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Town Takes On Big Oil?

By Kitty Merrill

Talk about a David and Goliath scenario, and going from Bonac to Brockovich: Yesterday the East Hampton Town Board met with representatives from a prominent personal injuries law firm in executive session. Their goal was an exploration the likes of which few municipalities have undertaken. The uncharted territory? A lawsuit against the oil companies that manufacture the gasoline additive MTBE.

Touted during the 1970s as a fuel additive that would result in cleaner car emissions, methyl tertiary butyl ether has been widely used. Trouble is, it may be great for the air, but it's terrible for the groundwater, and a potential carcinogen. In 2000 New York banned the use, sale, or importing of the gasoline oxygenate, set to take effect in 2004.

Testifying before the U.S. Senate subcommittee on clean air, climate change, and nuclear safety last month, Paul Granger, the Plainview Water District superintendent and member of the board of the Long Island Water Conference, predicted that unless MTBE is swiftly banned it "can and inevitably will poison our nation's water supply."

Well Closures

The Plainview Water District is suing the Exxon Mobil Corp. for a 1997 MTBE spill located just 450 feet away from the Nassau County community's public water well. While the company agreed to clean up the spill, six years later the contamination has still not been completely remediated. Additionally, neither the State Department of Environmental Conservation nor the oil company alerted local officials to the spill. Granger learned about it by chance, seeing work at the site in 2000.

That's typical, according to Walter Hang of the environmental research firm Toxics Targeting, which collects data on environmental spills. New York State has identified 1970 MTBE spill sites, 430 of them on Long Island. According to Granger's Senate testimony, California has 10,000 MTBE-contaminated sites, and 21 states have reported well closures due to MTBE groundwater contamination.

MTBE gets into groundwater easily, usually through leaking underground fuel tanks. Getting it out is very difficult. Water-soluble, the compound dissolves in groundwater and migrates in the direction of the prevailing flow. Once in the aquifer, MTBE does not biodegrade, and according to Granger's testimony "has a propensity to sink." The only upside to MTBE contamination is that the toxic has a strong odor, making well-water contamination noticeable to home owners.

But once it's there, MTBE is difficult to remove by traditional methods, and therefore remediation is very expensive. In June 2001 the New York Times reported that Exxon removed over 1000 tons of affected soil at the Plainview site, but the pollution had seeped down through a clay barrier and into the groundwater 75 to 80 feet

below the surface.

Shift the Burden

The Water District has set up an extensive monitoring field near the plume. So far it hasn't entered the water supply. The goal of the Plainview suit is to ensure that Exxon pays the freight should the nearby well be contaminated. "Our legal action will rightfully shift the enormous financial burden of wellhead treatment onto the polluter, rather than onto the ratepayer," Granger told the Senate subcommittee.

Now, East Hampton Town may consider launching a similar suit. Preliminary research by Toxics Targeting has identified nine MTBE spill sites in East Hampton Town. Supervisor Jay Schneiderman this week emphasized that the sites are pre-existing on private properties and under DEC purview. While he emphasized that he doesn't want citizens to develop a fear that their drinking water is contaminated, he predicted that further investigation will expose new sites.

Hang agreed: "It's unquestionable that you are going to have some, hopefully there won't be immense plumes that can't be cleaned up."

Toxics Targeting has been working with a number of communities in the state since the news of MTBE contamination "hit the fan publicly" about three years ago. Overall, Hang has found that "every community has some sites that haven't been properly investigated and properly cleaned up." In some instances cleanup has taken as long as a decade. "Litigation seems to be the only way to get cleanups underway," Hang opined. Enter the prominent personal injuries law firm Napoli, Kaiser & Bern. Yesterday the East Hampton Town Board met with Marc Jay Bern to explore the possibility of a suit against big oil. Litigation strategies fall under the umbrella of executive session discussion, so specifics of the discussion can't be revealed. Supervisor Schneiderman did explain, however, that the firm works on a contingency basis, meaning the town doesn't pay unless the suit is successful. At that point, the attorneys would receive a percentage of any monetary settlement.

Southampton Too?

Either way, the town gets to keep a bounty of data that Toxics Targeting, which works with the law firm, will amass. "All the groundwater data they collect, we get to keep," Schneiderman pointed out. The information will be useful in the ongoing development of a groundwater protection plan.

Southampton Town has several MTBE spill sites currently under cleanup order from the DEC, including at a gas station on Flanders Road in Flanders, another on County Road 39 in Shinnecock, and a large spill that began at a station on Montauk Highway in Hampton Bays and sent a plume flowing as far as Tiana Bay. Schneiderman would like to see the neighboring community join in the proposed legal action. "It'd be very neat," he said, "to see us little guys suing the big oil companies."

Back when Southampton Town Councilwoman Linda Kabot was executive assistant to Supervisor Vince Cannuscio, she became an ardent advocate for the banning of MTBE as well as expeditious spill site cleanup, to the point where colleagues dubbed her "Erin Brockovich." This week she said she'd need to learn more about East Hampton's potential legal action before she'd support a collaborative action. In the meantime, however, she said, "I applaud the Town of East Hampton for looking into the possibility of a suit because of the seriousness of MTBE."

With the advent of a variety of contaminants showing up in private wells across the East End, she encourages home owners to have their water checked annually, offering, "What's coming to light in numerous neighborhoods in our town is we just don't know what's beneath our feet."