

APR 5 2000

EXECUTIVE ORDER

00-08


REBECCA McDOWELL COOK
SECRETARY OF STATE

WHEREAS, the fuel additive Methyl Tertiary-Butyl Ether (MTBE) is a common ingredient in higher octane gasoline and reformulated gasoline; and

WHEREAS, in November, 1998, U.S. EPA Administrator Carol M. Browner appointed a Blue Ribbon Panel on Oxygenates in Gasoline to investigate the air quality benefits and water quality concerns associated with oxygenates in gasoline; and

WHEREAS, in July of 1999, a Blue Ribbon Panel recommended the substantial reduction of the use of MTBE in gasoline, with some of the members recommending its elimination; and

WHEREAS, the Panel also stated that because "MTBE is currently an integral component of the U.S. gasoline supply both in terms of volume and octane...changes in its use, with the attendant capital construction and infrastructure modifications, must be implemented with sufficient time, certainty, and flexibility to maintain the stability of both the complex U.S. fuel supply system and gasoline prices; and

WHEREAS, on January 25, 2000, I wrote administrator Carol Browner urging her to take "*expeditious action to provide a national solution to address the use of MTBE in gasoline...*"; and

WHEREAS, I urged a national solution because I stated at the time, "*...if national measures are not implemented soon to prevent MTBE from further contaminating water supplies and endangering the health of our citizens, then individual states will devise different solutions that may not be protective....*"; and

WHEREAS, I believed then and believe now that it is an unsatisfactory alternative to allow individual states to adopt plans that solve the MTBE problem but create other problems with far reaching consequences on our citizens; and

WHEREAS, I believe the oxygenate requirement should be maintained in federal law and ethanol be used in place of MTBE; and

WHEREAS, on March 20, 2000, Administrator Browner and Agriculture Secretary Dan Glickman announced a legislative package "*...to encourage immediate Congressional action to reduce or eliminate MTBE and promote renewable fuels like ethanol...*"; and

WHEREAS, in addition to their enthusiastic support for ethanol, they also announced that the EPA was beginning the regulatory process they are required by Congress to follow before they can ban MTBE; and

WHEREAS, even though the first bill to address this subject was introduced in the spring of 1999 and assigned to the Senate Environment and Public Works Committee, Congress has not passed a single bill to address the problem; and

WHEREAS, instead of focusing their attention on a strategy to get Congress to take action which resolves the issue on a national basis in a protective and orderly fashion, certain members of the Missouri Congressional delegation have called on me to take unilateral action to ban MTBE statewide within a time frame which ranges from immediately, to as soon as possible, to over a three-year period, and finally after three years; and

WHEREAS, those same members have not expressed any concern in any of their communications over the impact of that unilateral action on the price and availability of gasoline, on the air quality, or on the potential reduction of federal highway funds that flow to the State of Missouri; and

WHEREAS, a series of statements issued the week of March 27, 2000, by members of the Congressional delegation, and the Missouri Senate and House of Representatives Republican Caucus illustrate my previously expressed concern that "... *individual states will devise different solutions that may not be protective...*" was correct because some members of the Missouri Congressional delegation appear to be devising different and opposite solutions without fully evaluating the health or economic impact on Missouri citizens; and

WHEREAS, some members want the oxygenate requirement to be maintained to protect ethanol, but another member urges me to follow California's and New Jersey's lead to eliminate the oxygenate requirement; and

WHEREAS, the Northeast States for Coordinated Air Use Management (NESCAUM) organization was asked by the Northeastern states to evaluate the MTBE situation in the Northeast portion of the United States; and

WHEREAS, while I disagree with their proposal to eliminate the oxygen mandate because I believe the oxygen mandate should be maintained and ethanol substituted for MTBE, I agree with the statement in their January 19, 2000, press release relating to their concerns over current levels of MTBE use: "*Absent changes in federal law, states are effectively prohibited from addressing this significant public concern.*"; and

WHEREAS, I know that an immediate unilateral statewide ban of MTBE, without authority from Congress and the appropriate waivers from the EPA, would result in higher gasoline prices, a lack of supply of gasoline, significantly reduced air quality, significantly reduce federal highway funds which would normally flow to the state of Missouri, a potential lawsuit by petroleum manufacturers, and possibly another NAFTA type lawsuit like the one filed when Governor Davis of California announced a "phase-out" of MTBE; and

WHEREAS, as a result of the flurry of statements and mixed opinions within the Missouri delegation, I am left with the impression that Congress is not going to resolve the MTBE issue in a timely manner; and

WHEREAS, I therefore notified Administrator Browner that the State of Missouri will ban MTBE statewide and will voluntarily withdraw from participation in the RFG program when certain conditions have been met or congressional action taken; and

WHEREAS, I gave a general description of those conditions in my letter to Administrator Browner and advised her that I would direct the Missouri Department of Natural Resources (DNR) to make the formal requests for waivers from the EPA as well as a formal notification to her of the additional congressional action required before the actual statewide ban of MTBE and withdrawal from the RFG program would occur; and

WHEREAS, in addition to the EPA actions, before we ban MTBE statewide and voluntarily withdraw from the RFG program, Congress will have to take action to ensure that Missouri citizens and tourists will not be subject to gasoline shortages, price increases or reduced air quality as a result of the ban; and

WHEREAS, before we ban MTBE and voluntarily withdraw from the RFG program, Congress must resolve the controversy surrounding the oxygenate requirement; clarify federal and state authority to regulate and/or eliminate the use of gasoline additives that threaten drinking water supplies; authorize the state of Missouri to eliminate MTBE as a fuel additive; and assure us that the state will not suffer a loss of federal highway funds for any other reason as a result of our ban of MTBE and increased use of ethanol.

