

IMPACT STATEMENT

Legislation title: *Approve Revised Settlement Agreement in the matter of *City of Portland v. Monsanto et al.* and authorize the process for use of settlement funds (Ordinance)

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Purpose of proposed legislation and background information:

This ordinance would approve a Revised Settlement Agreement (attached as Exhibit A) between Monsanto Company and local governments and port districts, including the City, and confirm the ministerial process within Bureau of Environmental Services (BES) to hold settlement funds received by the City and facilitate development of the plan to use those funds.

The Litigation and the Revised Settlement Agreement:

The City, through its outside counsel, has been litigating this matter in the U.S. District Court, Portland Division since 2016. The Court has heard several motions in this case, and an intensive discovery process has been underway since December 2018. Trial is scheduled for August 2021. The purpose of the lawsuit was to protect the City's rights and seek relief, related to the public nuisance caused by Monsanto Company's manufacture of polychlorinated biphenyls (PCBs) and resulting impairment of waterbodies.

In July 2020, by Ordinance 190050 as amended, Council authorized certification of a class action against Monsanto Company in the U.S. District Court for the Central District of California and a proposed settlement of that action. The Court subsequently denied the motion pending clarifications to the settlement agreement.

The current Revised Settlement Agreement responds to the Court's concerns and confirms that attorney fees are not paid from settlement funds, more clearly states the scope of the release and distributes settlement funds in a single payment rather than over four years. Other revisions relate to states other than Oregon or otherwise do not adversely affect City interests. The Revised Settlement Agreement was provisionally signed by the City Attorney's Office on December 28, 2020, pending Council approval.

If Council approves the Revised Settlement Agreement, and the Court accepts the motion to certify the class action, the 2016 litigation will be dismissed and the City will proceed to settlement as one of the 13 named plaintiffs in the class action litigation.

If Council does not approve the Revised Settlement Agreement, the City will not be a named plaintiff in the class action and will not receive settlement funds that would

otherwise reimburse City litigation costs. The City could remain in the litigation as a general member of the Class Action and receive reduced benefits or opt-out of the class or pursue continued litigation independently and at its own cost.

Taking into consideration the risks and uncertainties inherent in the complex and novel issues posed in this lawsuit, settling this litigation as a named class plaintiff provides the City with a more certain benefit over a shorter timeframe than continuing to litigate the matter would do.

Settlement funds:

As in the previous proposed settlement agreement, the Revised Settlement Agreement provides that Monsanto Company will pay up to \$550 million in damages through a class action lawsuit. The class members are the more than 2500 local governments and port districts nationwide that are required to incur costs of meeting regulatory requirements because they discharge stormwater into waterbodies impaired by PCBs.

The settlement funds will be allocated pursuant to various formulae set forth in the Revised Settlement Agreement and pursuant to applications made by the local governments to a court-approved Special Master. Attorney fees and costs of administering the settlement fund distribution are paid from separate funds and do not diminish the amount of benefits to the class members.

As in the previous proposed settlement agreement, the Revised Settlement Agreement does not direct or restrict the use of any funds received. Therefore, the City has full discretion to direct how the settlement funds may be used.

When Council approved the original proposed settlement in July 2020, it stated Council's desire to focus the funds on communities that are disproportionately affected by environmental contamination and the need for environmental cleanup and directed BES to cocreate a process to address these goals and return the proposed plan to Council for public approval. Today's ordinance would direct the Brownfield Program within BES to carry out this task.

Financial and budgetary impacts:

This ordinance will have a positive, although undetermined, budgetary impact. It will reduce further litigation costs to the City. Although the City has pursued this litigation pursuant to a contingent fee arrangement with outside counsel, the City has had to devote some staff and attorney time to support the litigation. The settlement funds will be disbursed in a single payment. The distribution process will begin after the court certifies the class action, the class members are notified, the administrative process to make claims concludes and the court approves the Final Approval Order for the case. These steps are anticipated to be completed within the next 12 to 18 months.

