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**New CPR White Paper: MTBE Dispute Highlights
Importance of Tort Law in Protecting Public**

McGarity: 'MTBE proves that neither EPA nor industry can be trusted to protect public health. In such circumstances tort law is all that's left.'

Washington, DC ----- The current congressional push to exempt the petroleum industry from liability for fouling waterways across the nation with MTBE is based on a distorted version of how the polluting gasoline additive came into widespread use, according to "MTBE and the Need for Effective Tort Law," a new white paper from Thomas McGarity, president of the Center for Progressive Regulation.

In industry's version of events, the EPA forced it to use MTBE to comply with Clean Air Act requirements. But in reality, industry began using the additive long before the regulations in question, and EPA never required industry to use MTBE, McGarity says. Moreover, the industry lobbied for regulations that ensured that MTBE would wind up in drinking water. Writes McGarity:

In the 1980s, industry went to great lengths to make sure EPA allowed [MTBE] to remain in gasoline. Industry pressed EPA for soft underground storage tank regulations and got them. It avoided reporting to EPA the disturbing results of its own testing on MTBE's toxicity, and ignored indications of problems with MTBE and drinking water in order to avoid conducting research that could prove damaging to the bottom line. And it quashed a report by two Maine scientists that identified the MTBE problem so as to avoid triggering further regulation. For its part, EPA in the 1980s days of Anne Gorsuch Burford was a better friend to industry than the environment, so it paid far more attention to industry's concerns than to those of environmentalists.

"It's no surprise that the environment isn't a high priority for the petroleum industry, or that the EPA of the 1980s was eager to please industry even at the expense of the environment," McGarity said in releasing the white paper. "Industry's unlikely to change its spots, and we'll have such EPAs again – we do right now, as a matter of fact. That only underscores the importance of common law litigation. Industry fears it for good reason: it can force companies to put public health ahead of their private profit."

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In 2002, a finding by a California jury that several oil companies were liable for contaminating the water supply of Lake Tahoe led to a \$67 million settlement. Separately, several oil companies have tentatively agreed to pay the City of Santa Monica \$30 million in damages and spend more than \$200 million for a new water treatment plant. Similar lawsuits are pending throughout the country, and 15 additional states have banned MTBE from gasoline.

The damage from MTBE has been caused by leaking underground storage tanks at service stations, not by the burning of gasoline containing the additive. “Industry was grossly negligent in constructing and burying the first generation of underground storage tanks,” McGarity says. “You won’t hear the industry admit it, but that’s the real cause of the crisis. For its part, Congress required EPA to regulate the tanks, prompting upgrades and new double-walled steel or fiberglass tanks. But according to a 2002 GAO report, industry botched the job, leading to more leaks and more MTBE pollution.”

“They got exactly the regulations they wanted from a pliant EPA,” McGarity says. “They weren’t required to use MTBE. In any event, the real problem is that their tanks leaked. And now they want to pass the cost of cleaning up their mess to the taxpayers. And, of course, if it comes to that, it won’t be the federal government picking up the tab; it’ll be state and local jurisdictions. With Superfund already overwhelmed and underfunded, that’s who’ll be left paying for the cleanup if Washington buckles under to Big Oil on this.”

“In the end,” McGarity concludes, “this is a case study in the importance of tort law. Only by hauling the oil industry into court, presenting the facts to a judge or jury, and demanding justice are communities able to force the polluters to pay for their mess. We can’t trust industry to do it, and for the foreseeable future, we can’t trust the EPA.”

“MTBE and the Need for Effective Tort Law” is available on the web at http://www.progressiveregulation.org/articles/MTBE_506.pdf.

Founded in 2002, the Center for Progressive Regulation is a nonprofit research and educational organization of university-affiliated academics with expertise in the legal, economic, and scientific issues related to regulation of health, safety, and the environment. Through research and commentary, CPR seeks to inform policy debates, critique anti-regulatory research, enhance public understanding of the issues, and open the regulatory process to public scrutiny.