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September 5, 2009

Via Email and Hand Delivery

Hon. Shira A. Scheindlin
United States District Judge
U.S. District Court, Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *City of New York v. ExxonMobil*, 04 CV 3417 (SDNY)
Dominguez Deposition

Dear Judge Scheindlin:

Plaintiff City of New York would like to play selected portions of the September 12, 2000 deposition of Mr. George S. Dominguez during the week of trial starting on September 8. The selection originally sent to ExxonMobil to provide an opportunity for counter-designation and objection is attached to this letter as Exhibit 1. Counsel for ExxonMobil "object[s] to the entirety of this deposition as irrelevant to any issue to be presented to the jury," and claims that "[t]he only possible relevance of Mr. Dominguez's testimony is to Plaintiff's TSCA claim." See Exhibit 2 (email correspondence from Lauren Handel to Marnie Riddle).

But Mr. Dominguez's testimony is relevant to the City's non-TSCA claims in at least two ways. First, the City is arguing to the jury in Phase 3B that ExxonMobil failed to warn the public and the government about the hazards of gasoline containing MTBE. Second, ExxonMobil has stated several times, including in their opening argument on Phase 3B, that the EPA was fully informed of all the relevant information about MTBE.

Mr. Dominguez, however, testifies that the MTBE Committee was aware that the EPA wanted information about "the presence and persistence of MTBE in ground water," that Mr. Dominguez would have transmitted any such information to the EPA had he received it, and that the only reason he did not provide such information to the EPA was that the members of the MTBE Committee, including Exxon, did not provide it to him. (Exhibit 1, pages 25-26, Clips 89-90.) This means that Exxon failed to warn the EPA, and through the EPA both the government and the public, about the hazards of MTBE in ground water. This information is not merely relevant to the City's TSCA claim, but also *plainly* relevant to the City's failure to warn claim.

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Mr. Dominguez's testimony about TSCA in the earlier portion of his deposition serves to lay a foundation for understanding that ExxonMobil was obliged to respond to EPA's requests for "health-related information and environmental information," and the MTBE Committee, of which Exxon was a member, served *in part* to provide responses to those requests. *See* Exhibit 1, page 2, Clip 6; page 15, Clip 53; page 14, Clip 52. In that context, Mr. Dominguez testifies that the MTBE Committee was created in order to provide information *to the government and the public* (Exhibit 1, page 12, Clip 44; page 14, Clip 52), not merely to provide TSCA compliance information to the EPA.

Before playing the video recording of Mr. Dominguez's testimony, the City would like to show, using documentary evidence, that Exxon was a member of the MTBE Committee between 1988 and 1995 (Exhibit 3) and that Exxon identified Mr. Dominguez and the MTBE Committee as a contact to the EPA for "all proceedings and developments concerning MTBE testing." (Exhibit 4 (PL-2590)). The City would also like to read into the record a portion of the testimony of Dr. Robert W. Biles (Exhibit 5) who states that "[t]he OFA [of which the MTBE Committee was a part] was chartered to represent Exxon in submissions" to the EPA. *See* Exhibit 5 (February 8, 2007 Deposition of Robert W. Biles, Ph.D., p. 199, lines 20-21).

In sum, Exxon's membership in the MTBE Committee, the fact that the MTBE Committee was created to serve as an information clearinghouse between MTBE gasoline producers and the public and government, and the fact that the MTBE Committee did not receive full information about the dangers to groundwater posed by MTBE are all highly relevant to the City's failure to warn claim, and Mr. Dominguez's testimony should be presented to the jury as part of Phase 3B of this trial. Accordingly, this Court should overrule Exxon's relevance objection and allow the testimony at issue to be shown.

Respectfully submitted,



Victor M. Sher


Cc: All Counsel via LNFS & Email

EXHIBIT 1

MTBE - Phase 3

 Dominguez, George (Vol. 01) - 09/12/2000

1 CLIP (RUNNING 01:12:10.097)

 Dominguez 09.01.09 Trial Clip

GDO-002

99 SEGMENTS (RUNNING 01:12:10.097)



1. PAGE 10:03 TO 10:20 (RUNNING 00:00:47.967)

03 Q. Could you state your full
04 name for the record please, sir?
05 A. Certainly. George, S, which
06 is Steven, Dominguez.
07 Q. Can you provide us a brief
08 history of your educational background?
09 A. Certainly. I attended the
10 City College of New York, Fairleigh
11 Dickinson University. Obtained a BS and
12 an MBA from Kentucky Christian, and much
13 later on a Ph.D. from Sheffield
14 University in Sheffield England.
15 Q. What did you obtain your
16 Ph.D. in?
17 A. Oh, environmental health
18 sciences, which was a concentration in
19 material safety data sheets and hazard
20 communication.

2. PAGE 13:10 TO 14:20 (RUNNING 00:01:46.134)

10 Q. If you could give us a brief
11 description of your employment
12 background?
13 A. Certainly. I was employed
14 briefly, as I mentioned earlier, as a
15 medical technician. That was at
16 Maimonides Hospital in Brooklyn, New
17 York.
18 Then I left them to join
19 Ciba-Geigy Corporation in 1953. And I
20 was employed at Ciba-Geigy until 1981.
21 And I had various jobs therein.
22 I left Ciba-Geigy in '81 to
23 take on the presidency of Springborn
24 Regulatory Services in Enfield,
00014:01 Connecticut. And that was from '81 to
02 '84.
03 Then I joined SOCMA,
04 Synthetic Organic Chemical Manufacturers
05 Association, in 1984. I was employed by
06 them until approximately 1990. I say
07 approximately because in the latter part
08 of my work with them, I became a
09 part-time employee as opposed to a
10 full-time employee, and then eventually I
11 was just a consultant to them. And on an
12 hourly rated basis.
13 So, it was a transitional
14 period there, but I left them in 1990.
15 And then I started and still maintain my
16 own business.
17 Q. What's the name of your own
18 business?
19 A. Regulatory Assistance

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20 Corporation.

3. PAGE 15:04 TO 15:15 (RUNNING 00:00:27.766)

04 Q. And then in 1953 you went to
05 work for Ciba-Geigy?

06 A. Yes.

07 Q. What kind of company is
08 that?

09 A. Ciba-Geigy is a diversified
10 chemical company. At the time I was
11 employed by them we had four major
12 divisions; an agricultural chemical
13 division, a dyes and chemical division, a
14 plastics and additives division, and a
15 pharmaceutical division.

4. PAGE 18:18 TO 19:04 (RUNNING 00:00:29.400)

18 Q. When you were with
19 Ciba-Geigy, did you ever have an
20 opportunity or a situation where you
21 assisted that company in dealings with
22 the EPA under TSCA, the Toxic Substances
23 Control Act?

24 A. Many times.

00019:01 Q. And in those instances,
02 would that be related to the introduction
03 of a chemical into the marketplace?

04 A. Among other things. Yes.

5. PAGE 20:10 TO 20:20 (RUNNING 00:00:25.100)

10 Q. What is TSCA?

11 A. Toxic Substances Control Act
12 enacted October 26th, 1976.

13 Q. What does it provide?

14 A. It provides for the
15 regulation of the introduction of new
16 chemicals as well as the control of
17 existing chemicals through a series of
18 specifics contained in the fundamental
19 statute and subsequent regulations
20 promulgated by EPA.

6. PAGE 22:21 TO 23:03 (RUNNING 00:00:13.567)

21 Q. Okay. In mid 1980's did the
22 EPA under TSCA have the authority to
23 request health related information and
24 environmental information from

00023:01 manufacturers of particular products?

02 A. I think they did at that
03 time.

7. PAGE 24:07 TO 24:13 (RUNNING 00:00:11.000)

07 Q. Sir, based on your
08 experience at Ciba-Geigy when you've
09 testified that you dealt with the EPA
10 under TSCA on hundreds of chemicals;
11 correct?

12 A. I beg your pardon. What did
13 you say I did?

8. PAGE 24:14 TO 24:19 (RUNNING 00:00:07.100)

14 Q. You dealt with the EPA or
15 oversaw the communications with the EPA
16 under TSCA for hundreds of chemicals;

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17 correct?
18 A. Yes.
19 Q. Correct?

9. PAGE 27:01 TO 27:18 (RUNNING 00:00:58.967)

00027:01 Q. Okay. Under Section 8,
02 based on your understanding of TSCA, is
03 there a provision that deals with
04 supplementation of information?
05 A. There are rules issued under
06 Section 8 applicable to specific chemical
07 substances. Those applicable rules
08 require the submission of safety and
09 health studies. And I believe there is a
10 provision, I haven't visited that in a
11 long time, to require the submission of
12 any subsequently developed data, again,
13 for those specific chemicals cited in the
14 regulation.
15 Q. Okay. Now, in 1984, you
16 joined SOCMA; correct?
17 A. Yes.
18 Q. Tell me again what SOCMA is.

10. PAGE 28:02 TO 28:09 (RUNNING 00:00:21.066)

02 A. Synthetic Organic Chemical
03 Manufacturers Association.
04 Q. Okay. What purpose does it
05 serve?
06 A. It was a trade association
07 representing the interests of its
08 membership in connection with a whole
09 variety of activities.

11. PAGE 28:10 TO 29:05 (RUNNING 00:01:01.600)

10 Q. What is the OFA?
11 A. Well, the OFA, I assume it
12 still is, I don't know, was the
13 Oxygenated Fuels Association.
14 Q. Do you know when the
15 Oxygenated Fuels Association first began?
16 A. I don't know precisely. It
17 was probably 1982 or thereabouts. It was
18 prior to my joining SOCMA.
19 Q. What was the OFA's
20 relationship with SOCMA back when you
21 began employment at SOCMA?
22 A. The easiest way to visualize
23 SOCMA is as in a sense two separate
24 businesses, if will you.
00029:01 The Synthetic Organic
02 Chemical Manufacturer itself, per se,
03 represented several, probably in the
04 order of 100 chemical companies that
05 belonged to the association. It was the

12. PAGE 30:07 TO 30:22 (RUNNING 00:00:37.300)

07 was that SOCMA is a trade
08 association on the one hand, but
09 it was also a management
10 organization providing
11 infrastructural support and staff
12 to what we refer to as special
13 projects.
14 BY MR. SUMMY:

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15 Q. Now, did SOCMA provide a
16 trade association for hundreds of
17 chemical manufacturers?
18 A. Yes. Well, I don't know
19 about hundreds. Circa 100.
20 Q. Okay. Was OFA a special
21 project of SOCMA?
22 A. Yes.

13. PAGE 33:01 TO 33:16 (RUNNING 00:00:57.367)

00033:01 Q. Now in 1984, did you have
02 any dealings with OFA?
03 A. Yes.
04 Q. Describe those.
05 A. I was assigned by SOCMA to
06 be a staff representative for OFA,
07 provide staff support services to OFA.
08 Q. And how would you do that?
09 A. Convene meetings, provide
10 minutes of meetings, make arrangements
11 for any discussions that the members
12 might wish to have with either our
13 internal support staff or any external
14 support, provide a newsletter for the
15 association members, and assist in the
16 recruitment of new members.

