

April 22, 1999

**To:** Board of Directors (Communications and Legislation Committee—Information)

**From:** General Manager \_\_\_\_\_

**Submitted by:** Mark D. Beuhler  
Director of Water Quality \_\_\_\_\_

**Subject:** Update on MTBE Phaseout

**RECOMMENDATION**

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For information only.

**EXECUTIVE SUMMARY**

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On March 25, 1999, Governor Gray Davis ordered a three year, eight month phaseout of the fuel additive Methyl Tertiary Butyl Ether (MTBE). Through this executive order, Governor Davis began the statewide process to remove MTBE from California's gasoline supply. This action is the culmination of nearly three years of legal, legislative, and regulatory activities aimed at eliminating the impacts of MTBE on California's environment. Legislative activity, both Federal and State, continues in order to expedite the phaseout of MTBE in California, possibly in advance of the December 31, 2002 removal date specified in the Governor's Executive Order. The Governor has also asked the Administrator of the U.S. Environmental Protection Agency (USEPA) to use her administrative powers to provide a waiver from the mandate that oxygenates like MTBE be used in California.

**DETAILED REPORT**

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Acting on the findings of the recently released University of California Study on the "Health and Environmental Assessment of (MTBE)," Governor Gray Davis issued Executive Order D-5-99 calling on a host of State agencies to carry out a coordinated series of efforts to effectively phase out the use of the gasoline additive MTBE. This phaseout is to take place at the earliest possible date, but not later than December 31, 2002. To help expedite this phaseout, gas stations will have to post a description of whether their gasoline contains MTBE in an attempt to get consumers to choose MTBE-free gasoline.

This action marks the conclusion of nearly three years of legislative, legal, and regulatory activities in California focused on addressing MTBE's use and its environmental impacts.

Table 1 summarizes the State bills regarding MTBE that were passed in 1997 (three) and 1998 (one). This is an impressive legislative accomplishment, and Metropolitan's Board, member agencies, and staff can take pride in the results of their hard work. One of the bills, authorized by Senator Richard Mountjoy, SB 521, called for a comprehensive report by the University of California to study the environmental impacts of MTBE use. Metropolitan provided testimony at a series of hearings on the University of California Report in support of the study's findings on water supplies. The findings of this study recommended the discontinuation of MTBE use as a gasoline additive which resulted in the Governor's Executive Order.

### **Pending State Legislation**

The 1999-2000 Session of the California State Legislature offers a number of efforts aimed at expediting the phaseout of MTBE (See Table 1).

The five bills introduced in 1999 by Sher, Mountjoy, Oller, Leslie, and Perata call for the elimination of MTBE in gasoline on various schedules, including immediate bans, and with various penalties for noncompliance. These State bills were introduced prior to Governor Davis' decision to phase out MTBE.

Given Executive Order D-5-99, conflicting State legislation expediting a ban on MTBE in advance of the December 31, 2002 deadline may face a veto by Governor Davis.

### **Federal Legislation**

With State legislation and regulation now in place to phase out the use of MTBE, attention is now focused on potential Federal activity to waive Clean Air Act provisions that mandate oxygenate use in all states. Without such a waiver, federal law would require that gasoline sold in areas with air pollution problems contain an oxygenate regardless of whether the oxygenate is needed for clean air. California and other states have called for flexibility in complying with Clean Air Act if they meet the goals of the law. The USEPA has consistently argued for strong adherence to existing Clean Air Act requirements. Prior attempts to amend the Clean Air Act for reformulated gasoline requirements have not been supported by the USEPA.

Six bills have been introduced in Congress dealing with MTBE. The most prominent one is S 266/HR 11 (Feinstein/Bilbray), which would permit an exclusion for California from the oxygenate mandate. A similar bill S 645 (Feinstein) would allow such an exclusion from use of an oxygenate for any state based on the USEPA Administrator's approval. The Board has supported a prior version of the Feinstein/Bilbray legislation, and the existing Metropolitan policy principles would allow for continued support of these efforts.

