of providing protection from contribution actions or claims for matters addressed in this Judicial Consent Order. It would be executed by the NJDEP, consistent with its authority pursuant to the Spill Act and WPCA, and its obligations and authorities as the trustee of New Jersey’s natural resources. N.J.S.A. 58:10-23.11a et seq., 58:10-23.11u, and 13:1D-150. Pursuant to the proposed Judicial Consent Order, the Settling Defendants will pay a total of \$18.5 million to the NJDEP to resolve Settling Defendants’ alleged Statewide liability related to what NJDEP claims was the Settling Defendants’ contribution to the injury of natural resources

caused by MTBE contamination. The public will benefit from ensuring decreased MTBE concentrations in New Jersey's waters, including groundwater. Public trust resources are expected to return to pre-discharge condition, in part through monitored natural attenuation. The settlement amount takes into consideration the Settling Defendants' alleged proportional contribution to MTBE contamination in New Jersey and previous settlement agreements as part of the MDL and does not constitute a double-recovery or windfall for the State.

In consideration of the valuation of natural resources injured by MTBE contamination, the Settling Defendants' alleged proportionate responsibility for that contamination, and the public trust benefits described in this notice, the NJDEP, as trustee of the public's natural resources, believes that the proposed terms are fair, reasonable, faithful to the intent of the aforementioned statutes, and in the public interest. All settlement funds recovered for NRD, less the costs of the suit, legal, and administrative fees, will be held in the NJDEP's dedicated NRD account subject to legislative appropriation for specific natural resource restoration activities in accordance with the New Jersey State Constitution, Article VIII, Section 2, Paragraph 9. The NJDEP intends to conduct public outreach and engagement in the consideration and selection of restoration activities to be pursued with funds recovered by this settlement.

It is the intent of the NJDEP and the Settling Defendants that this Judicial Consent Order constitutes an administratively approved settlement for which the NJDEP is seeking public comment pursuant to N.J.S.A. 58:10-23.11e2 for matters addressed in this Judicial Consent Order. It is the intent of the NJDEP and the Settling Defendants that this Consent Judgment constitutes an administratively approved settlement within the meaning at N.J.S.A. 58:10-23.11f.a(2)(b) of the Spill Act for the purpose of providing protection from contribution actions or claims for matters addressed in the proposed Judicial Consent Order.

A copy of the proposed Judicial Consent Order is available for inspection online at <http://www.nj.gov/dep/nrr/settlements/index.html> and at the NJDEP Office of Record Access at 401 East State Street, Trenton, New Jersey. Requests to inspect a paper copy of the proposed Consent Judgment should be directed to records.custodian@dep.nj.gov. Written comments on the entry of this Judicial Consent Order may be submitted electronically to MTBESettlement@dep.nj.gov, referencing “MTBE CFI/Gulf Settlement” in the subject line of the email, or in hard copy to the Office of Natural Resource Restoration, NJDEP, 501 East State Street, Mail Code 501-03, PO Box 420, Trenton, NJ 08625-0420. Any electronically submitted comments must be provided as portable document format (PDF) files.

All comments must be submitted within 60 calendar days of the date of this public notice. The NJDEP will consider all comments received and may decide to withdraw or withhold consent to the entry of the Judicial Consent Order if comments received disclose facts or considerations that demonstrate that the Judicial Consent Order is inappropriate, improper, or inadequate.