NOW, THEREFORE, I, Mel Carnahan, Governor of the State of Missouri, do hereby find that "on balance, there is significant risk to the environment from using MTBE in gasoline in Missouri" and, by virtue of the power and authority vested in me by

the Constitution and statutes of the State of Missouri, do hereby issue this order to become effective immediately:

In order to maintain and improve our air and water quality I hereby order the following actions to be taken:

1. On behalf of the State of Missouri, the Director of the Department of Natural Resources (DNR) shall make a formal request to the Administrator of the U.S. Environmental Protection Agency for the following;

- a) a waiver for Missouri from appropriate provisions pursuant to the Clean Air Act and the Toxic Substances Control Act (TSCA) as they relate to the ability of the state to ban MTBE statewide; however, the state shall maintain the air quality standards in all non-attainment areas as provided for in the State Implementation Plan;
- b) a waiver for Missouri to withdraw from the RFG program without sanction or loss of federal funds as long as the air quality standards in all non-attainment areas are maintained as provided for in the State Implementation Plan;
- c) remove MTBE from the registry of gasoline additives permitted in Missouri;
- d) notify the State of Missouri that no business shall suffer from new or increased sanctions as a result of the state's ban of MTBE and withdrawal from the RFG program.

2. The DNR shall develop a timetable for the removal of MTBE from gasoline at the earliest possible date. The timetable should ensure adequate supply and availability of gasoline.

3. The Director of DNR shall put into effect the timetable established in section 2 above after the EPA has taken all actions requested in section 1 above and after Congress has done the following:

a) Congress has taken sufficient action to ensure that Missouri citizens and tourists will not be subject to:

1. gasoline shortages,
2. price increases or
3. reduced air quality as a result of the statewide ban on MTBE and withdrawal from the RFG program.

b) Congress has taken sufficient action to:

1. resolve the controversy surrounding the oxygenate requirement;
2. clarify federal and state authority to regulate and/or eliminate the use of gasoline additives that threaten drinking water supplies;
3. allow Missouri to eliminate MTBE as a fuel additive; and
4. ensure that Missouri will not suffer a loss of federal highway or any other funds and that no Missouri business shall suffer any sanctions as a result of the statewide ban of MTBE and increased use of ethanol.

4. When the EPA has complied with all requests contained in section 1 of this Executive Order and Congress has taken all actions required by

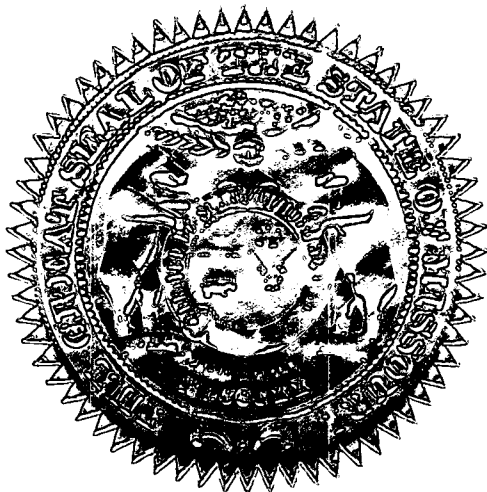
section 2 of this Executive Order, the Director of the DNR shall formally notify the EPA that the timetable of the State of Missouri's ban of MTBE is in effect and give the EPA notice of the state's official withdrawal from the RFG program while still maintaining the air quality standards in the non-attainment areas as provided for in the State Implementation Plan.

5. The Department of Natural Resources (DNR) and the Department of Health (DOH), shall expeditiously prioritize groundwater recharge areas and aquifers that are most vulnerable to contamination by MTBE and prioritize resources towards protection. The DNR, in consultation with DOH, the Department of Agriculture, and the Petroleum Storage Tank Insurance Fund (PSTIF), shall develop a clear set of guidelines for the investigation and cleanup of MTBE in groundwater at these sites.

6. The DNR shall seek legislation through the Missouri General Assembly to repeal any state law that prohibits DNR from instituting a statewide ban of MTBE.

7. The DNR shall pursue sufficient appropriations from the Missouri General Assembly for the PSTIF in order for the DNR to pursue sufficient allocation from the Board of Trustees of PSTIF in order to increase the frequency of inspections they currently perform and to rapidly respond to any potential threat of MTBE contamination in the water supply as a result of storage tank leaks.

8. The DNR and the Board of PSTIF shall seek extension of the sunset provision of the PSTIF.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 5th day of April, 2000.


GOVERNOR

ATTEST:


SECRETARY OF STATE