14. PAGE 34:04 TO 34:07 (RUNNING 00:00:17.100)

04 Q. What type of companies back
05 in 1984 were members of OFA?
06 A. Producers of fuel oxygenates
07 and users of fuel oxygenates.

15. PAGE 34:08 TO 34:21 (RUNNING 00:00:51.533)

08 Q. Back in 1984 when you joined
09 SOCMA, were major oil and gas companies
10 members of OFA?
11 A. Some as members of OFA.
12 Q. At some point in time while
13 serving as a staff representative with
14 the OFA, did the OFA become interested in
15 a chemical by the name of MTBE,
16 Methyl-Tertiary Butyl Ether?
17 A. Yes, they did.
18 Q. Do you recall approximately
19 when that was?
20 A. That would have been
21 basically from the 1985/1986 period.

16. PAGE 34:22 TO 34:24 (RUNNING 00:00:10.333)

22 Q. What is your first
23 recollection of monitoring MTBE as a
24 staff representative with OFA?

17. PAGE 35:01 TO 35:06 (RUNNING 00:00:14.000)

00035:01 A. I'm not sure I understand
02 the question. What does monitoring mean
03 in that context?
04 Q. As a staff representative,
05 keeping up with a topic of interest to
06 your members.

18. PAGE 35:07 TO 35:11 (RUNNING 00:00:18.600)

07 A. Definitely from '84/'85

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08 onwards because we were interested in all
09 oxygenates. So perhaps I should clarify
10 and say as a staff representative, we
11 were interested in all oxygenates.

19. PAGE 37:11 TO 39:03 (RUNNING 00:02:17.267)

11 Q. Back in 1984/1985 when you
12 were a staff representative for OFA, do
13 you recall when you first learned that
14 MTBE was more soluble in ground water
15 than let's say the BTEX chemicals,
16 benzene, toluene, ethyl benzene, and
17 xylene?

18 A. I don't believe I ever
19 learned that. I'm not sure that's
20 scientifically true.

21 Q. So your testimony is, is
22 that as you sit here today, you don't
23 recall ever knowing that MTBE was more
24 soluble in ground water than the BTEX
00038:01 chemicals?

02 A. No, I don't.

03 Q. Do you recall any member of
04 OFA ever informing you of that fact?

05 A. No. I recall discussions
06 about MTBE, but not differential
07 solubility.

08 Q. Back in the 1984/'85 time
09 frame when you were a staff
10 representative at OFA, do you recall
11 learning that MTBE, when released to
12 ground water, was more mobile and
13 traveled faster than the BTEX chemicals?

14 A. I recall that was stated by
15 some individuals, agencies, whatever. I
16 don't recall that being documented.

17 Q. Sir, do you recall, as you
18 sit here today, any member companies of
19 OFA informing you of the fact that once
20 MTBE was released into ground water, that
21 it would travel faster and further than
22 the BTEX chemicals of gasoline?

23 A. No, I don't recall that.

24 I recall, as indicated,
00039:01 discussions about MTBE and differential
02 solubility, but not that specifically.
03 No.

20. PAGE 39:05 TO 39:11 (RUNNING 00:00:24.000)

05 Sir, as you sit here today,
06 do you recall any of the member companies
07 of OFA informing you that MTBE was much
08 more resistant to biodegradation than
09 let's say the BTEX chemicals?

10 A. No, I don't recall any
11 discussions about biodegradation per se.

21. PAGE 39:12 TO 40:15 (RUNNING 00:01:20.300)

12 Q. Sir, do you recall a time
13 back in the mid 1980's when the EPA
14 designated MTBE under TSCA?

15 A. Yes. I do.

16 Q. What did it mean when the
17 EPA placed that designation under TSCA on
18 a chemical?

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19 A. It meant that it was going
20 to be considered by the agency for
21 potential testing.
22 Q. What type of testing?
23 A. I don't think that was at
24 that time specified. I think it was to
00040:01 be determined subsequently.
02 Q. Sir, do you recall MTBE
03 being designated by EPA under TSCA?
04 A. Yes.
05 Q. Do you recall approximately
06 when that was?
07 A. No. It would have been in
08 the '80s, but I don't recall the precise
09 date.
10 Q. Okay. Do you recall at that
11 time in the mid 1980's, after EPA
12 designated MTBE under TSCA, that you were
13 involved in the formation of what has
14 become known as the MTBE Committee?
15 A. Yes.

22. PAGE 40:16 TO 40:19 (RUNNING 00:00:16.233)

16 Q. Sir, do you recall when you
17 began representing the industry as the
18 executive director of the MTBE Committee
19 in communications with the EPA?

23. PAGE 40:24 TO 41:03 (RUNNING 00:00:10.166)

24 THE WITNESS: Approximately
00041:01 1986, I believe, was when the task
02 force was created. I don't recall
03 the exact date.

24. PAGE 41:18 TO 41:21 (RUNNING 00:00:11.366)

18 Q. Whose idea was it to form
19 the MTBE Committee to deal with the EPA
20 on the TSCA issue?
21 A. Members of OFA.

25. PAGE 43:22 TO 44:02 (RUNNING 00:00:15.033)

22 Q. At some point in time, was
23 there a decision made by someone to
24 include you in communications with the
00044:01 EPA related to MTBE?
02 A. Yes.

26. PAGE 45:13 TO 46:04 (RUNNING 00:00:48.300)

13 Q. Okay. At the time that the
14 OFA made the decision to oversee the
15 representation of MTBE with the EPA, was
16 the MTBE Committee formulated at that
17 time?
18 A. No. I think it was as a
19 result of that.
20 Q. Okay. Who at the OFA made
21 the decision to oversee the
22 communications with the EPA related MTBE?
23 A. The OFA management
24 committee, steering committee, whatever
00046:01 its proper term was at the time.
02 Q. Would that have been
03 comprised of members of the OFA?
04 A. Yes.

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27. PAGE 46:05 TO 46:11 (RUNNING 00:00:25.500)

05 Q. Do you recall who the
06 members of the OFA were that made the
07 decision for the OFA to oversee
08 communications with the EPA related to
09 MTBE?
10 A. No, I do not recall all of
11 them.

28. PAGE 46:18 TO 46:20 (RUNNING 00:00:07.633)

18 Q. Do you recall Exxon?
19 A. Now that you mention them,
20 yes.

29. PAGE 47:17 TO 48:07 (RUNNING 00:00:21.900)

17 Q. Well, if you take a look at
18 Exhibit 2.
19 A. Okay.
20 Q. The title is Minutes for the
21 Public Focus Meeting for MTBE December
22 17th, 1986; correct?
23 A. Yes.
00048:01 Q. And if you take a look at
02 about the third page, you'll see a
02 sign-in sheet?
03 A. Right.
04 Q. And I believe if you look at
05 the third name down, that is you;
06 correct?
07 A. Mm-hmm.

30. PAGE 48:18 TO 49:01 (RUNNING 00:00:29.933)

18 So initially you began
19 showing up at the meetings with the EPA
20 in your capacity with OFA?
21 A. Yes.
22 Q. Okay. Now, if you take a
23 look at the minutes and you take a look
24 at the first paragraph on Deposition
00049:01 Exhibit Number 2, and if you look at

31. PAGE 49:06 TO 50:12 (RUNNING 00:01:10.100)

06 Q. That one right there. And
07 if you take a look at the last two
08 sentences of the first paragraph, it
09 begins "an additional concern?"
10 A. Mm-hmm. Yes.
11 Q. It says, An additional
12 concern brought out by TRDB research was
13 the contamination of ground water
14 supplies by MTBE. There are over 700,000
15 underground storage tanks for petroleum
16 products in the US and about 30 percent
17 of these tanks leak.
18 Do you see that entry?
19 A. Yes.
20 Q. Now, you were at this
21 meeting of December 17th, 1986; correct?
22 A. Yes.
23 Q. And at this meeting, the EPA
24 brought out an additional concern over
00050:01 MTBE's contamination of ground water;
02 correct?
03 A. Yes.

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04 Q. And if you look down at the
05 last paragraph of that document, on the
06 first page, it says, The industry
07 representatives were encouraged to submit
08 supplemental information and the
09 mandatory 8(a) and 8(d) information for
10 the Agency's course setting process.
11 Do you see that?
12 A. Yes.

32. PAGE 57:02 TO 57:06 (RUNNING 00:00:11.033)

02 Q. Well, isn't it important
03 that companies like ARCO Chemical
04 Company, who do provide information to
05 the EPA under TSCA, that that information
06 be forthcoming and accurate?

33. PAGE 58:13 TO 58:13 (RUNNING 00:00:02.400)

13 I would have such an expectation.

34. PAGE 61:05 TO 61:19 (RUNNING 00:00:35.133)

05 Q. Have you had the opportunity
06 to take a look at Deposition Exhibit
07 Number 5?
08 A. I have.
09 Q. Deposition Exhibit Number 5
10 is a -- the first page is a letter dated
11 January 9th, 1987, from ARCO Chemical
12 Company, W. J. Kilmartin to Mr. J. A. Del
13 Pup at Texaco. And it says, Dear John:
14 As discussed, attached is the proposal
15 that George Dominguez from OFA made.
16 I've included the proposed agenda for the
17 January 16, 1987, meeting.
18 Do you see that?
19 A. Yes.

35. PAGE 61:20 TO 62:01 (RUNNING 00:00:19.000)

20 Q. And then attached to it,
21 beginning with the second page, is a
22 document entitled Proposal and Rationale
23 for the Formation of an MTBE Group dated
24 January 16th, 1986. Do you see that?
00062:01 A. Yes.

36. PAGE 62:02 TO 62:14 (RUNNING 00:00:37.267)

02 Q. My question is, who drafted
03 the proposal and rationale for the
04 formation of an MTBE group?
05 A. I did.
06 Q. So you would have drafted
07 the -- beginning with the second page of
08 Deposition Exhibit Number 4, going all
09 the way through the agenda. And I
10 realize those may not be your handwritten
11 notes on the agenda at the back of the
12 exhibit, but would you have drafted the
13 agenda as well?
14 A. Yes.

37. PAGE 62:20 TO 63:02 (RUNNING 00:00:10.833)

20 Q. Correct. I believe that on
21 the second January 16th, 1986, it should
22 read 1987; correct?

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23 A. (Gesturing.)
24 Q. Is that your understanding
00063:01 Mr. Dominguez?
02 A. Yes.

38. PAGE 63:07 TO 63:12 (RUNNING 00:00:19.000)

07 Q. What prompted you to prepare
08 this document?
09 A. The premise of initiating an
10 MTBE task force necessitated inclusion of
11 other companies that were not members of
12 OFA.

39. PAGE 63:19 TO 63:24 (RUNNING 00:00:21.000)

19 Q. After you prepared the
20 document, what did you do with it?
21 A. As far as I recall, we sent
22 it to OFA member companies and others
23 that we thought might be interested in
24 joining an MTBE organization.

