

February 14, 2001

Section: A-Section

Edition: Tribune

Page: A1

SHELL WILL CLEAN UP MTBE IN MORRO \$2.3 MILLION SETTLEMENT CALLED 'A TOTAL VICTORY'

*Neil Farrell
The Tribune*

In what's being hailed "a total victory" for Morro Bay, Shell Oil Co. agreed Tuesday to pay more than \$2.3 million to clean up **MTBE** contamination that threatens a city drinking source. The settlement came at the start of the fifth day of testimony in a hearing the city brought against Shell after **MTBE**, a gas additive, was found nearly two years ago in soil and ground water under the Morro Bay Shell station at 1840 Main St.

"I think that as evidence started to come out, people from (Shell's) home office started looking at it and said 'What can we do to make this go away?' " Morro Bay Mayor Rodger Anderson said after the City Council approved the settlement Tuesday evening.

"The bottom line is the abatement will begin immediately. This is exactly what we had been working towards."

Cameron Smyth, a spokesman for Equilon, a Shell subsidiary that oversees the company's West Coast stations, said the company was pleased to have reached an agreement.

The settlement calls for Shell to:

- * Clean up the **MTBE** in the Morro Creek ground-water basin and making sure contamination does not reach the city's four drinking water wells, located some 500 feet west of the station. The state Health Agency ordered the city not to use the Morro Creek wells unless in an emergency to prevent drawing the contamination through the basin toward them.
- * Pay up to \$1.6 million for a replacement water source; \$500,000 to cover city costs for attorneys, consultants and the abatement hearing; and \$175,000 for repairing a sewer main in the area of the spill.
- * Pay the city some \$6,500 a month to oversee its cleanup of the contamination, which is expected to last until the end of the year.
- * Speed up cleaning of the site.

The city will receive a total of \$2.34 million with the settlement, but will be restricted in how it can spend the largest chunk, \$1.6 million destined for replacement water.

Shell also will have to post a \$2 million bond to ensure it follows through with the cleanup plans, which include stringent testing of the station's entire fueling system.

The numbers didn't seem to faze Shell's lead attorney, Steve Jones, who argued fiercely during the hearing that the matter was not in the city's jurisdiction and should be handled by the state Regional Water Quality Control Board.

"When you look at all the costs it seems appropriate," said Jones, who said this was the first nuisance-abatement hearing he's ever handled.

Morro Bay City Attorney Robert Schultz said Shell wasted a lot of money fighting the case. "This settlement is the same thing we've been trying for since last September," said Schultz. "When we initially approached Shell, the city's costs were about \$75,000. Now, it's half a million."

As for why it took so long to reach a settlement, Shell attorney Jones said, "There were some very complicated issues to be worked out."

Environmental attorney Barry Groveman, hired by the city for this case, said Shell had no choice but to settle. At the beginning of Tuesday's proceedings, Groveman said, he informed them he had scheduled a hearing for Wednesday afternoon to ask Superior Court Judge Jeffrey Burke to hold some of Shell's employees in contempt of court for not showing up at the hearings, despite having been subpoenaed.

Most of the Shell employees who received subpoenas declined to testify from the start on Jan.

17, invoking their Fifth Amendment right against self-incrimination. After several days of sitting through testimony, some of the employees went home.

Shell's attorney Jones shrugged at the court hearing that was canceled after the settlement was reached. "It was just a hearing to show cause," said Jones. But the hearing could have led to warrants being issued for some of the Shell employees, said Groveman, the former head of the Environmental Crimes Unit for the Los Angeles County District Attorney's Office. Groveman helped form the Toxic Waste Strike Force in 1980, which was responsible for the first-ever prosecutions of people for "midnight dumping" of toxic chemicals, he said.

"You can't be too bullish when you're protecting the city's resources," said Groveman. "That's what the city's done, been very aggressive, and it paid off."

He noted that just last Friday, the regional water board ordered Shell to conduct more tests and have the results by April 2, or face penalties. It also noted that soil samples from December showed gasoline constituents had been found in water in one of the soil samples.

Shell was led to believe it could allow the **MTBE** to reach the wells and then use relatively cheap cleanup methods to bring the water within the state's acceptable levels, five to 13 parts per billion, explained Groveman.

The City Council voted that was unacceptable last summer and ordered its staff to see that no contamination reached the wells.

"We've set the stage to prevent this from ever occurring again," Groveman said. "It's a total victory for the city of Morro Bay."