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SENATE JOINT MEMORIAL 8027

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State of Washington                      58th Legislature                      2004 Regular Session

By Senators Eide, Regala, Fairley, Fraser, Franklin, Jacobsen, Spanel, Kline and Keiser

Read first time 01/14/2004.            Referred to Committee on Natural Resources, Energy & Water.

1            TO THE HONORABLE GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES,  
2            AND TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF  
3            REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE  
4            UNITED STATES, IN CONGRESS ASSEMBLED, AND TO MIKE LEAVITT, SECRETARY OF  
5            THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AND TO SPENCER  
6            ABRAHAM, SECRETARY OF THE UNITED STATES DEPARTMENT OF ENERGY:

7            We, your Memorialists, the Senate and House of Representatives of  
8            the State of Washington, in legislative session assembled, respectfully  
9            represent and petition as follows:

10           WHEREAS, Methyl tertiary-butyl ether (MTBE) is a volatile oxygen-  
11           containing organic compound that has been added to gasoline to promote  
12           more complete combustion, reduce air pollution, and increase octane  
13           ratings; and

14           WHEREAS, MTBE is difficult to biodegrade, readily dissolves in  
15           water, and moves through soil and ground water rapidly, and renders  
16           water undrinkable due to its foul taste and odor of paint thinner; and

17           WHEREAS, In March of 2000, the United States Environmental  
18           Protection Agency (EPA) stated that the use of MTBE in our nation's  
19           fuel supply has created a significant and unacceptable risk to drinking  
20           water and ground water resources; and

1           WHEREAS, EPA's Office of Water has concluded that MTBE is a  
2 potential human carcinogen at high doses and continues to examine the  
3 health risks at lower levels; and

4           WHEREAS, The Washington state department of ecology conducted a  
5 study of existing underground storage clean-up sites that revealed  
6 nearly fifty percent had some contamination relating to the use of  
7 MTBE, with twenty-five percent of the sites exceeding the EPA's  
8 national drinking water advisory standard; and

9           WHEREAS, MTBE has caused extensive contamination of both ground  
10 water and surface water across the country, as shown by a nationwide  
11 study by the United States Geological Survey that found MTBE in  
12 eighty-six percent of wells sampled in industrial areas, thirty-one  
13 percent sampled in commercial areas, twenty-three percent in  
14 residential areas, and twenty-three percent in areas of mixed urban  
15 land use, parks, and recreational areas; and

16           WHEREAS, In 2001, the Washington State Legislature prohibited the  
17 intentional addition of methyl tertiary-butyl ether (MTBE) to gasoline,  
18 motor fuel, or clean fuel for sale or use after December 31, 2003; and

19           WHEREAS, Drinking water systems and their customers potentially  
20 face billions of dollars in costs to clean up contaminated supplies and  
21 secure new sources of water to replace shutdown wells; and

22           WHEREAS, State and federal funding for such cleanups is already  
23 limited at best and common law claims against manufacturers, seeking  
24 either injunctive or monetary remedies, provide important tools to  
25 clean up MTBE contamination; and

26           WHEREAS, The MTBE industry knew of the additive's environmental  
27 dangers long before it was put in use to meet the oxygenate  
28 requirement, as shown in documents uncovered in a lawsuit by the South  
29 Tahoe Public Utility District against oil companies which demonstrated  
30 the MTBE industry's knowledge since the early 1980s that the product  
31 spread rapidly in ground water and was difficult to clean up; and

32           WHEREAS, Congress has recently considered provisions that would  
33 shield the producers of MTBE from any legal claims that the chemical is  
34 "defective in design or manufacture"; and

35           WHEREAS, These provisions would establish an extremely troubling  
36 precedent in which Congress legislatively determines that harmful  
37 chemical compounds are not defective and renders irrelevant any

1 legitimate, substantial scientific and medical evidence regarding the  
2 health hazards of a dangerous product; and

3 WHEREAS, Such congressional action would amount to a staggering  
4 rollback of the "polluter pays" laws and an unwarranted preemption of  
5 state statutory and common law standards relating to manufacturer's  
6 product liability; and

7 WHEREAS, Neither the Clean Air Act, nor EPA's reformulated gasoline  
8 regulations, have ever required the use of MTBE in any way;

9 NOW, THEREFORE, Your Memorialists respectfully pray that the  
10 President, Congress, the Secretary of the United States Environmental  
11 Protection Agency, and the Secretary of the United States Department of  
12 Energy oppose the inclusion of a "safe harbor" provision in any  
13 legislation that essentially would grant manufacturers of methyl  
14 tertiary-butyl ether (MTBE) immunity from claims that the fuel additive  
15 is "defective in design or manufacture" or any other action that would  
16 seriously undermine efforts to clean up ground water and surface water  
17 contaminated by MTBE.

18 BE IT RESOLVED, That copies of this Memorial be immediately  
19 transmitted to the Honorable George W. Bush, President of the United  
20 States, Mike Leavitt, Secretary of the United States Environmental  
21 Protection Agency, Spencer Abraham, Secretary of the United States  
22 Department of Energy, the President of the United States Senate, the  
23 Speaker of the House of Representatives, and each member of Congress  
24 from the State of Washington.

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