40. PAGE 66:18 TO 68:20 (RUNNING 00:01:54.433)

18 Q. When we went off the record
19 I was reading from the first paragraph of
20 Deposition Exhibit Number 5 on the fourth
21 page. It says, It is well recognized
22 that MTBE is growing in importance. Its
23 use in gasoline is becoming more widely
24 accepted with a commensurate increase in
00067:01 the volume being used.
02 And then you say, From the
03 perspective of its existing market share
04 as well as to provide for additional
05 market development, the establishment of
06 a discrete group that could represent
07 MTBE interests is logical at this time.
08 In fact, the logic of establishing an
09 MTBE group in the very near future is
10 further reinforced by some recent
11 developments.
12 And the first development
13 you state is, The potential need for
14 testing MTBE pursuant to potential EPA
15 actions on health hazards of MTBE and
16 gasoline containing MTBE. Do you see
17 that?
18 A. Yes.
19 Q. And then if you look down at
20 the third bullet point you have, Possible
21 representation with the state of Maine
22 regarding contention that MTBE is a
23 ground water contaminate. Do you see
24 that?
00068:01 A. Yes.
02 Q. Sir, do you recall at the
03 time that you wrote the -- this document
04 that has a heading, The Need for
05 Establishing an MTBE Task Force, that some
06 regulators in the state of Maine had come
07 out and documented a number of sites
08 where MTBE had contaminated ground water
09 in the state of Maine?
10 A. I don't remember specific
11 citations, but I, in principle, recall
12 that.

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13 Q. If you take a look at down
14 below there is a section called The Need
15 for an MTBE Task Force.
16 A. Mm-hmm.
17 Q. And you basically document
18 two recent issues of considerable
19 importance to the future of MTBE. Do you
20 see that?

41. PAGE 69:03 TO 73:02 (RUNNING 00:03:38.033)

03 THE WITNESS: Yeah, right.
04 BY MR. SUMMY:
05 Q. And you state there had been
06 two recent issues of considerable
07 importance to the future of MTBE.
08 A. Yes.
09 Q. Do you see that?
10 A. Yes.
11 Q. And one of them is EPA's
12 examination of MTBE under TSCA; correct?
13 A. Yes.
14 Q. There is also a section on
15 fuel contamination. Do you see that?
16 A. Yes.
17 Q. You cite that as a reason to
18 prepare or formulate an MTBE group;
19 correct?
20 A. Yes.
21 Q. And then the last issue is
22 the Maine ground water contaminant issue.
23 Do you see that?
24 A. Yes.
00070:01 Q. And you state that The state
02 of Maine has established a maximum
03 contaminant level of 50 parts per billion
04 for MTBE. According to recent reports,
05 concentrations of 690 parts per billion
06 were found in drinking water. The Maine
07 Department of Environmental Protection
08 has issued a report on the hazards of
09 MTBE as a ground water contaminant and
10 has recommended that MTBE should be
11 banned as a gasoline blending component
12 or at a minimum stored in extra-secured
13 tanks. Do you see that?
14 A. Yes.
15 Q. Why was the Maine ground
16 water contaminant issue a development
17 that you believe should lead to the
18 formation of an MTBE group?
19 A. I believe that it was part
20 of enumerating concerns relative to MTBE.
21 Q. What do you mean?
22 A. I mean that in the context
23 of forming an MTBE group, people are
24 naturally interested in why should such
00071:01 an institution be formed. On that
02 premise you enumerate areas of actual or
03 potential concern.
04 Q. And why was the Maine ground
05 water contaminant issue a concern?
06 A. Well, clearly it imposed a
07 potential for disruption of MTBE use,
08 whether it be in Maine or elsewhere.
09 Q. After that you lay out the
10 objective of an MTBE task force. Do you

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11 see that?
12 A. Yes.
13 Q. And you state some of the
14 things that the MTBE Committee would do
15 under your view of things; correct?
16 A. Could do.
17 Q. Okay. And then you list out
18 specific activities that the task force
19 could undertake; correct?
20 A. Yes. Correct.
21 Q. And among those would be to
22 liaison with the EPA regarding the ITC
23 listing of MTBE; correct?
24 A. Correct.
00072:01 Q. And then on the next page
02 you continue with the various activities
03 the specific committee could undertake.
04 And among those would be the development
05 of environmental impact analysis. Do you
06 see that?
07 A. Yes.
08 Q. Sir, do you know if anyone,
09 including the MTBE Committee, ever
10 developed an environmental impact
11 analysis on MTBE?
12 A. Not that I recall.
13 Q. You also have down that one
14 of the activities that the committee
15 could do would be to represent MTBE
16 interests in Maine; correct?
17 A. Yes.
18 Q. Also, after that would be to
19 evaluate potential ground water
20 contamination?
21 A. Yes.
22 Q. Develop market for MTBE?
23 A. Yes.
24 Q. And act as an informational
00073:01 resource for MTBE; correct?
02 A. Yes.

42. PAGE 75:05 TO 75:21 (RUNNING 00:00:50.600)

05 Q. Sir, have you had the
06 opportunity to review Deposition Exhibit
07 Number 6?
08 A. Yes.
09 Q. And it is a document on OFA
10 letterhead entitled Oxygenated Fuels
11 Association MTBE Technical Committee
12 Meeting Minutes, dated Friday, January
13 23rd, 1987. The meeting having taken
14 place in Washington, DC. Do you see
15 that?
16 A. Yes.
17 Q. Now, what was the purpose of
18 this meeting?
19 A. That was essentially an
20 organizational meeting in connection with
21 forming an MTBE association.

43. PAGE 76:04 TO 76:20 (RUNNING 00:00:38.234)

04 Q. Okay. And the minutes are
05 dated January 23rd, 1987, but it appears
06 that the meeting took place on Friday,
07 January 16th, 1987; correct? And I'm
08 looking at that in the first paragraph.

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09 A. That is what it says. I
10 can't account for the discrepancy.
11 Q. And then it provides a list
12 of those who were in attendance at the
13 meeting; correct? And it's the first
14 subheading.
15 A. In the first page, yes.
16 Q. Okay. And certainly you
17 were present at this meeting?
18 A. Yes.
19 Q. Correct?
20 A. Yes.

44. PAGE 78:09 TO 80:08 (RUNNING 00:01:34.367)

09 Q. And what it describes there
10 is Mr. Ed Guetens of ARCO began to
11 explain the reasons behind establishing
12 the group. Do you see that?
13 A. Yes.
14 Q. And if you go to the second
15 page, page 2, in the first full
16 paragraph, it says in this context,
17 Mr. Guetens reviewed the information
18 contained in the letter of invitation of
19 the meeting, and in specific the paper
20 prepared by Mr. Dominguez, executive
21 director of OFA. Do you see that?
22 A. Yes.
23 Q. And there he's talking about
24 your paper which we identified as part of
00079:01 Deposition Exhibit Number 5, which was
02 entitled Proposal and Rationale for the
03 Formation of an MTBE Group; correct?
04 A. Yes.
05 Q. And after that, Mr. Guetens
06 then outlined numerous objectives that
07 the organization might have. Do you see
08 those?
09 A. Yes.
10 Q. Number 1 is represent MTBE
11 interest to EPA regarding ITC action.
12 Number 2, provide a form in
13 which MTBE producers, importers and users
14 could provide a basis for responding to
15 environmental concerns that have been
16 raised in a number of states regarding
17 ground water contamination.
18 Number 3 is prepare
19 technical literature.
20 And number 4, assist in
21 market development by providing an
22 organization which would be able to
23 provide information to the government and
24 public. Do you see that?
00080:01 A. Yes.
02 Q. And the next paragraph
03 Mr. Guetens summarizes. He says, in
04 summary, he indicated that serious
05 consideration should be given to the
06 establishment of the group. Do you see
07 that?
08 A. Yes.

45. PAGE 80:20 TO 81:05 (RUNNING 00:00:19.133)

20 Q. Sir, at this point in time,
21 did you feel that it was important that

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22 such a group be established?
23 A. Yes.
24 Q. And why is that?
00081:01 A. I felt that in the same
02 context that we needed representation for
03 oxygenated fuels, it would be
04 appropriate, given the importance of
05 MTBE, to have an organization for MTBE.

46. PAGE 81:06 TO 81:15 (RUNNING 00:00:21.000)

06 Q. Did you also feel it was
07 important to establish a group because of
08 the Maine, state of Maine ground water
09 issue that had arisen?
10 A. I believe all the points
11 that we considered to be the
12 justification for the group were
13 enumerated in the rationale for the
14 paper, I mean the rationale paper that we
15 presented.

47. PAGE 81:21 TO 81:24 (RUNNING 00:00:05.000)

21 Q. And the state of Maine
22 ground water issue was certainly one of
23 those points; correct?
24 A. Yes, it was.

48. PAGE 83:10 TO 84:05 (RUNNING 00:00:41.000)

10 Q. Now, if you look at page 3,
11 there is a review of the ground water
12 contamination issue. Do you see that?
13 A. Yes.
14 Q. And a Mr. James D. DeJovine
15 with ARCO, it states, he reviewed the
16 question of ground water contamination
17 highlighting the study conducted in the
18 state of Maine and distributed a copy of
19 the paper entitled MTBE as a ground water
20 Contaminant prepared by Dr. Peter
21 Garrette, Marcel Moreau, and Jerry Lowry
22 of the University of Maine. Do you see
23 that?
24 A. Yes.
00084:01 Q. Certainly the Maine ground
02 water issue was one of the issues that
03 was giving rise to the need to formulate
04 the MTBE Committee; correct?
05 A. Yes.

49. PAGE 84:20 TO 85:08 (RUNNING 00:00:28.000)

20 Q. If you look at the next
21 paragraph, it says, Mr. DeJovine
22 indicated that other states such as North
23 Carolina have also raised this question,
24 and that while it was not a concern
00085:01 raised by the ITC in their recommendation
02 to EPA, that EPA in their December 16th,
03 1986, focus meeting had indicated that
04 they intended to address the
05 environmental issue as well as the
06 toxicological concerns raised by ITC in
07 their review. Do you see that?
08 A. Yes.

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50. PAGE 89:21 TO 90:03 (RUNNING 00:00:16.000)

21 Q. What I would like to ask you
22 about is, what happened after this
23 meeting? In other words, was a committee
24 established?
00090:01 A. An MTBE Committee?
02 Q. Yes.
03 A. Yes.

51. PAGE 92:02 TO 92:18 (RUNNING 00:00:43.000)

02 Q. Sir, have you had a chance
03 to review Deposition Exhibit Number 7?
04 A. Yes, I have.
05 Q. Can you identify this
06 document?
07 A. MTBE Committee bylaws.
08 Q. Sir, was this the bylaws of
09 the MTBE Committee that was established?
10 A. They are the proposed
11 bylaws. I don't recall if they are
12 exactly what was finally established.
13 Q. Did the MTBE Committee after
14 it was formed adopt bylaws?
15 A. Yes, they did.
16 Q. Do these appear to be a
17 draft of those bylaws?
18 A. Yes.