Two other MTBE bills were introduced in the House in April. H.R. 1367, introduced by Representative Bob Franks (R-NJ), would amend the Clean Air Act to prohibit the use of MTBE three years after enactment, while leaving the oxygenated fuel content level in place. The second bill, H.R. 1398, introduced by Representative Richard Pombo (R-CA), directs the USEPA to prohibit MTBE as a fuel additive "as promptly and practicable after the date of enactment."

**Administrative Solutions**

Governor Davis' office is also recommending that the USEPA Administrator, Carol Browner, use her administrative powers to waive the oxygen mandate in the Clean Air Act with the understanding that California and other states will still fully meet the air quality emissions standards of the Act. If Administrator Browner waives the oxygenate requirement, many current State and Federal MTBE bills would become unnecessary. Also, it is likely that Administrator Browner will delay any action on MTBE until after she receives the recommendations of the USEPA's Blue Ribbon Panel on MTBE. The Blue Ribbon Panel's recommendations are scheduled for release in July, 1999.

EGD/JMB/MDB/cs

**Attachment 10-26A**

## Attachment 10-26A

TABLE 1

Bill Number (Author)	Major Provisions	Notes
<b>State Legislation (Chapters during the 1997-1998 Session)</b>		
SB 1189 (Hayden)/ AB 592 (Kuehl)	Called for establishment of secondary drinking water standard.	Supported by MWD
SB 521 (Mountjoy)	Initially introduced as a ban on MTBE, this bill ultimately commissioned the UC Report, which led to Governor Davis' recent executive order to phase out the gasoline additive.	Supported by MWD
SB 2198 (Sher)	Established a fund to assist water agencies impacted by MTBE contamination.	Supported by MWD
AB 1491 (Cunneen)	Provided for improvements to the State's underground storage tank program.	Supported by MWD
<b>State Legislation (Pending in 1999-2000 Session)</b>		
SB 989 (Sher)	Would require a phase out of MTBE by December 31, 2002 (would also incorporate other provisions of the Governor's executive order).	Supported by MWD Pursuant to Policy Principles
SB 201 (Mountjoy)	Would require the state board to develop an incentive program for oil refiners to produce MTBE-free gasoline on or before October 31, 2000.	No Position
AB 129 (Oller)	Would make it a misdemeanor to add MTBE to gasoline during the manufacturing or refining process or to sell or offer for sale gasoline that contains MTBE.	Supported by MWD Pursuant to Policy Principles
SB 272 (Leslie)	Would make it a misdemeanor for any person to sell gasoline containing MTBE.	Supported by MWD Pursuant to Policy Principles
SB 192 (Perata)	Would make it unlawful to sell motor fuel that contains at least 1.1 percent by weight MTBE unless a sign or label is displayed stating "Contains MTBE."	Supported by MWD Pursuant to Policy Principles
<b>Federal Legislation (Pending in the 106<sup>th</sup> Congress)</b>		
S 266 (Feinstein)/ HR 11 (Bilbray)	Would waive oxygenate requirement for the State of California.	Reintroduction of previous years effort supported by MWD.
S 645 (Feinstein)	Would waive oxygenate requirement for the Nation.	Supported by MWD Pursuant to Policy Principles
S 267 (Feinstein)	Calls for increased priority for MTBE in underground storage tanks.	Supported by MWD Pursuant to Policy Principles
S 268 (Feinstein)	Regulates exhaust emissions for new spark-ignition gasoline marine engines.	Supported by MWD Pursuant to historic practice
HR 1398 (Pombo)	Calls for a ban on MTBE as soon as possible.	Supported by MWD Pursuant to Policy Principles
HR 1367 (Franks)	Calls for a ban on MTBE in 3 years.	Supported by MWD, if amended. Pursuant to Policy Principles