



Legislation Text

File #: 23-71, Version: 1

Report regarding a resolution approving and authorizing the City Manager to execute a legal services agreement with Sher Edling LLP to join a lawsuit filed by the County of San Mateo and other cities in the County against Monsanto to recover costs of remediating PCB contamination. (*Sky Woodruff, City Attorney*)

RECOMMENDATION

It is recommended that the City Council adopt a resolution approving and authorizing the City Manager to execute a legal services agreement with Sher Edling LLP to join a lawsuit filed by the County of San Mateo and other cities in the County against Monsanto to recover costs of remediating PCB contamination.

BACKGROUND/DISCUSSION

PCBs are chlorinated hydrocarbons that are fire resistant, not readily biodegradable, and are difficult to destroy. Monsanto and its corporate predecessors were the manufacturers of virtually all PCBs in the United States. PCBs were used as cooling and insulating fluids in heavy-duty electrical equipment, including capacitors and transformers. For over 40 years, PCB electrical fluids were required in structures where the risks of fires or explosions were major concerns, including high-rise buildings, schools, hospitals, and industrial operations. Over time, PCBs came to be used in numerous products, including hydraulic fluids, lubricants, paints, and carbonless copy paper. The EPA has concluded that PCBs are probable human carcinogens. In 1979, EPA issued regulations prohibiting the production of PCBs.

Despite the fact that PCBs have not been in wide use for decades, they are ubiquitous in the environment. In particular, they are found in old buildings, sewer systems, and in urban stormwater runoff.

Thirteen cities initiated what became the class action lawsuit *City of Long Beach v. Monsanto*, in which the plaintiffs allege damages resulting from PCBs on behalf of a class of cities, counties and other governmental entities. The City of South San Francisco was named as one of 2,528 plaintiff class members of this lawsuit. A settlement in this suit was reached in June 2020.

The City Council has reviewed the terms of this settlement and determined it to be insufficient in addressing the damage to the City. In particular, but not exclusively, the City may face future costs for remediation of PCBs in stormwater runoff as a requirement of the regional permit issued under Clean Water Act.

The County of San Mateo and other cities in the County made a similar determination previously and initiated a suit against Monsanto, *County of San Mateo et al. v Monsanto, et al.* The law firm retained for this suit is Sher Edling LLP. The County and city plaintiffs in this suit have agreed to allow South San Francisco to join the suit as a plaintiff. Authorizing the execution of the attached legal services agreement will formalize the City's participation in the suit.

FISCAL IMPACT

There is no direct fiscal impact for this item. The legal services agreement includes a contingent fee arrangement in which Sher Edling will receive a percentage of any monetary award or settlement. The City will not have to pay any attorneys' fees or costs.

RELATIONSHIP TO STRATEGIC PLAN

Joining the County and other cities in this litigation promotes public health and environmental stewardship by seeking compensation for anticipated costs of PCB remediation, including in stormwater runoff. Such remediation positively influences the quality of life for South San Francisco residents by protecting public health and safety.

CONCLUSION

It is recommended that the City Council adopt a resolution approving and authorizing the City Manager to execute a legal services agreement with Sher Edling LLP to join a lawsuit filed by the County of San Mateo and other cities in the County against Monsanto to recover costs of remediating PCB contamination.