52. PAGE 93:15 TO 95:09 (RUNNING 00:01:32.000)

15 Q. Okay. Now, if you look at
16 the bylaws, Deposition Exhibit Number 7,
17 under paragraph 1.02, the objectives. Do
18 you see that?
19 A. Yes.
20 Q. And the last sentence in
21 that paragraph says, In particular, the
22 Committee will: A. Address
23 environmental, health and safety issues
00094:01 relating to MTBE by (i) collecting data
02 from member companies and other sources
03 and (ii) sponsoring programs to develop
04 data unavailable from other sources.
05 Next page, B. Address
06 federal and state regulatory issues
07 relating to MTBE by (i) providing
08 technical data to appropriate regulatory
09 agencies and legislative bodies and (ii)
10 meeting with appropriate governmental
11 officials to develop acceptable
12 solutions.
13 C. Assist in the formation
14 of the task force to be named the MTBE
15 Health Effects Testing Task Force
16 specifically for the purpose of
17 conducting and funding testing of MTBE
18 required under a Toxic Substances Control
19 Act ("TSCA") Section 4 Consent Order or
20 Test Rule.
21 D. Make available to
22 interested parties and the general public
23 technical and scientific information
24 relating to the use of MTBE in fuel.
00095:01 And E. Provide a form for
02 the exchange of information appropriate
to the objectives stated herein above

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03 between producers and users of MTBE. Do
04 you see that?
05 A. Yes.
06 Q. Is it your recollection that
07 the bylaws that were adopted had these
08 goals in it as well?
09 A. Yes.

53. PAGE 100:05 TO 100:07 (RUNNING 00:00:05.000)

05 Q. Do you recall Exxon being a
06 member of the MTBE Committee?
07 A. Yes.

54. PAGE 101:10 TO 101:16 (RUNNING 00:00:07.000)

10 Q. Do you recall Texaco being a
11 member of the MTBE Committee?
12 A. Yes.
13 Q. Do you recall Texas
14 Petrochemical being a member of the MTBE
15 Committee?
16 A. Yes.

55. PAGE 101:20 TO 102:02 (RUNNING 00:00:19.000)

20 Q. Also attached to Deposition
21 Exhibit Number 8 is a copy of the charter
22 of the MTBE Committee. Do you see that?
23 A. Yes.
24 Q. To your recollection, is
00102:01 that a correct statement of the charter
02 of the MTBE Committee?

56. PAGE 102:03 TO 102:07 (RUNNING 00:00:16.000)

03 A. Yes.
04 Q. In fact, does it appear to
05 be very much the same as the objectives
06 that are set forth in the bylaws, in
07 Deposition Exhibit Number 7?

57. PAGE 102:08 TO 102:13 (RUNNING 00:00:09.000)

08 A. Yes.
09 Q. I think in the bylaws, C,
10 the establishment of the Health Effects
11 Testing Task Force is the only thing
12 that's an addition thereto; correct?
13 A. It would so appear.

58. PAGE 102:22 TO 103:13 (RUNNING 00:00:34.000)

22 Q. Do you recall, sir, if the
23 companies that were members of the
24 committee, in fact, agreed to the charter
00103:01 of the committee and the objectives that
02 are stated in the bylaws?
03 A. That was the condition of
04 membership.
05 Q. In fact, the charter and the
06 objectives were agreed upon by each
07 member company; correct?
08 A. Insofar as I know.
09 Q. Do you know of any company
10 that was a member who disagreed with the
11 charter or the objectives of the MTBE
12 Committee?
13 A. No, I do not.

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59. PAGE 107:02 TO 107:05 (RUNNING 00:00:15.000)

02 Q. Now, to your understanding
03 was the final bylaws signed by each of
04 the member companies?
05 A. I believe they were.

60. PAGE 107:06 TO 107:06 (RUNNING 00:00:00.000)

06 Q. Okay.

61. PAGE 108:03 TO 108:07 (RUNNING 00:00:13.000)

03 Q. Sir, Deposition Exhibit
04 Number 9 is entitled MTBE Health Effects
05 Task Force Participation Agreement dated
06 August, 1987. Do you see that?
07 A. Yes.

62. PAGE 109:08 TO 109:24 (RUNNING 00:00:42.000)

08 Q. Now, what does the -- how
09 does the Health Effects Task Force differ
10 from the MTBE Committee?
11 A. The Health Effects Task
12 Force had a specific purpose which was to
13 undertake the testing that might be
14 required of MTBE as a result of the EPA
15 actions.
16 Q. Okay. And did this
17 agreement also take into account how the
18 cost of such testing that the EPA may
19 require, how that would be split up among
20 the member companies?
21 A. It did.
22 Q. And in fact, that was based
23 upon the amount of MTBE that you
24 produced. Correct?

63. PAGE 110:05 TO 110:05 (RUNNING 00:00:00.000)

05 A. Yes.

64. PAGE 111:03 TO 113:02 (RUNNING 00:01:58.000)

03 Q. Sir, Deposition Exhibit
04 Number 10 is a telephone account, or it's
05 an account of a telephone conversation
06 between Beth Anderson of EPA and yourself
07 regarding MTBE dated February 2nd, 1987;
08 correct?
09 A. Yes.
10 Q. And it says, George
11 Dominguez of Oxygenated Fuels Association
12 (they are methanol producers) has formed
13 an MTBE coalition. He said their MTBE
14 Committee involves manufacturers,
15 importers, engineering and technology. I
16 asked if he knew of any importers (I
17 thought we were exporting) he said they
18 didn't have any importers at this time.
19 And it says Dominguez is
20 requesting all 8(a) & 8(d) information be
21 sent to his office and EPA. He is
22 working with manufacturers to see the
23 February 12th deadline is met. Their
24 MTBE Committee has 3 task forces: 1)
00112:01 Health Effects - Steve Ridlon, ARCO,
02 chair. 2) Exposure (includes ground

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03 water). 3) Economic impact.
04 These task forces will
05 review information and have their
06 analysis ready by the end of February.
07 Do you see that?
08 A. Yes.
09 Q. Now, at this date, February
10 1987, is it your understanding that the
11 MTBE Committee had already been formed?
12 A. It had been formed in
13 principle. I'm not sure it had been
14 formed in the legal sense of formed.
15 Q. In other words, the
16 agreements that we looked at which were
17 Deposition Exhibit Numbers 7 and 9, those
18 might not have been signed, but certainly
19 there was an agreement to have a group
20 that would communicate with the EPA;
21 correct?
22 A. Yes.
23 Q. And you were going to be the
24 primary person responsible for that
00113:01 communication; correct?
02 A. Yes.

65. PAGE 113:24 TO 114:11 (RUNNING 00:00:25.000)

24 Q. Sir, I have handed you
00114:01 what's been marked as Deposition Exhibit
02 Number 11 which is a February 12th, 1987
03 letter from you to Dr. Beth Anderson;
04 correct?
05 A. Yes.
06 Q. And the top of the left hand
07 of the letter says MTBE Committee on it?
08 A. Correct.
09 Q. So did the MTBE Committee
10 have its own letterhead?
11 A. Eventually it did.

66. PAGE 115:02 TO 115:12 (RUNNING 00:00:19.000)

02 Q. Okay. It says, Dear Dr.
03 Anderson: As you know from our
04 conversation last week, we have formed an
05 MTBE Committee. In order to provide you
06 with some additional information, I am
07 pleased to attach a copy of the
08 Committee's charter. Do you see that?
09 A. Yes.
10 Q. Attached to this document is
11 a charter of the MTBE Committee; correct?
12 A. Yes.

67. PAGE 116:10 TO 117:01 (RUNNING 00:00:27.000)

10 Q. Okay. And the second
11 paragraph of this letter says, As you can
12 see, one of our objectives is to work
13 cooperatively with appropriate government
14 agencies and, in that context, I am
15 pleased to confirm that we are preparing
16 an integrated response on behalf of the
17 MTBE Committee to the questions raised at
18 your December 16th focus meeting on MTBE;
19 correct?
20 A. Yes.
21 Q. And at that focus meeting

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22 the EPA had raised the issue of ground
23 water contamination related to MTBE;
24 correct?
00117:01 A. Yes.

68. PAGE 118:06 TO 118:21 (RUNNING 00:00:51.000)

06 Sir, at the time that you
07 were working with the MTBE Committee, do
08 you recall what your title was?
09 A. I think it was executive
10 director.
11 Q. Okay. What were your duties
12 and responsibilities as executive
13 director of the MTBE Committee?
14 A. Arranging meetings, hosting
15 the meetings at our offices or other
16 locations, in concert with the chairman
17 of the committee preparing agendas,
18 preparing minutes of the meetings,
19 arranging for meetings with third
20 parties, EPA. Participating to the
21 extent possible in those meetings.

69. PAGE 118:22 TO 119:22 (RUNNING 00:01:04.000)

22 Receiving the information on production
23 in relationship to calculation of funds.
24 Q. Did you also assist the
00119:01 member companies in collating information
02 that would be sent to the EPA by the MTBE
03 Committee?
04 A. Yes. We collected data that
05 was submitted to us from the member
06 companies and transmitted some of that
07 data to EPA.
08 Q. Now, the data that was
09 collected by you, was all of that
10 information provided to you, the MTBE
11 Committee and yourself being the
12 executive director by member companies?
13 A. I'm not sure I understand
14 the question.
15 Q. Well, did you or the OFA
16 independently prepare information to send
17 to the EPA?
18 A. No.
19 Q. In other words, you had to
20 rely on that information to come from
21 your member companies; correct?
22 A. Yes.

70. PAGE 123:05 TO 124:03 (RUNNING 00:00:52.000)

05 And then if you take a look
06 at the second page, Item D, it says, Item
07 D requests more information on the
08 presence and persistence of MTBE in
09 ground water. Do you see that?
10 A. Yes.
11 Q. Do you recall that being one
12 of the data gaps that was identified at
13 the focus meeting that you attended?
14 A. I recall ground water being
15 one of the concerns raised. I don't
16 recall the specific data gaps enumerated
17 by EPA as such.
18 Q. Okay. And if you look at

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19 page 3 of this exhibit, there is an
20 attachment one, Roman Numeral III, data
21 gaps?
22 A. Yes.
23 Q. And if you look down at D,
24 it says, TRDB needs more information on
00124:01 the presence and persistence of MTBE in
02 ground water. Do you see that?
03 A. Yes.

71. PAGE 124:17 TO 127:06 (RUNNING 00:02:44.000)

17 Q. At any time when you were
18 executive director of the MTBE Committee,
19 did any member company inform you of
20 specific ground water problems they had
21 encountered related to MTBE?
22 A. The only references that I
23 recall were to citations in the
24 literature or papers, for example, the
00125:01 Garrette paper that was mentioned
02 earlier.
03 I don't recall any specific
04 indications of individual companies such
05 as cited here.
06 Q. Do you recall any member
07 company of the MTBE Committee
08 specifically informing you of a
09 particular problem that they may have had
10 related to ground water contamination by
11 the chemical MTBE at one of their service
12 stations?
13 A. No.
14 Q. Do you recall any other
15 gasoline company that may not have been a
16 member of the MTBE Committee providing
17 you any information related to their
18 experience of ground water contamination
19 with MTBE at particular sites?
20 A. No.
21 Q. Do you recall as part of
22 your role as executive director of MTBE
23 Committee inquiring into the area of
00126:01 ground water contamination with respect
02 to your member companies?
03 A. Yes, in the context of
04 gathering data to be submitted in
05 fulfillment of this data gap or in the
06 context of the ITC requirement.
07 Q. And how did you do that?
08 A. We surveyed the members in
09 terms of providing us as indicated in
10 that telephone conversation that was
11 summarized before with Beth Anderson. We
12 requested the companies to provide us
13 with data.
14 Q. And did you contact each of
15 the member companies to request that
16 data?
17 A. Not personally. If I
18 recall, by mail.
19 Q. Okay. And what do you
20 recall receiving in return from the
21 member companies by way of information
22 related to ground water contamination?
23 A. I just recall various
studies that had been undertaken by the

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24 companies which were in turn collated and
00127:01 submitted to the agency.
02 Q. Do you recall any of the
03 companies informing you of specific
04 examples of ground water contamination by
05 MTBE that they may have experienced at
06 service stations?

