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Test Case in Charges That Gas Stations Imperil Water

By [BRUCE LAMBERT](#)

PLAINVIEW, N.Y., May 21 — When Paul Granger, the water district superintendent here, came to work one morning in 2000, he spotted a rig test-drilling for pollution at a gasoline station across the road from two wells that pump up to 1.7 million gallons of drinking water a day.

He expressed concern that pollution might be threatening the water supply, and eventually his district sued three filling stations, affiliated with Exxon, Shell and Gulf.

As the trial in that case opened in Garden City on Monday, the nation's water supply industry and major oil companies were watching closely.

The outcome of the case could set a national precedent on who will pay the estimated tens of billions of dollars to clean up contamination caused by MTBE, a potentially carcinogenic fuel additive, now widely banned, that seeped into the ground as gasoline leaked from fuel storage tanks across the country.

More than 150 other lawsuits involving MTBE from 15 states have been consolidated in United States District Court in Manhattan, with the first trial set for next spring. But because the Plainview case predated them, it is proceeding on its own in State Supreme Court.

The case has a David-and-Goliath flavor, pitting a community of 32,000 residents against major oil companies. The litigation also features some of the leading lawyers involved in the consolidated federal cases. While the Plainview case is not binding on the 15 consolidated cases, the judge in the federal case, [Shira A. Scheindlin](#), has already taken note of some of the preliminary rulings in the Plainview suit.

About half the population of the United States drinks water pumped from the ground, according to the American Water Works Association, which represents 5,000 municipal and commercial suppliers. Its director of legislative affairs, Albert E. Warburton, said, "We're concerned that the oil companies pick up their share of their liabilities for contaminating the aquifers."

Fearing costly litigation, the gasoline industry lobbied Congress intensely for an exemption from lawsuits over MTBE, but the effort failed. The industry estimated the national bill for cleaning up MTBE contamination at a minimum of \$29 billion. Some experts have estimated costs at as high as \$100 billion.

Long Island is a suitable setting for a test case. Its nearly three million residents are the largest population in the country that depends exclusively on groundwater. Its automobile-dependent suburbs have fostered many hundreds of filling stations, and its porous, sandy soil hastens the movement of water — and contamination. In one instance, in West Hempstead, MTBE contamination was so severe that the local water system was temporarily shut down last year.

MTBE, short for methyl tert-butyl ether, was first added to gasoline to raise octane and also fostered cleaner combustion, reducing air pollutants. But critics say it is especially dangerous because it is soluble in water, fast-moving and hard to remove.

The Plainview Water District has had “440 confirmed hits of MTBE” in the groundwater near the pumps, one of the district’s lawyers, Paul Napoli, said in his opening statement before Justice Kenneth Davis, who is hearing the state case in a nonjury trial. The worst sample was 21,800 parts per billion, far above the state safety standard of 10 parts, Mr. Napoli said. The closest edge of the pollution is only 116.5 feet from a well, he added.

Although MTBE has not reached the wells yet, Mr. Napoli said it is only a matter of time before it does. “It’s a slow-motion train wreck that is going on here,” he said.

State health law requires the Plainview district to take action whenever the water is threatened, Mr. Napoli said. To be prepared, the district says it needs \$80 million to build special treatment plants.

In his opening statement, the lead defense lawyer, Peter J. Sacripanti, representing Exxon, said, “There is no MTBE in Plainview’s wells, not today, not yesterday, not ever.”

Exxon has been cleaning up its gasoline leaks, he said. The earth around the site has seven thick clay layers that retard pollution from sinking down, and groundwater moves mostly sideways, rather than down to the depth of the wells, he said. One well is 440 feet deep, and the other is 490. Moreover, the local groundwater flow is away from the wells and toward the sites of the filling stations, he said.

Ridiculing the water district’s underground maps as “voodoo hydrology,” Mr. Sacripanti said that the State Department of Environmental Conservation had declared the gasoline spills

not to be hazards to the water.

But the district insisted that its maps and charts are correct.

The Plainview case is evolving into a war of expert witnesses, with conflicting assessments of how much contamination exists and disputed projections of where it is going. The defendants said that recent measurements show the amount of contamination is subsiding. But Mr. Napoli argued that those numbers mean “it’s going deeper and deeper into the aquifer,” beyond the testing points.

More than 100 boxes of exhibits were carted to the courtroom, and 24 computer screens were set up so that the lawyers and court personnel could view various maps, charts, reports and other documents. The plaintiffs have even prepared an animated simulation of how they say the contamination is spreading.

“It’s a real threat, not a fantasy,” Mr. Napoli said. But Mr. Sacripanti said that the plaintiffs failed to meet the legal standard that MTBE poses an imminent threat.

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