



# Monroe County Legislature

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No: <u>050211</u>
Not to be removed from the Office of the Legislature Of Monroe County
Committee Assignment
<b>Memorializing Referral</b>

To The Honorable  
Monroe County Legislature  
39 West Main Street  
Rochester, NY 14614

**RE: Memorializing the United States Senate to Remove the "Safe Harbor" Provision of the Energy Policy Act of 2005, Pertaining to Corporate Liability for MTBE Remediation**

Honorable Legislators:

In the 1970s, the nation's petroleum-producing industries developed a gasoline additive known as MTBE (methyl tertiary-butyl ether) for the purpose of increasing gas efficiency while reducing the environmentally harmful byproducts associated with the burning of fossil fuels. Use of the additive increased after changes to the federal Clean Air Act in 1990.

However, in accordance with the rules of unintended consequence, subsequent studies have revealed that MBTE is very likely a cancer-causing agent, and in regions where fuel treated with MTBE has leaked into the water table, residential populations are at risk. A substance created to protect consumers and the environment now poses a very real danger to both.

Unfortunately, the MTBE threat has not spared Monroe County and New York state, where 89 and 2,727 MBTE spills, respectively, have been identified. (See attached map.)

The question now is one of remediation and responsibility. Clearly, the major oil corporations involved in the creation of MTBE are obligated to safely store fuel treated with it, and are also obliged to notify the public of potential dangers posed by their products. But just as clearly, the petroleum industry has sought to evade these obligations, at times forcing citizens to seek legal remedy. In 2002, for instance, a Lake Tahoe, California, jury found clear evidence of liability on the part of three major oil companies, awarding significant damages to the plaintiffs in the case. During the course of that trial, documents were entered into evidence indicating that corporate officers knew of the dangers posed by MTBE but took no action.

And so it is disappointing that the Bush Administration's Energy Policy Act, recently passed by the House of Representatives, includes a so-called "Safe Harbor" clause holding petroleum companies harmless from future MTBE liabilities. The provision does so by declaring that no fuel additive such as MTBE may ever be declared a "defective product" in a court of law. The Safe Harbor clause is to no small degree the result of intense petro-industry lobbying in Washington, DC, particular on the part of Saudi Arabian concerns.

In the interest of both public health and simple justice, the US Senate, as it considers the Energy Policy Act of 2005, must reverse the irresponsible actions taken by the House of Representatives. Corporations that have profited, especially of late, from the sale of petroleum must now bear some of the costs their products have inflicted upon the environment and the public.

I, therefore, request that my colleagues join me in memorializing the United States Senate to remove from the final version of the Energy Policy Act of 2005 the Safe Harbor provision described herein.

Please forward this matter to the appropriate officers listed herein for review and favorable action. This request shall have no impact on the 2005 Monroe County budget.

Respectfully submitted,

  
Edward M. O'Brien  
Legislator - District 17

  
Stephanie Polowe Aldersley  
Democratic Leader