72. PAGE 127:11 TO 127:20 (RUNNING 00:00:20.000)

11 THE WITNESS: No, I don't
12 recall.
13 BY MR. SUMMY:
14 Q. Do you recall any of the
15 member companies informing you that they
16 had conducted internal studies related to
17 MTBE and had determined that MTBE was
18 more soluble than other gasoline
19 components and it did not biodegrade like
20 other gasoline components?

73. PAGE 128:13 TO 128:16 (RUNNING 00:00:02.000)

13 THE WITNESS: No.
14 BY MR. SUMMY:
15 Q. They did not provide you
16 that information?

74. PAGE 129:03 TO 129:03 (RUNNING 00:00:00.000)

03 THE WITNESS: No.

75. PAGE 131:11 TO 131:20 (RUNNING 00:00:32.000)

11 Q. Did any of the member
12 companies inform you that they had been
13 members of an MTBE task force associated
14 with API, and that as a result of that
15 membership, they had learned that at
16 numerous service stations there had been
17 releases of gasoline containing MTBE, and
18 that MTBE migrated faster and further
19 than other chemicals of gasoline?
20 A. No, I don't recall that.

76. PAGE 133:11 TO 135:08 (RUNNING 00:02:03.000)

11 Q. Did anyone at Exxon inform
12 you in 1987 that they had learned from
13 experiences in the early 1980 from a site
14 in Thurmont, Maryland and another site in
15 Jacksonville, Maryland that MTBE migrated
16 faster and further than any other
17 gasoline chemicals?
18 A. No.
19 Q. Did anyone at Exxon inform
20 you that they had learned from their
21 experiences in the early 1980's from
22 releases from underground storage tanks
23 that when the gasoline contained MTBE, it
24 had a very low odor and taste threshold
00134:01 much more so than the BTEX chemicals?
02 A. No, I don't recall.
03 Q. Did anyone at Exxon inform
04 you that they had learned from the early
05 1980's from their leaking underground
06 storage tanks that MTBE cannot be removed
07 from water by carbon absorption?
08 A. No.

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09 Q. Did anyone at Exxon inform
10 you that based on an internal analysis
11 that they had done that they estimated
12 that if MTBE were placed in the stream of
13 commerce, that it would contaminate three
14 times as many ground water wells in the
15 country?

16 A. No.

17 Q. Did anyone at Exxon ever
18 inform you that based on an internal
19 analysis they had conducted that they
20 estimated that if MTBE were introduced
21 into gasoline, that their number of
22 leaking underground storage tank
23 incidents would double or triple?

24 A. No.

00135:01 Q. Did anyone at Exxon inform
02 you that they had conducted an internal
03 analysis wherein an environmental
04 committee recommended to the management
05 of the company that MTBE not be placed in
06 gasoline that would be delivered along
07 the east coast?

08 A. No.

77. PAGE 136:10 TO 137:10 (RUNNING 00:01:08.000)

10 Q. Deposition Exhibit Number 13
11 is a letter with an attachment. The
12 letter is from you, George Dominguez,
13 executive director of the MTBE Committee
14 to Dr. Beth Anderson with the EPA dated
15 February 27th, 1987; correct?

16 A. Yes.

17 Q. And it says, As you know
18 from our earlier conversations, the MTBE
19 Committee has recently been formed and I
20 am pleased to submit the attached
21 statement on behalf of the Committee
22 relative to the Federal Register
23 announcement of the ITC's intention to
24 designate MTBE for priority testing
00137:01 consideration under the Toxic Substances
02 Control Act (51 Federal Register 41417,
03 November 14th, 1986).

04 The submission is also
05 intended to be responsive to discussions
06 held at the December 16th focus meeting.
07 Do you see that?

08 A. Yes.

09 Q. Who prepared the attachment
10 that has a title of Comments of the MTBE

78. PAGE 137:11 TO 137:13 (RUNNING 00:00:04.000)

11 Committee on the Interagency Testing
12 Committee's Recommendations Concerning
13 Methyl Tertiary Butyl Ether.

79. PAGE 138:23 TO 140:14 (RUNNING 00:01:47.000)

23 THE WITNESS: To the best of
24 my recollection, that was prepared
00139:01 by the committee, that is the MTBE
02 testing task force
03 representatives. And then, I
04 believe, it was finalized by
05 counsel

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06 BY MR. SUMMY:
07 Q. By legal counsel?
08 A. Yes.
09 Q. Now, when you say it was
10 prepared by the MTBE Committee, how would
11 that have occurred?
12 A. They would have had a
13 meeting and reviewed the various
14 documents referred to in the appendices
15 and drafted a summary conclusion
16 predicated on that review.
17 Q. Now, this particular
18 document was intended to answer the -- or
19 respond to the concerns that were brought
20 out by the EPA in the December 16th focus
21 meeting related to MTBE ground water
22 contamination; correct?
23 A. In part. Yes.
00140:01 Q. And is it your recollection
02 that the members of the MTBE Committee
03 had the opportunity to review this
04 document and make any changes they saw
05 fit prior to it being sent to the EPA?
06 A. That is my recollection.
07 Q. Did you draft any portions
08 of the comments?
09 A. I certainly drafted, as I
10 recall, the cover letter, but I don't
11 recall drafting the comments per se. No.
12 Q. Now, if you look at the
13 comments, I believe, Section II is
14 entitled Occupational and Environmental
Exposure.

80. PAGE 141:04 TO 141:05 (RUNNING 00:00:08.000)

04 Q. And if you look at page 12,
05 13, and 14 of the comments.

81. PAGE 142:01 TO 143:12 (RUNNING 00:01:08.000)

00142:01 Q. Okay. There is a section
02 called MTBE in ground water?
03 A. Yes.
04 Q. Do you see that?
05 A. Yes.
06 Q. Who would have drafted that
07 section?
08 A. I don't know specifically.
09 Q. Would it have been members
10 of the MTBE Committee?
11 A. Oh, yes. It would have been
12 a member of the -- either the committee
13 or the task force. Yes.
14 Q. Okay. And then on page 13,
15 page 78, fax page up top, there's a
16 section that goes from pages 13 to 14
17 that deals with
18 Biodegradation/Persistence. Do you see
19 that?
20 A. Yes.
21 Q. Who would have drafted that
22 section of the paper?
23 A. Same answer. It would have
24 been a member of the task force.
00143:01 Q. Would you have had the
02 expertise to draft those sections of the
03 comments?

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04 A. No. That's not my area of
05 expertise.
06 Q. Would you have expected
07 members of the MTBE Committee in
08 preparing this document to respond to the
09 EPA's concerns to be forthcoming with
10 information and as accurate as possible?
11 A. That would certainly be my
12 expectation.

82. PAGE 145:04 TO 146:04 (RUNNING 00:01:25.000)

04 Q. After the comments that are
05 listed in Deposition Exhibit Number 13
06 were finalized by the MTBE Committee, you
07 would then take those comments, prepare
08 this cover letter and send it on to the
09 EPA?
10 A. Yes.
11 Q. Would the members of MTBE
12 Committee also get a copy of what you
13 sent to the EPA?
14 A. Absolutely.
15 Q. Now, after this document was
16 sent to the EPA on February 27th, 1987,
17 do you recall providing any other
18 information that related to the ground
19 water issue to the EPA?
20 A. Not specifically, no.
21 Q. Sir, based on your
22 recollection as to the final consent
23 agreement that was entered into by the
24 member companies and the EPA, did the EPA
00146:01 require any environmental monitoring or
02 testing of MTBE at manufacturing sites,
03 terminals, or service station sites?
04 A. Not that I recall.

83. PAGE 148:17 TO 149:02 (RUNNING 00:00:20.000)

17 Q. Do you recall any occasions
18 where any member of the committee
19 objected to the content of a document
20 being submitted to the EPA concerning
21 MTBE?
22 A. No, I do not.
23 Q. So, as best you can recall,
24 the industry was of one mind, at least
00149:01 concerning the documents that were
02 submitted to the EPA?

84. PAGE 150:08 TO 150:19 (RUNNING 00:00:22.000)

08 THE WITNESS: Well, it
09 represented the conclusions of
10 those who were members. Beyond
11 that, I have none.
12 BY MR. MILLER:
13 Q. Those are the companies that
14 you identified earlier in this
15 deposition; is that correct?
16 A. Those are the companies that
17 I enumerated and were on the list that I
18 was shown from those that I could not
19 recall.

MTBE - Phase 3

85. PAGE 153:21 TO 154:04 (RUNNING 00:00:14.000)

21 Q. Sir, would the companies on
22 this list on Exhibit 8 have been given
23 the opportunity to attend the meeting and
24 make any comments they wished?
00154:01 A. Yes.
02 Q. And certainly several of
03 them did attend and participate?
04 A. Yes.

86. PAGE 154:16 TO 155:20 (RUNNING 00:00:57.000)

16 Q. Was it your practice to
17 circulate a copy of the document that was
18 being considered for submission to the
19 EPA before it was submitted to that group
20 to get any comments, corrections, or
21 additions from committee members that
22 were interested in participating?
23 A. Yes.
24 Q. Was it also your practice to
00155:01 circulate the final document that was
02 sent to the EPA in to each of those
03 members?
04 A. Yes.
05 Q. And do you recall any
06 occasions where someone who failed to
07 attend a meeting received a final version
08 of a document and said we need to submit
09 a correction?
10 A. No. I have no recollection
11 of that occurring.
12 Q. All right. And at the time
13 these documents were prepared, is it fair
14 to say Exxon was the committee, sir?
15 A. Yes.
16 Q. ARCO?
17 A. Yes.
18 Q. Texaco?
19 A. Yes.
20 Q. Shell?

87. PAGE 155:21 TO 156:02 (RUNNING 00:00:10.000)

21 A. Yes.
22 Q. And do you recall any of
23 them objecting to the reports that were
24 submitted to the EPA, any of the four
00156:01 companies I just mentioned?
02 A. No.

