Board Agenda Item 36

DATE: October 8, 2019

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Settlement Agreement with Dow Chemical and Shell Oil for Claim regarding 1,2,3 -TCP Contamination of CSA 14 Groundwater

RECOMMENDED ACTION(S):

Approve and authorize Chairman to execute a Settlement Agreement and Release of Claims with The Dow Chemical Company and Shell Oil Company to settle the County's claim related to 1,2,3-Trichloropropane groundwater contamination by payment of $2,000,000 to the County for the credit of County Service Area No. 14

ALTERNATIVE ACTION(S):

There is no viable alternative action.

FISCAL IMPACT:

No Net County Cost will result from approving the recommended action. The payment of $2,000,000 to the County under the recommended settlement agreement will be received to the credit of County Service Area No. 14 (CSA 14) to pay the capital cost for facilities adequate to treat TCP out of the water and for operation and maintenance of those facilities.

DISCUSSION:

Certain agricultural fumigants manufactured by The Dow Chemical Company (Dow) and Shell Oil Company (Shell) used to contain 1,2,3-Trichloropropane (TCP). The TCP was an unnecessary impurity, and not essential to their products. It was not listed on the labels for those products. It is a carcinogen, however, with a long half-life, and it is persistent for decades when it gets into groundwater. Current products do not contain TCP.

The State Water Resources Control Board (State Board) recently established a maximum contaminant level (MCL) for TCP of 0.000005 milligrams per liter. That MCL went into effect on January 1, 2018.

The County owns two wells that extract groundwater for domestic service to 41 homes in CSA 14. Both of those wells have tested above the MCL for TCP. Both of those wells are in violation of the MCL and subject to enforcement action by the State Board. The Department of Public Works and Planning has tested other CSA wells for TCP, but it so far has appeared only in the CSA 14 wells.

The Department of Public Works and Planning informs this office that the estimated capital cost for facilities adequate to treat TCP out of the water for CSA 14 is about $1.6 million, and the estimated 10-year cost to operate and maintain those facilities will be about $400,000.

County Counsel negotiated a settlement with Dow and Shell to avoid litigation in this matter. Under the recommended agreement, Dow and Shell will pay $2,000,000 to the County in exchange for a release of all claims.

The County will be the first party to sign the recommended agreement. Dow and Shell have stated that they will not sign until after the County signs.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with the Clerk - Settlement Agreement and Release of Claims

CAO ANALYST:

Yussel Zalapa