

Attorneys:

- **Lee D. Hoffman**
lhoffman@pullcom.com
860.424.4315
- **Gary B. O'Connor**
goconnor@pullcom.com
860.424.4366
- **Jean Perry Phillips**
jphillips@pullcom.com
860.424.4368
- **Diane W. Whitney**
dwhitney@pullcom.com
860.424.4330

Gas Station Owners: State to Pursue Claims of MTBE Contamination

January 29, 2016

Over a decade ago, Connecticut, like much of the country, had concerns over groundwater contamination from gasoline containing the additive MTBE. Although much of the country had let the issue of MTBE contamination fall by the wayside, Connecticut appears ready to revisit the issue and put itself in a litigation posture. Now, in the wake of the information surrounding the water contamination in Flint, Michigan becoming front page news, it would seem that Connecticut's attempt to secure private litigation resources to address groundwater contamination may have some momentum.

In January of 2016, the Connecticut Attorney General's office issued a Request for Proposals (RFP) for law firms to provide legal counsel to the state, including to the Connecticut Department of Energy and Environmental Protection (DEEP), for the investigation, negotiation, and/or litigation to recover damages, costs, penalties, injunctive relief, and any other relief authorized by law concerning MTBE pollution or contamination in groundwater. Part of the process may include resolving or litigating claims and issues arising from Connecticut's Underground Storage Tank (UST) Petroleum Clean-Up Program.

In 2000, Connecticut banned the sale and use of MTBE in gasoline in the state. According to the U.S. Environmental Protection Agency, MTBE has not been used in significant quantities in gasoline since 2005. Despite MTBE being out of the spotlight for over a decade, it seems to once again be an enforcement priority for Connecticut's Attorney General's Office and DEEP.

When MTBE gets into groundwater, its strong odor and taste of turpentine can affect the drinkability of the water and may be responsible for adverse health effects. MTBE can enter drinking water sources from, among other things, leaking underground and above-ground fuel storage tanks, leaking or ruptured pipelines, and people disposing of "old" gasoline.

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Gas station owners, and owners of other businesses that use fuel storage tanks, whether above ground or underground, that either now or in the past held gasoline, need to be aware that the state is ramping up its enforcement of MTBE-related contamination issues.

It is not clear what the Attorney General's hiring of legal counsel will mean with respect to recovery of funds for MTBE contamination, however, the Attorney General's office has used this approach for other high-profile cost recovery actions such as tobacco litigation. We will continue to monitor this situation for further developments, however, the applicable legal and regulatory schemes are complicated and fraught with traps for the unwary. You would be wise to consult experienced counsel on these matters sooner rather than later.

For more information on this issue, please contact your Pullman & Comley, LLC attorney or any member of our Environmental Law and Litigation Department. © 2016 Pullman & Comley, LLC. All Rights Reserved.

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