88. PAGE 156:19 TO 158:04 (RUNNING 00:01:12.000)

19 Q. Do you have Exhibit 12
20 before you?
21 A. Yes.
22 Q. And just so the record is
23 clear, this is a submission to the EPA
24 with a cover letter signed by
00157:01 Mr. Kilmartin; is that correct?
02 A. Yes.
03 Q. And he's from ARCO?
04 A. Yes.
05 Q. Was he an active participant
06 in these committee meetings that we're
07 talking about on behalf of his employer?
08 A. I don't remember him being

MTBE - Phase 3

09 present at all the meetings. He was
10 present at some.
11 Q. Okay. The third page of the
12 exhibit, if you could turn to that.
13 A. Yes.
14 Q. It has a list of data gaps?
15 A. Yes.
16 Q. Now, from your experience in
17 working with the EPA over the years,
18 could you explain what a data gap is?
19 A. A data gap is information
20 which the agency feels is necessary for
21 them to assess the properties and
22 characteristics of the substance in
23 question.
24 Q. This is a specific written
00158:01 request for information to fill a gap in
02 the information available to the EPA; is
03 that correct?
04 A. Well, it can take that form.

89. PAGE 158:22 TO 159:15 (RUNNING 00:00:31.000)

22 Q. Do you see the list of data
23 gaps that's part of the exhibit?
24 A. I do.
00159:01 Q. Do you see one of the items
02 that concerns ground water?
03 A. Yes.
04 Q. Could you read it for the
05 record and then I'm going to ask you a
06 question about it, please?
07 A. Certainly.
08 It's Item D, TRDB needs more
09 information on the presence and
10 persistence of MTBE in ground water.
11 Q. Now, is that consistent with
12 your memory that when you interacted with
13 representatives of the EPA on MTBE, they
14 were asking for more information on
15 ground water?

90. PAGE 159:18 TO 162:04 (RUNNING 00:02:08.000)

18 THE WITNESS: Yes.
19 BY MR. MILLER:
20 Q. And did you attempt through
21 contacts with committee members to obtain
22 any information they had on that subject?
23 A. Yes.
24 Q. And is it your understanding
00160:01 that from their participation, members of
02 the committee were aware that the EPA
03 wanted information on that subject?
04 A. Yes.
05 Q. Do you recall at any point
06 in time any representative of the EPA
07 saying that they had enough information
08 on the subject of MTBE in ground water
09 and didn't want any more?
10 A. No.
11 Q. Is it fair to say that
12 throughout the time that you worked with
13 the EPA, they were still seeking any
14 information that the committee had
15 available to it concerning MTBE and its
16 potential impacts on ground water?
17 A. Yes.

MTBE - Phase 3

18 Q. Is it also fair to say that
19 if you had received data showing that
20 MTBE would adversely impact ground water,
21 you would have known that it would be
22 responsive to EPA request for information
23 that you had received?
24 A. Yes.
00161:01 Q. And you would have provided
02 that information had it been given to
03 you?
04 A. I certainly would, on my own
05 behalf.
06 Q. And the only reason you
07 didn't provide information of that type
08 is that you didn't have it; is that
09 correct?
10 A. Yes.
11 Q. Now, you were relying on
12 members of the committee to furnish you
13 with accurate information on that
14 subject; is that correct?
15 A. Yes.
16 Q. I want to contrast two
17 things. I'm going to call gasoline
18 without MTBE conventional gasoline. Are
19 you comfortable with that?
20 A. Yes.
21 Q. And I'm going to call
22 gasoline with MTBE, MTBE gas. Okay?
23 A. Clear.
24 Q. Do you recall anyone who was
00162:01 a member of the committee advising you at
02 any time that MTBE gasoline created more
03 of a ground water contamination problem
04 than conventional gasoline?

91. PAGE 162:08 TO 165:02 (RUNNING 00:03:10.000)

08 THE WITNESS: No, I don't
09 have a recollection.
10 BY MR. MILLER:
11 Q. Okay. Let me show you
12 Exhibit 2, which is dated December 17,
13 1986.
14 A. Okay.
15 Q. Just so the record is clear,
16 could you identify the document, since we
17 haven't mentioned it in a while?
18 A. Minutes for the Public Focus
19 Meeting for Methyl Tert-Butyl Ether
20 (MTBE) dated December 17, 1986.
21 Q. If you look at the bottom of
22 the page of these minutes, it states --
23 A. Yes?
24 Q. "The industry
00163:01 representatives were encouraged to submit
02 supplemental information and the
03 mandatory 8(a) and 8(d) information for
04 the Agency's course setting process."
05 Do you see that?
06 A. Yes.
07 Q. Now, you're familiar with
08 the Toxic Substances Control Act from
09 your years of interaction with the EPA?
10 A. Yes.
11 Q. What does 8(a) and 8(d)
12 refer to?

MTBE - Phase 3

13 A. They refer to Section 8 of
14 the Toxic Substances Control Act.
15 Q. And basically it's your
16 understanding that provides the EPA with
17 the legal authority to require companies
18 that have a particular product that
19 they're interested in to submit data?
20 A. Yes.
21 Q. Was it your understanding
22 that the submissions that we've talked
23 about in this deposition by the committee
24 were in part submissions under the Toxic
00164:01 Substances Control Act?
02 A. Yes.
03 Q. And is it your understanding
04 that any submissions about ground water
05 would be included within that particular
06 request for information I just quoted?
07 A. Yes.
08 Q. Now, if we turn to the
09 persons who attended that meeting, do you
10 see the sign-in sheet for the December
11 17, 1986, meeting?
12 A. I do.
13 Q. The first person listed as
14 signing in was Mr. Art Lington of Exxon
15 Corporation; correct?
16 A. Yes.
17 Q. The next person is Mr. James
18 DeJovine of ARCO Chemical; correct?
19 A. Yes.
20 Q. And then you're the third
21 person who signed, listing yourself as a
22 representative of the Oxygenated Fuels
23 Association?
24 A. Yes.
00165:01 Q. So you were present?
02 A. Yes.

92. PAGE 165:14 TO 166:01 (RUNNING 00:00:20.000)

14 Q. Does this appear to be a
15 sign-in sheet that you were asked to sign
16 at the time the meeting occurred?
17 A. Yes.
18 Q. And do you have any reason
19 to believe that anyone who signed in
20 didn't attend?
21 A. No.
22 Q. And that would include the
23 individuals we just went over; is that
24 correct?
00166:01 A. Insofar as I know.

93. PAGE 172:23 TO 173:04 (RUNNING 00:00:18.000)

23 Q. Do you recall that the task
24 force in its communications with the EPA
00173:01 took the position that MTBE was not a
02 persistent chemical in ground water?
03 A. That's essentially the
04 position. Yes.

94. PAGE 178:14 TO 179:10 (RUNNING 00:01:00.000)

14 Q. Do you recall that it was
15 the MTBE's committee's position that MTBE
16 was not a serious threat to ground water

MTBE - Phase 3

17 in the meetings with the EPA?
18 A. Yes, in the context of its
19 not constituting a health or
20 environmental hazard.
21 Q. All right. Now, we've
22 previously gone over a document in the
23 form that the EPA apparently received it.
00179:01 I want to return to that exhibit. And I
02 want to mark what may be an earlier draft
03 of at least part of the document as an
04 exhibit.
05 This document that I'm about
06 to mark is entitled Statement of MTBE
07 Committee Submitted to EPA, dated
08 February 27th, 1987. It was produced to
09 us by Exxon in this form. And it bears
10 your signature at the end, or at least
what appears to be your signature.

95. PAGE 180:02 TO 183:13 (RUNNING 00:03:02.000)

02 Q. And just so the record is
03 clear, I provided you with an A version
04 of which exhibit?
05 A. 13.
06 Q. So you have before you
07 Exhibit 13 and another exhibit marked
08 13a; is that correct?
09 A. I do.
10 Q. 13a is new. Can you tell me
11 if it appears to bear your signature at
12 the end?
13 A. That is not my signature.
14 It was signed on my behalf. It is not my
15 signature.
16 Q. Does it look like your
17 secretary's version of your signature?
18 A. Probably.
19 Q. Okay. Does this appear to
20 be an earlier version of the documents
21 submitted to the EPA since your secretary
22 signed it on your behalf and since the
23 version submitted to the EPA appears to
00181:01 bear your signature, that is, Exhibit 13?
02 A. Yes.
03 Q. Now, in this Exhibit 13a, if
04 you could turn to the conclusion.
05 A. (Witness complies with
06 request.)
07 Q. It states, "The following
08 discussion establishes --
09 A. We're looking at 13 at this
10 juncture?
11 MR. THALER: No. 13a versus
12 13.
13 THE WITNESS: Okay.
14 MR. MILLER: Yes.
15 BY MR. MILLER:
16 Q. The following discussion
17 establishes that there is no evidence
18 that MTBE poses any significant risk of
19 harm to health or the environment.
20 Do you see that statement?
21 A. I do.
22 Q. And was that draft that we
23 just went over prepared for the purpose
of circulating it to members of the

MTBE - Phase 3

24 committee?
00182:01 A. It was.
02 Q. And it would have been sent
03 to them; is that correct?
04 A. Yes.
05 Q. This particular version was
06 produced by Exxon. Do you have any
07 reason to believe they would not have
08 received this draft version?
09 A. No reason to believe.
10 Q. All right. Now, if we go to
11 the final version submitted to the EPA,
12 Exhibit 13, it also has a conclusion?
13 A. It does.
14 Q. And does it contain that
15 same quoted statement, that MTBE does not
16 pose any significant risk of harm to the
17 environment?
18 A. It does.
19 Q. So no one asked you to
20 change that sentence; is that correct?
21 A. Yes.
22 Q. It goes on to state in the
23 same paragraph, Sufficient data exists to
24 reasonably determine or predict that
00183:01 manufacture, processing, distribution,
02 use and disposal of MTBE will not have an
03 adverse affect on health or the
04 environment, and that testing is
05 therefore not needed to develop such
06 data.
07 Do you see that quote in
08 13a, the draft?
09 A. Yes.
10 Q. And after you submitted it
11 to members of the committee, did you make
12 any change to that portion of the
13 conclusion?

96. PAGE 183:14 TO 184:06 (RUNNING 00:00:22.000)

14 A. It appears to read the same.
15 No changes.
16 Q. Okay. So the version you
17 submitted to the EPA contained the same
18 statement; correct?
19 A. Yes.
20 Q. In the conclusion you start
21 out with, the following discussion
22 establishes that there is no evidence, et
23 cetera. Were you referring to the
24 attachments?
00184:01 A. Yes.
02 Q. And they were supplied by
03 the committee?
04 A. Yes.
05 Q. Now, if we could turn to
06 Exhibit 13b, please. This version --

97. PAGE 184:10 TO 184:12 (RUNNING 00:00:08.000)

10 Q. This version has some of the
11 attachments, apparently. Is that your
12 understanding?

98. PAGE 184:13 TO 185:12 (RUNNING 00:00:54.000)

13 A. But this isn't the same

MTBE - Phase 3

14 document. This is a transmittal of
15 studies. It's not an earlier draft of 13
16 and 13a.
17 Q. Okay. Let's just take it a
18 step at a time then. Look at 13b, on the
19 first page it's dated February 27, 1987;
20 correct?
21 A. Yes.
22 Q. And at the bottom there's a
23 signature. Is that your signature or is
24 that your secretary's assistance?
00185:01 A. That is my secretary's
02 assistance signature.
03 Q. And does it appear therefore
04 that this version of the document would
05 have been generated by your office?
06 A. Yes.
07 Q. And then attached to it is
08 entitled Comments of the MTBE on the
09 Interagency Testing Committee's
10 Recommendations Concerning MTBE dated
11 February 27, 1987; correct?
12 A. Yes.

