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Town approves legal services agreement for representation regarding PCB contamination

By Vera Kochan

The Regional Water Quality Control Board in 2015 issued a Municipal Regional Stormwater Permit regulating the polychlorinated biphenyls (PCB) discharges in storm and dry weather runoff within Contra Costa County and all of its cities and towns. As such, Moraga is required to implement PCB source and treatment control measures along with pollution prevention strategies (including green infrastructure). The county and its cities will share the costs and most likely spend a collective total of approximately \$94 million. Moraga's anticipated share amounts to roughly \$4.22 million.

According to an Aug. 24 staff report presented to the town council by Moraga Town Manager Cynthia Battenberg and Town Attorney Michelle Marchetta Kenyon, PCBs "are a group of manufactured chemicals that have been determined to have carcinogenic effects on fish, wildlife and humans. Over the many years that PCBs were manufactured, they were released into the environment through intentional disposal in landfills or through accidental spills and leaks."

The report continues, "Because PCBs are highly persistent in the environment and do not degrade easily, PCBs continue to leach, leak, off-gas, and wash into wastewater and stormwater systems to this day."

A report from the County Executive's Office of San Mateo stated, "PCBs are known or suspected to cause a wide range of cancers including non-Hodgkin's lymphoma, breast cancer, liver cancer, gallbladder cancer, gastrointestinal cancers, pancreatic cancer, and skin cancer. They are also implicated in numerous non-cancer health problems including cardiovascular, endocrine, gastrointestinal, hepatic (liver), immune, neonatal, neurological, ocular, and reproductive harm."

The Monsanto Company, founded in 1901, as an American agrochemical and agricultural biotechnology corporation, eventually went on to produce almost 100% of all PCBs used in the United States until their manufacture was banned by the Toxic Substance Control Act of 1976.

In the 1950s, the U.S. Navy refused to buy Pydraul 150, a Monsanto product for use in its submarines, after Navy tests revealed that it killed all of the rabbits exposed to the vapors.

Monsanto's most recent negative news headlines involves dozens of successful, multi-million dollar lawsuits against their weed-killing product Roundup, a glyphosate-based herbicide introduced in the 1970s and proven to cause cancer and other diseases.

The city of Long Beach has filed a national class action settlement against Monsanto. However, many counties and municipalities are opting out, preferring to initiate their own litigation against Monsanto in order to better cover the expensive cost of treatment control measures ordered by the National Pollutant Discharge Elimination System (NPDES) as authorized by the Clean Water Act. If the town had opted into the City of Long Beach class action settlement, its insufficient share would have amounted to approximately \$22,024 - far below the anticipated costs of control measures.

Eight other cities within the county (Brentwood, Concord, Danville, Lafayette, Martinez, Oakley, San Pablo and San Ramon) have opted out of the class action settlement and have joined the county in pursuing an individual settlement.

The Moraga Town Council at its Aug. 24 meeting unanimously approved a legal services agreement with Sher Edling LLP of San Francisco, a legal firm specializing in public agency representation concerning environmental cases. Both Contra Costa County and San Mateo County, among others, have retained their legal services in the Monsanto matter.

Under the Legal Settlement Agreement, "Sher Edling will receive as compensation for its services between 7.5% and 18% of the net recovery the town receives in the litigation, depending on what stage of the litigation the recovery occurs," explains the staff report. "Sher Edling will front all litigation costs and will be reimbursed for those costs from any recovery the Town receives in the litigation before attorneys' fees are calculated. Both the attorneys' fees and litigation costs are contingent, meaning the Town will have no obligation to pay the firm for its services or reimburse the firm for any litigation costs in the absence of a recovery in litigation."

Since the town attorney's office will assist in and oversee the litigation by providing help with document gathering and responding to recovery requests, estimated legal fees and costs for these services could run approximately \$5,000 to \$10,000.

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