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**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER  
ATTORNEY GENERAL



ANN M. RICE  
DEPUTY ATTORNEY GENERAL

May 24, 2016

The Honorable Neal M. Kurk, Chairman  
Fiscal Committee of the General Court  
State House  
Concord, NH 03301

Her Excellency Governor Margaret Wood Hassan  
And the Honorable Council  
State House  
Concord, NH 03301

**REQUESTED ACTION**

1. Pursuant to RSA 14:30-a, VI, authorize the Department of Justice to budget and expend prior year carry forward funds in the amount of \$59,313,582 from the MtBE settlement funds for the remediation of MtBE contamination in groundwater and drinking water effective upon approval from the Fiscal Committee and the Governor and Executive Council through June 30, 2017. 100% Other Funds (MTBE Settlements).

Funds are to be budgeted in account #02-20-20-200010-3343, Department of Justice MtBE Settlements as follows:

<u>Class/Expense</u>	<u>Class Title</u>	<u>Current SFY16 Budget</u>	<u>Increase Amount</u>	<u>Revised SFY16 Budget</u>
073-500582	Grants to Other State Agencies	\$19,448,329	\$59,313,582	\$78,761,910
<u>Source of Funds</u>				
009-407129	Other Income	\$19,448,329	\$59,313,582	\$78,761,910

2. Contingent upon approval of requested action number one, authorize the Department of Justice to **retroactively** amend a Memorandum of Understanding between the Department of Justice (DOJ) and Department of Environmental Services (DES), approved by the Governor and Executive Council on December 4, 2013, Item #22 by extending end date from June 30, 2015 to June 30, 2021 and by increasing the grant to DES by \$59,313,582 from \$22,316,660 to \$81,630,242.

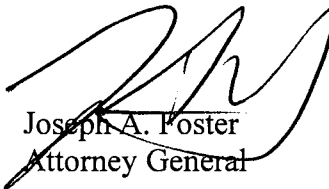
## EXPLANATION

1. In 2003, the Department of Justice (DOJ) sued gasoline manufacturers and marketers seeking damages for the statewide problem of MtBE contamination of groundwater and drinking water. DOJ entered into settlement agreements with a number of the manufacturers and marketers, which resulted in the State receiving \$81,630,242 for MtBE remediation. The Department of Environmental Services (DES) and the DOJ entered into an MOU in which DES would utilize an estimated \$22,316,660 to begin implementation of an MtBE corrective action plan for cleanup of the contamination of groundwater and drinking water. This request is to budget and expend the remaining \$59,318,582 to continue with MtBE remediation plan.
  
2. This request is retroactive because there was an extensive start-up period for the implementation of the corrective plan when DES did not have a significant outlay of the already-encumbered funds. The programs are up and running and major expenses are being incurred by DES, and will be incurred for an estimated five additional years. The amendment to the MOU will allow DES to receive the remaining settlement funds and expend them in accordance with the corrective action plan.

In the event these funds should no longer become available, general funds will not be requested in support of this request.

Please let me know if you have any questions regarding this request. Your consideration is greatly appreciated.

Respectfully submitted,

  
Joseph A. Foster  
Attorney General

#1425165

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**New Hampshire Department of Justice**  
**and**  
**New Hampshire Department of Environmental Services**  
**relative to**  
**the expenditure of MtBE Settlement Funds**

*AMENDMENT No. 1*

This Agreement, hereinafter called the "Amendment," is by and between the Department of Justice (DOJ) and the Department of Environmental Services (DES).