99. PAGE 186:04 TO 189:02 (RUNNING 00:02:55.000)

04 Q. What I'm trying to find out
05 is if the attachments, the pages that
06 follow the word comments of the MTBE
07 Committee on the interagency testing
08 committee's recommendations concerning
09 MTBE within Exhibit 13b, whether or not
10 the pages that follow that appear to have
11 come from the committee.
12 A. The answer to that is yes.
13 Q. And if you could turn --
14 you'll notice at the bottom of each page
15 there's a numbering system. It begins
16 with TX for Texaco because it was
17 produced on their behalf. And then the
18 number that I'm going to refer you to is
19 page number 048941.
20 Could you turn to that,
21 please?
22 A. (Witness complies with
23 request.)
24 Yes.
00187:01 Q. This document has two
02 bullets or points that are made; correct?
03 A. Yes.
04 Q. And the second one states,
05 MTBE/gasoline spill - excellent aerobic
06 biodegradability?
07 A. Yes.
08 Q. Did that come from you, that
09 statement or representation?
10 A. No.
11 Q. Is it your understanding it
12 came from the committee?
13 A. Yes.
14 Q. Now, what does that mean,
15 excellent aerobic biodegradability?
16 A. It means, according to this
17 statement, that MTBE degrades readily --
18 Q. So it --
19 A. -- under aerobic conditions.
20 Q. Okay. So it wouldn't be a

MTBE - Phase 3

21 persistent chemical, it would be one that
22 would break down?
23 A. Yes.
24 Q. And was it your
00188:01 understanding at the time that if a
02 chemical was persistent, it would
03 represent more of a threat to ground
04 water than one that was readily
05 biodegraded?
06 A. Potentially.
07 Q. Is it fair to say, sir, that
08 the communications by the industry group
09 that we've been calling the MTBE
10 Committee, that you were the executive
11 director of, in total assured the EPA
12 that based on information available to
13 industry, MTBE would not represent a
14 significant threat to ground water?
15 A. The reason I hesitate in
16 that answer is I'm not sure what does
17 industry mean again in that context. The
18 members of the association?
19 Q. Yes.
20 A. Yes.
21 Q. So, in terms of the total
22 information that was provided through
23 that committee, it was represented that
24 MTBE would not pose a significant threat
00189:01 to ground water?
02 A. Yes.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:12:10.097)

EXHIBIT 2

Reply Reply to all Forward X Close Help

From: Handel, Lauren [lhandel@mwe.com] Sent: Thu 9/3/2009 7:19 PM
To: Marnie Riddle
Cc: Vic Sher; Nick Campins; wstack@tmo.blackberry.net; Sacripanti, Peter; Pardo, James; Bongiorno, Anthony; Riccardulli, Stephen; Kalnins Temple, Jennifer
Subject: RE: City of NY v. Exxon: Dominguez deposition
Attachments:

[View As Web Page](#)

We object to the entirety of this deposition as irrelevant to any issue to be presented to the jury. The only possible relevance of Mr. Dominguez's testimony is to Plaintiff's TSCA claim. As the Court has decided, TSCA issues will be tried separately to the Court, not the jury.

In the event that the Court allows the testimony to be played to the jury, we note the additional objection at 131:11 - 131:20 was sustained by Special Master Hedges, subject to Plaintiff establishing a connection to relevant facts under Rule 104(b).

Also, if the Court allows the testimony to be played, the following counter-designations should be added for completeness:

- 75:22 - 76:3
- 80:9 - 80:19
- 101:17-19
- 119:23 - 120:2
- 120:21-22

Thank you.

Lauren E. Handel
McDermott Will & Emery LLP
340 Madison Avenue
New York, NY 10173
Tel: 212.547.5631
Fax: 212.547.5444

-----Original Message-----

From: Marnie Riddle [mailto:mriddle@sherleff.com]
Sent: Thursday, September 03, 2009 12:50 PM
To: Handel, Lauren
Subject: City of NY v. Exxon: Dominguez deposition

Lauren,

Does Exxon have any counterdesignations to add to Mr. Dominguez's testimony? Please let me know so I can convey that information to our video editor. Thank you.

Regards,
Marnie

IRS Circular 230 Disclosure: To comply with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein (including any attachments), unless specifically stated otherwise, is not intended or written to be used, and cannot be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.

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EXHIBIT 3



Sep 15 2005
4:26PM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

MDL No. 1358
Docket No. M21-88
Master File C.A. No.
1:00-1898 (SAS)

This document relates to the following cases:

- American Distilling & Manufacturing Co., Inc. v. Amerada Hess Corp., et al.*, 04 Civ. 1719
 - City of Galva, et al. v. Amerada Hess Corp., et al.*, 04 Civ. 1723
 - City of New York v. Amerada Hess Corp., et al.*, 04-CV-03417
 - Columbia Board of Education, et al. v. Amerada Hess Corp., et al.*, 04 Civ. 1716
 - County of Suffolk v. Amerada Hess Corp., et al.*, 04 Civ. 5424
 - Orange County Water District v. Unocal Corp., et al.*, No. 04 Civ. 4968
 - Our Lady of the Rosary Chapel v. Amerada Hess Corp., et al.*, 04 Civ. 1718
 - Town of East Hampton v. Amerada Hess Corp., et al.*, 04 Civ. 1720
 - United Water Connecticut, Inc. v. Amerada Hess Corp., et al.*, 04 Civ. 1721
 - United Water New York, Inc. v. Amerada Hess Corp., et al.*, 04-CV-2389
-

**DEFENDANT EXXON MOBIL CORPORATION'S RESPONSE
TO MEMBERSHIP CHART**

Pursuant to the Court's directives at the hearing on August 12, 2005, Exxon Mobil Corporation ("ExxonMobil"), having made a good faith and diligent effort to ascertain the necessary information, hereby submits the following Response to the Membership Chart prepared by plaintiffs.

American Petroleum Institute ("API")

Exxon Company USA ¹	1975-1999
Exxon Mobil Corporation	2000-present
Mobil Oil Corporation ²	1966-1999

¹ Exxon Company USA was an unincorporated division of Exxon Corporation.

² Although Mobil Corporation was identified on defendants' May 20, 2005 Disclosure Pursuant to April, 20, 2005 Order, ExxonMobil has been unable to identify any information regarding the dates Mobil Corporation was an official member of API.

Oxygenated Fuels Association ("OFA")

ExxonMobil (including its related entities) is not, nor has ever been, a member of OFA.

MTBE Committee

Exxon Chemical Company 1988-1995

Dated: New York, New York
September 15, 2005

By: 

~~Peter John Sacripanti (PS 8968)~~

~~James A. Pardo (JP 9018)~~

Stephen J. Riccardulli (SR 7784)

Jennifer N. Kalnins (JK 3274)

McDERMOTT WILL & EMERY LLP

50 Rockefeller Plaza

New York, New York 10020

(212) 547-5400

(212) 547-5444 (Fax)

Attorneys for Exxon Mobil Corporation

TO: All Counsel via LexisNexis File and Serve

EXHIBIT 4

EXXON CHEMICAL AMERICAS



ENVIRONMENTAL AFFAIRS DEPARTMENT

C.T. SEAY
Manager

February 20, 1987

TSCA Public Information Office (TS-793)
Office of Pesticides and Toxic Substances
US Environmental Protection Agency
Room NE-G004
401 M Street, SW
Washington, D. C. 20460

OPTS-41023A

Dear Sir:

This letter is in reponse to the notice (52FR3343, February 3, 1987) on solicitation of parties interested in negotiations for testing of Methyl tert-butyl ether (CASRN 1634-04-4).

Exxon Chemical Americas is a member of the MTBE Committee which is affiliated with the Oxygenated Fuels Association. We are interested in developments related to the process, but in the spirit of simplicity, we will look to the MTBE Committee for keeping us informed. We therefore wish to ensure that Mr. George Dominquez of the MTBE Committee be kept apprised of all proceedings and developments concerning MTBE testing.

Very truly yours,

H. L. Hunter, Jr.

HLH:skm
cc: Dr. E. L. Anderson
bcc: R. A. Ganz
J. A. Zboray
D. D. Sigman

CHEMICALS-TSCA-00328

HLH:87(1)

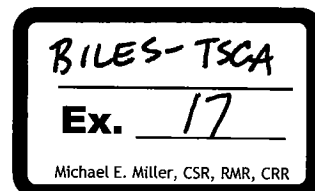


EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____ X

In re: Methyl Tertiary Butyl Ether
("MTBE") Products Liability Litigation

_____ X

Master File No. 1:00-1898

MDL No. 1358 (SAS)

M21-88

_____ X

February 8th, 2007

** MAY CONTAIN CONFIDENTIAL TESTIMONY **

Oral deposition of ROBERT W.
BILES, Ph.D., AS 30(B)(6) REPRESENTATIVE OF
EXXONMOBIL CORPORATION, RE: TSCA, held in the
offices of ExxonMobil Corporation, 800 Bell
Street Houston, Texas, commencing at
10:08 a.m., on the above date, before
Michael E. Miller, Registered Merit Reporter
and Certified Realtime Reporter.

GOLKOW LITIGATION TECHNOLOGIES
1880 John F. Kennedy Boulevard
Suite 760
Philadelphia, Pennsylvania 19103
888.465.5698

1 Q. Do you --

2 A. Counselor, I'm going to
3 frustrate you, I'm sure, but this document
4 does not appear to be -- it has the
5 February 27th letter that does look familiar,
6 but the rest of this document doesn't look to
7 be a document that I remember reviewing after
8 trying to find it in our files. Checking
9 with Information Services, they did not have
10 it.

11 MS. EVANGELISTI: Let's go off
12 the record for a minute.

13 THE VIDEOGRAPHER: Going off
14 the record. The time is approximately
15 2:15.

16 (Discussion off the record.)

17 THE VIDEOGRAPHER: Please stand
18 by. We're back on the record. The
19 time is approximately 2:17.

20 BY MS. EVANGELISTI:

21 Q. Dr. Biles, we've established
22 that on or about September -- I'm sorry,
23 February 27th, 1987, a submission was made to
24 the EPA by George Dominguez on behalf of the

1 MTBE Committee. We know that, right?

2 A. Correct.

3 Q. And you did your best to try to
4 track down the full copy of that submission,
5 but for whatever reason, you were unable to;
6 is that a fair?

7 A. That is correct.

8 Q. So we obtained this from the
9 EPA, "this" being Exhibit 21. Reviewing this
10 document now -- I understand you haven't seen
11 the whole thing for the first time. Flipping
12 through, would you agree with me that this is
13 likely the submission that we've been
14 referring to that was made to the EPA on
15 behalf of the members of the MTBE Committee
16 in the February 1987 time frame?

