

## **\$39M Deal Ends ConocoPhillips, Phillips 66 MTBE Claims**

By **Kat Sieniuc**

*Law360, New York (May 24, 2017, 3:25 PM EDT)* -- A New York federal judge gave a green light Tuesday to a \$39 million settlement in New Jersey's suit accusing ConocoPhillips and Phillips 66 of polluting the Garden State's waters with methyl tertiary butyl ether, or MTBE, a gasoline additive.

The judicial consent order U.S. District Judge Vernon S. Broderick signed off on stems from an MTBE case New Jersey brought against ConocoPhillips and dozens of other companies in 2007.

Though the order refers to ConocoPhillips, a spokesperson for the company said Thursday that ConocoPhillips had not been involved in the case since 2012, when it spun off its downstream assets into Phillips 66, a separate company.

ConocoPhillips' downstream liabilities, including MTBE liability, were transferred to Phillips 66, and ConocoPhillips isn't responsible for any of the \$39 million settlement payment, the spokesperson added.

A spokesperson for Phillips 66 confirmed to Law360 the company had "settled this case on terms mutually acceptable to both parties." Neither company admitted any liability under the deal.

Leland Moore of the New Jersey Attorney General's Office told Law360 on Thursday the settlement covered "ConocoPhillips Company, Phillips 66 Company and a number of other related corporate entities."

Phillips 66 joined numerous other companies, such as Vitol SA, Hess Corp. and Valero Energy Corp., that have cut deals in multidistrict litigation over MTBE in the U.S. District Court for the Southern District of New York.

New Jersey initially filed suit against ConocoPhillips and others in state court, but the case moved to New Jersey federal court and eventually ended up in the New York MDL. The defendants New Jersey targeted included MTBE manufacturers, oil refiners and major-brand marketers of gasoline that contained MTBE.

In 2015, Coastal Eagle Point Oil Co. and El Paso Corp. agreed to pay \$20 million to New Jersey to exit the litigation. Also in 2015, the state unveiled a \$2.15 million settlement with Switzerland-based oil trader Vitol, as well as a separate deal in the MTBE litigation with parties tied to the Lyondell Chemical Co. bankruptcy.

Those agreements, as well as Tuesday's, are part of a broader, steady series of settlements in the litigation in recent years.

MTBE, a known animal carcinogen and possible human carcinogen, contaminates the odor and taste of water, making it unsuitable for drinking, according to court documents. The chemical also biodegrades into the toxic substance tert-butyl alcohol, which irritates the skin and eyes and has been linked to cancer.

The New Jersey Department of Environmental Protection's complaint traces the history of the oil companies' knowledge of the dangers of MTBE back to 1980 or earlier and accuses them of engaging in a long-standing pattern of ignoring scientific evidence and deceiving government authorities, including the U.S. Environmental Protection Agency, about the harmfulness of the substance and its potential to cause severe contamination of groundwater.

It claims the companies originally chose MTBE because it was a cheap way to increase octane. The companies have argued that environmental regulations required them to include MTBE in gasoline, the complaint said.

The parties were not able to be immediately reached for comment.

Counsel information for Phillips 66 was not immediately available.

ConocoPhillips is represented by Matthew D. Thurlow of Latham & Watkins LLP.

The state is represented by New Jersey Attorney General Christopher Porrino and Deputy Attorney General Gwen Farley, as well as Leonard Z. Kaufmann of Cohn Lifland Pearlman Herrmann & Knopf LLP, Scott E. Kauff of the Law Offices of John K. Dema PC, Michael Axline of Miller Axline & Sawyer, and Tyler Wren of Berger & Montague PC.

The case is New Jersey Department of Environmental Protection et al. v. Atlantic Richfield Co. et al., case number 1:08-cv-00312, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Martin Bricketto. Editing by Jack Karp.