

AGENDA ITEM H1

DATE: February 3, 2020
TO: Board of Directors
FROM: Barrie S. Buenaventura, General Counsel *BSB*
SUBJECT: Agreement for Representation in Per- and Polyfluoroalkyl Substances (PFAS)
Litigation – *Approve*

SUMMARY

Consider retaining counsel on a contingency basis to represent Tampa Bay Water in connection with investigation and participation in potential civil litigation regarding the possible presence of PFAS, which are a group of man-made chemicals that include PFOS, PFOA, and similar compounds (the “Chemical Compounds”) at unacceptable detection limits in Tampa Bay Water source waters.

RECOMMENDATION

Approve retaining the law firms of Ventura Law, Frazer P.L.C., Frank Charles Miranda, P.A., and Napoli Shkolnik P.L.L.C. (the “Law Firms”) to investigate and potentially litigate the recovery of economic losses resulting from the presence, if found, of the Chemical Compounds in Tampa Bay Water source waters. In addition, delegate authority to the General Manager, in consultation with the Chair and the General Counsel, to direct the Law Firms to initiate litigation against manufacturers of the Chemical Compounds or other potentially responsible parties if investigations detect unacceptable levels of the Chemical Compounds in Tampa Bay Water source waters.

COST/FUNDING SOURCE

All fees and costs will be paid from any monetary award Tampa Bay Water may receive.

DISCUSSION

Per- and polyfluoroalkyl substances (PFAS), which are a group of man-made chemicals that include PFOS, PFOA, and similar compounds (the “Chemical Compounds”), are frequently used in products such as firefighting foam, food packaging, and many other consumer products. They are unregulated compounds and, therefore, they are not part of Tampa Bay Water’s routine water quality sampling. When last sampled in cooperation with member governments in the 2015 timeframe, the Chemical Compounds were not detected with the methodologies used at that time. While these are unregulated compounds, the EPA does have health advisory levels for PFOS and PFOA at individual or combined concentrations greater than 70 parts per trillion. It is expected that the EPA will release new requirements for the Chemical Compounds in the coming year.



There is multidistrict litigation ongoing against several manufacturers of the Chemical Compounds. Tampa Bay Water staff and General Counsel have been contacted by two teams of law firms currently undertaking contingency representation of entities to investigate and potentially litigate claims involving the possible presence of the Chemical Compounds at unacceptable detection limits. Each team has a local attorney along with several out of state attorneys or firms involved in the litigation. The teams are comprised of the following firms:

Baron & Budd, PC
Cossich, Sumich, Parsiola & Taylor, LLC
Young & Partners LLP

Ventura Law
Frazer PLC
Frank Charles Miranda, PA
Napoli Shkolnik, PLLC

Through discussions with staff and counsel, both teams have demonstrated that they are highly qualified and hold leadership positions on the plaintiffs' side in the ongoing multidistrict litigation. However, Tampa Bay Water has prior experience with Ventura Law and Frank Charles Miranda, PA in that they were part of the team that successfully represented Tampa Bay Water in the BP Oil matter. In addition, the team that includes Ventura Law and Frank Charles Miranda, PA has proposed a contingency fee of 25% for attorney fees while the other team has proposed a contingency fee of 33.33%.

For the reasons identified above, it is recommended that the Board approve retaining the law firms of Ventura Law, Frazer P.L.C., Frank Charles Miranda, P.A., and Napoli Shkolnik P.L.L.C. to represent Tampa Bay Water in this matter and authorize the General Manager to sign the representation agreement. The Law Firms and experts they may retain will perform a comprehensive analysis of the viability of claims on behalf of Tampa Bay Water and prosecute any such claim through recovery, if any. It is also recommended that the Board delegate authority to the General Manager, in consultation with the Chair and the General Counsel, to direct the Law Firms to initiate litigation against manufacturers of the Chemical Compounds or other potentially responsible parties if investigations reveal unacceptable levels of the Chemical Compounds in Tampa Bay Water source waters.