17 A. The EPA has it. It's likely
18 that it came -- Dr. Dominguez is apparently
19 communicating it, but I haven't read this. I
20 haven't read it in detail. It looks like
21 it's an extensive summary.

22 It's a written summary of
23 information that I know Dr. Lington had
24 already presented in the December 17, '86

1 meeting with the EPA, and I think
2 subsequently in the March 5th meeting with
3 EPA.

4 Q. You have no reason to doubt
5 that this is not the MTBE submission that
6 we've been talking about, though, right?

7 A. Well, I have no reason to doubt
8 that this was not a submission by
9 Mr. Dominguez to the EPA discussing the
10 health effects of MTBE with respect to the --
11 it says the ITC, I think. I looked at the
12 top of it. I might not be right.

13 "I'm pleased to submit the
14 attached statement on behalf of the Committee
15 relative to the Federal Register announcement
16 of the ITC's intention to designate MTBE for
17 priority testing."

18 Q. And the last sentence of that
19 paragraph says, quote, "The submission is
20 also intended to be responsive to discussions
21 held at the December 16 focus meeting,"
22 correct?

23 A. Yes.

24 Q. So he's representing, on behalf

1 of the MTBE Committee, to the EPA that not
2 only are they going to make a statement on
3 behalf of the committee relative to the
4 Federal Register announcement, but
5 specifically that the submission is intended
6 to be responsive to the questions raised by
7 the EPA on the --

8 A. At that meeting.

9 Q. Okay.

10 A. That is what it says, and it
11 also says that "We'd like to meet with your
12 staff on March 5th," and I do know of a
13 March 5th meeting that occurred.

14 So this does look to be written
15 detail -- and, again, I haven't seen it or
16 read it or judged the veracity, but that's
17 what it appears to be.

18 Q. If you'll turn to the fourth
19 page of that document.

20 A. Is the number at the bottom 725
21 or --

22 Q. 724.

23 A. 724? Okay.

24 Q. Sorry.

1 A. Okay.

2 Q. Under "Introduction," reviewing
3 that, would you agree that the MTBE Committee
4 in this statement is again reiterating that
5 it would "address environmental issues
6 relating to MTBE by collecting data from
7 member companies and other sources and
8 sponsoring programs to develop data
9 unavailable from other sources," and that it
10 would "make available" -- this is the third
11 bullet -- "to interested parties and the
12 general public technical and scientific
13 information relating to the use of MTBE in
14 fuel"?

15 A. I -- I see that that's the
16 third bullet that you read. I answered that
17 question earlier when we discussed this
18 portion, that the committee was dedicated to
19 working cooperatively with the government and
20 the public and be a source of information, so
21 yes.

22 Q. If you'll look at the next
23 page, which ends in the Bates number 724 --

24 A. 724. Okay. Same page.

1 Q. Second -- I'm sorry, 725.

2 A. Okay.

3 Q. The second paragraph states,

4 "In addition, Section III provides

5 information on the positive effects of air

6 quality of using MTBE as a fuel component, as

7 well as an analysis of the level at which

8 MTBE would be detected as a groundwater

9 contaminant in the event of an accidental

10 spill or leakage.

11 "We believe that the

12 information provided supports the conclusion

13 that MTBE does not represent a drinking water

14 hazard." Do you see that?

15 A. I do.

16 Q. Would you agree -- sorry.

17 A. With the exception you -- I

18 think you said Section III, but I think you

19 meant Section II.

20 Q. Thank you for making that

21 clarification.

22 A. Okay. Minor.

23 Q. Would you agree that in here,

24 he's representing to the EPA that in

1 Section II they would provide an analysis of
2 the level at which MTBE would be detected as
3 a groundwater contaminant in the event of an
4 accidental spill or leakage?

5 A. It says "as well as an analysis
6 of the level at which MTBE would be detected
7 as a groundwater contaminant in the event of
8 an accidental spill or leakage." It does say
9 that.

10 Q. And would you also agree that
11 he, on behalf of the MTBE Committee and its
12 members, was representing to the EPA in
13 February of 1987 that MTBE does not represent
14 a drinking water hazard?

15 A. The sentence in this letter
16 says that. I did not have this letter to
17 review, to rebut or challenge that.

18 I personally might state that
19 that was too strong of wording. It is in the
20 document. The OFA was chartered to represent
21 Exxon in submissions.

22 I think this is possibly an
23 example of letters by committee or whatever
24 that may have been too strong, but it does

1 say, "We believe that the information
2 provided supports the conclusion that MTBE
3 does not represent a drinking water hazard."
4 Trying to decipher the intent and the depth
5 of that right now is speculation on my part.

6 Q. What do you mean, "too strong
7 of a word"? Which word?

8 A. "Drinking water hazard."
9 "Hazard," we go into toxicology now and
10 industrial hygiene and epidemiology and
11 safety. "Hazard" is a word that means
12 something that's harmful, potentially
13 harmful, depending on the exposure and the
14 amount.

15 I think everybody in this room
16 would agree that too much MTBE in drinking
17 water could be a hazard, so this sentence
18 is -- is not clear enough.

19 It's not -- it seems to -- you
20 know, without -- without reading the
21 document, I'd have to know what the document
22 was, and I'd have to -- I was not present at
23 the meetings with the EPA, so I cannot tell
24 you if OFA or whoever was present at the

1 meeting said, "We don't believe MTBE can be
2 considered a hazard in drinking water." I
3 personally wouldn't have supported that. I
4 don't believe Exxon or ExxonMobil would
5 support that.

6 Q. How would you have phrased it?

7 A. At the time, or in this letter?

8 Q. Yes.

9 A. Well, again, I haven't read the
10 document to know what is being said in here,
11 but I think if I was just looking at this
12 kind of a sentence, I would say, "We believe
13 the information provided should be sufficient
14 to support a conclusion that the hazard to
15 humans from drinking water contamination with
16 MTBE should be minimal."

17 But, see, then I'd have to
18 qualify that based on all the organoleptic
19 properties of MTBE making drinking water
20 undrinkable at a high enough concentration,
21 and that concentration, that high enough
22 concentration, is still lower, much lower,
23 than the health effects levels that we know
24 of from our studies.

1 So I'm just saying I -- that's
2 what's written there, and all I can do is let
3 you know that that is written in the
4 document.

5 Q. But you agree that this was
6 written and it was a statement made on behalf
7 of the members of the MTBE Committee,
8 including Exxon at that time?

9 A. I would have to say that it was
10 represented by the Oxygenated Fuels
11 Association, and Exxon, we've established
12 Exxon was a member.

13 Q. If you'll look at the next page
14 of that exhibit, which ends in Bates
15 number 726. And so the record is clear and
16 since you've just seen this for the first
17 time, if you'll look at the following page,
18 there's a conclusion with some typing and a
19 signature. That was the actual original page
20 of the submission.

21 And so the record is clear, the
22 page before that was actually put in, I
23 believe, by EPA because that next page was
24 not especially clear. I can't --

1 A. In other words, they retyped
2 this page.

3 Q. Right. So you can go off
4 whatever page you want to, but --

5 A. Can you tell me if it's an
6 accurate --

7 Q. I -- it's accurate, in my
8 opinion. And I think you can actually read
9 it. I can read it. You can look along with
10 me, if you want to go on page 727. If you
11 want to look at the actual page --

12 A. Right, it's this one.

13 Q. -- and then read along with me,
14 I think it's clear enough that you can read
15 along with me.

16 A. Okay.

17 Q. It says, "Conclusion: The
18 following discussion establishes that there
19 is no evidence that MTBE poses any
20 significant risk of harm to health or the
21 environment, that human exposure to MTBE and
22 release of MTBE to the environment is
23 negligible, that sufficient data exists to
24 reasonably determine or protect -- predict

1 that manufacturing, processing, distribution,
2 use, and disposal of MTBE will not have an
3 adverse health effect" -- "health" -- I'm
4 sorry -- "not have an adverse effect on
5 health or the environment, and that testing
6 is therefore not needed to develop such data.

7 "Furthermore, issuance of a
8 test rule requiring long-term chronic testing
9 will have a significant adverse environmental
10 and economic impact." Do you see that?

11 A. I see that.

12 Q. Aside from my tripping up, did
13 I read that accurately?

14 A. You read it accurately.

15 Q. At that time, being 1987,
16 February of 1987, did you agree that at that
17 time there was no evidence that MTBE posed
18 any significant risk of harm to health or the
19 environment?

20 A. Counselor, again, we didn't --
21 I have not seen this document. I believe, in
22 reading this right now, it overstates. It
23 would not be -- that was certainly the way I
24 would communicate it. I cannot tell you if

1 Dr. Lington reviewed this and agreed to this.

2 This does -- this does not
3 communicate what the record continues to say
4 subsequent to this. It seems to be a -- it
5 seems to be an overstatement, in my opinion.

6 Q. And likewise, at that time --
7 and we're looking only in February of 1987,
8 because that's when this was created. Would
9 you agree that at that time, the members of
10 industry that did work on MTBE believed that
11 human exposure to MTBE and release of MTBE to
12 the environment was negligible?

13 THE WITNESS: May I ask you to
14 restate that or say it again?

15 MS. EVANGELISTI: I'll have him
16 read it.

17 (The following portion of the
18 record was read.)

19 "QUESTION: And likewise, at
20 that time -- and we're looking only in
21 February of 1987, because that's when
22 this was created. Would you agree
23 that at that time, the members of
24 industry that did work on MTBE

1 believed that human exposure to MTBE
2 and release of MTBE to the environment
3 was negligible?"

4 A. You're asking a question about
5 release and exposure, and at this time, the
6 EPA was still asking us for information on
7 that subject, and trying to answer in that
8 time frame, I -- honestly, Counselor, I'd
9 have to read this document to see what the
10 basis is for making this statement and
11 talking about releases to the environment and
12 that being negligible.

13 And I need to quickly follow
14 up. By me saying this and saying that this
15 statement may be a -- may be overly stated or
16 different than I would state it myself,
17 exposure information and documentation of
18 health effects, specifically documentation of
19 health effects with the exposure information
20 that's available, our industry clearly did
21 the testing in a negotiated manner with EPA
22 to develop it and came to conclusions of
23 safety to human workers -- to workers, sorry,
24 and the general public.

1 So without reading the text
2 here to back up what it says here, I'm just
3 not able to critique it.

4 BY MS. EVANGELISTI:

5 Q. Would you agree that, first of
6 all, this conclusion is a summary of the
7 submission, that if one wanted to figure out
8 the crux of the submission as you would look
9 in an abstract for a scientific article, if
10 you're going to look at the crux of this
11 submission, you'd read the conclusion? Is
12 that your understanding of this paragraph
13 here that we're reading?

14 A. For me, I would read the
15 document. I'd want to know -- as I read
16 this, I'd want to know what was the thinking
17 and all the supporting information that would
18 have drawn this kind of a statement.

19 Q. But you would expect that the
20 conclusion would summarize the data
21 accurately?

22 A. Well, again, I'm looking at
23 this in 2007 eyes, so I just cannot -- I
24 cannot answer that question.