WHEREAS, pursuant to a Memorandum of Understanding (MOU) approved by Governor and Council on December 4, 2013 (Item #22) DOJ and DES agreed to perform certain services upon the terms and conditions specified in the MOU and in consideration of reimbursement by DOJ of certain sums as specified therein; and

WHEREAS, the DOJ and DES have agreed to amend the MOU in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the MOU and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification of MOU: The MOU is hereby amended as follows:

(A) Delete existing paragraph D and replace it with:

*D. Payment*

*DOJ will reimburse DES, at a minimum, on a quarterly basis for expenditures incurred.*

*DOJ and DES shall jointly determine the amount of funds that will be necessary to support the MTBE remediation program. DOJ may transfer funds to DES to support the MTBE remediation program; however, payments in total shall not exceed \$81,630,242.00.*

(B) Add the following new section F:

*F. Termination*

*This MOU will terminate upon full disbursement of the MtBE Settlement Funds by DES.*

2. Effective Date of Amendment: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.

3. Continuance of Agreement: Except as specifically amended and modified by the terms

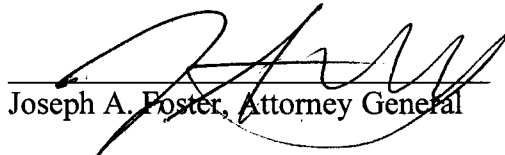
and conditions of this Amendment, the MOU, and the obligations of the parties there under, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

**For the Department of Environmental Services:**

  
Thomas S. Burack, Commissioner

5/12/2016  
Date

**For the Department of Justice:**

  
Joseph A. Foster, Attorney General

5/18/2016  
Date

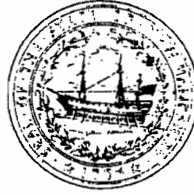
ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE

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CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER  
ATTORNEY GENERAL

ANN M. RICE  
DEPUTY ATTORNEY GENERAL



October 29, 2013

The Honorable Mary Jane Wallner, Chairman  
Fiscal Committee of the General Court  
State House  
Concord, NH 03301

*M. J. Wallner* 11/22/13  
Approved by Fiscal Committee Date

Her Excellency Governor Margaret Wood Hassan  
And the Honorable Council  
State House  
Concord, NH 03301

REQUESTED ACTION

1. Pursuant to RSA 14:30-a, VI, authorize the Department of Justice to budget and expend prior year carry forward funds in the amount of \$22,316,661 from the MtBE settlement funds for the remediation of MtBE contamination in groundwater and drinking water effective with the approvals of the Fiscal Committee and Governor and Council through June 30, 2015. 100% Other Funds (MTBE Settlements).

These funds are to be budgeted in account #02-20-20-200010-3343, Department of Justice, MtBE Settlements as follows:

MtBE Settlements 02-20-20-200010-3343		Current	Requested	New
<u>Class</u>	<u>Description</u>	<u>Budget</u>	<u>Action</u>	<u>Budget</u>
073-500582	Grants to other State Agencies	\$0	\$22,316,661	\$22,316,661
Revenue 009-407129	Other Income	\$0	(\$22,316,661)	(\$22,316,661)
MtBE Settlements				

2. Contingent upon approval of requested action number one, authorize the Department of Justice to enter into a Memorandum of Understanding (MOU) with the Department of Environmental Services (DES) and grant DES \$22,316,661 to establish and begin the implementation of an MtBE corrective action plan for cleanup of the contamination of groundwater and drinking water effective with the date of Governor and Council approval through June 30, 2015.

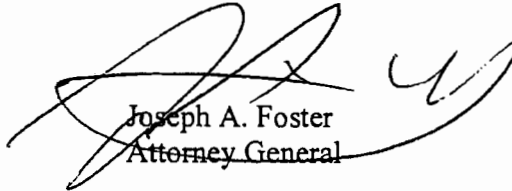
## EXPLANATION

In 2003, the Department of Justice (DOJ) sued gasoline manufacturers and marketers seeking damages for the statewide problem of MtBE contamination. The State settled with all but one of the defendants. After deductions from the settlement payments for legal fees, costs, and administrative fees, the State has \$81,630,000 available for remediation of MtBE contamination in groundwater. The settlements, entered as orders of the court, require that the money be spent on MtBE-related remediation. The Department of Environmental Services (DES) has developed a plan for the efficient use of these funds. This plan is being presented to the committee as a separate DES item. DOJ requests authorization to grant \$22,316,661 to DES for implementation of the plan during the current biennium. DOJ and DES have entered into a separate Memorandum of Understanding (MOU) that allows DES to implement this plan while DOJ retains the right to review DES expenditures quarterly and to review any single expenditure over one million dollars (MOU attached).

