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THE UNCERTAIN FUTURE OF MTBE PRODUCTION:

EFFECTS OF THE U.S. ENERGY POLICY ACT OF 2005

by Cari Shiffman*

Fuel industry analysts project that the production of methyl tertiary butyl ether (“MTBE”),¹ an oxygenated fuel additive used to help reduce air pollution from automobiles,² will decrease in the United States over the next two years, due in part to the government’s support of ethanol over MTBE in last year’s U.S. Energy Policy Act (“Energy Act”) and domestic concerns over groundwater contamination.³ In recent years, controversy has surrounded MTBE due to assertions that the additive contaminates groundwater when leaked from underground storage tanks.⁴ The U.S. Environmental Protection Agency and the World Health Organization labeled it as a possible carcinogen when consumed in high doses.⁵ Additionally, 26 states banned MTBE usage because of water contamination concerns.⁶

The future of MTBE production in the United States is even more uncertain due to the exclusion of limited liability protection for MTBE producers in last year’s Energy Act.⁷ The House of Representatives (“House”) proposed to give limited liability protection to MTBE manufacturers in product defect suits filed after September 5, 2003, in exchange for MTBE producers’ contributions toward a trust fund for cleaning sites contaminated by MTBE.⁸ Domestic cleanup costs range from \$2 billion to \$25 billion.⁹ Following debates between the House and the Senate over limited liability protection for MTBE producers in the Energy Act, Congress redacted the limited liability provision from the Act.¹⁰ Additionally, Congress substituted the Clean Air Act’s oxygenated gasoline requirement with a renewable fuels plan that supports the gasoline additive ethanol over MTBE.¹¹

Valero, the second largest U.S. producer of MTBE, announced that it will stop MTBE production due to the elimi-

nation of limited liability protection in the Energy Act.¹² If other producers follow suit, then the U.S. gas supply may face supply disruptions, resulting in a rise in gas prices.¹³ Domestic MTBE production is expected to further decline as ethanol is increasingly substituted for MTBE.¹⁴

ENDNOTES:

¹ *MTBE*, CHEMICAL WK., Nov. 9, 2005, at 59.

² Chris Woodyard, *Refiner’s Change Could Raise Gas Prices*, USA TODAY, Aug. 5, 2005, at B1.

³ *MTBE*, *supra* note 1.

⁴ Darren Goode, *Barton Announces Deal on MTBE Liability, Trust Fund...*, CONG. DAILY, July 22, 2005, at 1 [hereinafter *Barton Deal*].

⁵ Environmental Protection Agency, Methyl Tertiary Butyl Ether, Drinking Water, <http://www.epa.gov/mtbe/water.htm> (last visited Mar. 12, 2006). The World Health Organization released a document reporting that MTBE is a potential carcinogen in rats, but cautioned against over applying these results to humans. See WORLD HEALTH ORGANIZATION, BACKGROUND DOCUMENT FOR DEVELOPMENT OF WHO GUIDELINES FOR DRINKING-WATER QUALITY: METHYL TERTIARY-BUTYL ETHER (MTBE) IN DRINKING-WATER (2005), available at http://www.who.int/water_sanitation_health/dwq/chemicals/MTBE200605.pdf (last visited Mar. 12, 2006).

⁶ *MTBE*, *supra* note 1.

⁷ Kara Sissell, *MTBE Liability Relief Dropped from Energy Bill*, CHEMICAL WK., Aug. 3, 2005, at 11.

⁸ Darren Goode, *Energy Bill Flash Points*, 37(30) NAT’L J. 2380, 2381 (2005) [hereinafter *Energy Bill*]; *Barton Deal*, *supra* note 4; Sissell, *supra* note 7.

⁹ ENSR International, a group supported by MTBE lobbyists, estimate cleanup costs to be only \$2 billion, while the American Water Works Associations estimates cleanup costs to be closer to USD twenty-five billion. See *Energy Bill*, *supra* note 8, at 2381.

¹⁰ Sissell, *supra* note 7.

¹¹ *MTBE*, *supra* note 1; Peck Hwee Sim, *Valero to Quit MTBE Production*, CHEMICAL WK., Aug. 10, 2005, at 12.

¹² Sim, *supra* note 11.

¹³ Woodyard, *supra* note 2.

¹⁴ *MTBE*, *supra* note 1.

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