Please let me know if you have any questions concerning this request.

Your consideration is greatly appreciated.

Respectfully submitted,



Joseph A. Foster  
Attorney General

JAF/k  
#964192

MEMORANDUM OF UNDERSTANDING  
STATE OF NEW HAMPSHIRE  
DEPARTMENT OF JUSTICE  
DEPARTMENT OF ENVIRONMENTAL SERVICES

A. Agreement

This Memorandum of Understanding between the Department of Justice (hereinafter "DOJ") and the New Hampshire Department of Environmental Services (hereinafter "DES") sets forth the terms and conditions whereby DOJ will dispense up to \$81,630,242.00 in settlement funds received in the case of *State v. Hess, et al* (hereinafter "MTBE case") to DES to implement mutually agreed-upon programs to prevent exposure to MTBE by identifying and remediating contamination of groundwater in New Hampshire, and providing safe, clean drinking water to those who have been affected.

B. Development of a Project Plan

DOJ and DES agree that the settlement funds should be used in a manner that will provide benefit to the greatest number of affected citizens, while focusing on those high priority sites that pose the most immediate danger to drinking water sources. DOJ and DES recognize that it is critical to the success of the MTBE remediation projects that the input of legislators and other stakeholders be considered as a detailed project plan is developed. DOJ and DES agree that by March 31, 2014, they will jointly schedule and attend meetings with legislators and various other stakeholders to seek input as to the use of the funds. Thereafter, DES will develop a long-range work proposal for: (1) investigation and remediation of existing contamination sites, (2) testing at-risk private drinking water wells within a location radius of contamination source sites, (3) providing safe, clean drinking water to impacted citizens, (4) installation and improvement of public water supply infrastructure in areas having significant MTBE contamination, and (5) implementation of measures to prevent further MTBE contamination. The plan must be approved by DOJ prior to implementation.

C. Scope of Work

DES will create an MTBE Remediation Bureau within the agency, which will have primary responsibility for implementing the approved work plan. The Bureau's efforts will include coordination of MTBE site cleanup, drinking water quality assessment, public and private drinking water supply improvements, and prevention work. Staff will be responsible for establishing and implementing comprehensive plans to sample at-risk private and transient public water supply wells to identify areas affected by MTBE contamination and for the investigation and cleanup of priority MTBE-contaminated sites. Where drinking water impacts are identified, staff will work to provide appropriate treatment or connection to new or existing private or public water systems. DES may engage the services of outside professionals as needed to implement the plan.

D. Payment

DOJ will reimburse DES on a quarterly basis for expenditures incurred.

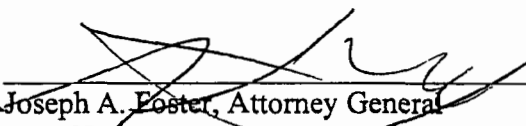
Prior to the ends of FY 2015, and FY 2017, respectively, DOJ and DES shall jointly determine the amount of funds that will be necessary to support the MTBE remediation program for the following biennium. Unless instructed otherwise by the Governor or the Legislature, DOJ will seek the approval of the Fiscal Committee and the Governor and Council to transfer that sum to DES by the beginning of the following fiscal year. Payments in total shall not exceed \$81,630,242.00.

E. Reporting

On a quarterly basis, DES will provide a report to DOJ that will include the name of each project, the total amount spent, what the money was spent on, and a copy of its appropriation summary report. DOJ may audit DES expenditures.

DES shall seek DOJ approval of any single project expenditure in excess of \$1,000,000.00.

10/31/13  
Date

  
\_\_\_\_\_  
Joseph A. Foster, Attorney General  
New Hampshire Department of Justice

10/31/2013  
Date

  
\_\_\_\_\_  
Thomas S. Burack, Commissioner  
Department of Environmental Services