

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: September 16, 2024

Agenda Item: 5A	Prepared by: Chris Noury, City Attorney
Agenda Section: Consent: Resolution	Date: September 11, 2024
Subject: A resolution opting out of the Tyco Fire Products LP, et al. and BASF Corporation Class Action Settlements	Division: Legal

Background:

Attached is a resolution of the City of North Myrtle Beach opting out of the Tyco Fire Products LP, et al. and BASF Corporation Class Action Settlements in re: Aqueous Film Forming Foams Product Liability Litigation, US District Court of South Carolina, MDL No. 2:18-MN-2873-RMG; Case Nos. 2:24-CV-02321-RMG and 2:24-CV-03147-RMG.

Recommended Action:

Adoption of the Resolution

Reviewed by Department Head	Reviewed by City Manager	Reviewed by City Attorney
Council Action: Motion By _____ 2 nd By _____ To _____		

A RESOLUTION

A RESOLUTION OF THE CITY OF NORTH MYRTLE BEACH OPTING OUT OF THE TYCO FIRE PRODUCTS LP, ET AL. AND BASF ACTION SETTLEMENTS IN RE: AQUEOUS FILM FORMING FOAMS PRODUCT LIABILITY LITIGATION, US DISTRICT COURT OF SOUTH CAROLINA, MDL NO. 2:18-MN-2873-RMG; CASE NOS. 2:24-CV-02321-RMG and 2:24-CV-03147-RMG

WHEREAS, perfluoroalkyl and polyfluoroalkyl substances (“PFAS”) are a large group of synthetic chemicals which do not break down in the environment and eventually contaminate surface and groundwater supplies and soils, among other things; and

WHEREAS, countless lawsuits relating to PFAS have been combined into multi-district litigation in the U.S. District Court for the District of South Carolina *In re Aqueous Film-Forming Foams Products Liability Litigation* (No. 2:18-mn-2873-RMG) (“MDL”); and

WHEREAS, hundreds of the cases in the MDL were brought by U.S. drinking water providers alleging that PFAS manufacturers, including Tyco Fire Products, LP (and companies associated with Tyco) and BASF Corporation, contaminated the drinking water of those providers; and

WHEREAS, the U.S. District Court for the District of South Carolina has given preliminary approval to separate class-action settlements for MDL defendants Tyco Fire Products, LP (and companies associated with Tyco) and BASF Corporation (“the Tyco and BASF Settlements”); and

WHEREAS, the City of North Myrtle Beach operates a public water system and has been identified as a member of the proposed classes in the Tyco and BASF Settlements; and

WHEREAS, the terms of the Tyco and BASF Settlements require class members who do not wish to participate in the settlements to affirmatively opt out to avoid being bound by the terms of the settlements; and

WHEREAS, the Tyco and BASF Settlements include broad releases of future PFAS-related claims; and

WHEREAS, PFAS is known to impact not only drinking water but soil, wastewater, and groundwater, and federal and state regulations for PFAS are expected to be enacted in 2024 and beyond; and

WHEREAS, the scope and resulting consequences of PFAS contamination are unknown; additional time is needed for the City of North Myrtle Beach to gain a better understanding of the true legal, operational and financial impacts of PFAS; and

WHEREAS, the City of North Myrtle Beach is classified as a consecutive water system since the City purchases most of the water from a regional supplier, Grand Strand Water and Sewer Authority. As such, any anticipated settlement amount would be nominal.

WHEREAS, it is in the public interest for the City of North Myrtle Beach to preserve any PFAS-related claims it may have against Tyco, BASF, and other potential defendants until the risks and impacts of PFAS are better understood.

BE IT RESOLVED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, that it specifically elects to not participate in the proposed Tyco and BASF Class Action Settlements in re: Aqueous Film Forming Foams Product Liability Litigation, US DISTRICT COURT OF SOUTH CAROLINA, MDL NO. 2:18-MN-2873-RMG CASE NOS. 2:24-CV-02321-RMG and 2:24-CV-03147-RMG. This litigation would require participating member to “release certain Claims against Settling Defendants, their affiliates, certain predecessors and successors, and other persons as set forth in the Settlement Agreement...Generally speaking, the Release will prevent and Settlement Class Member from bringing any lawsuit against the Settling Defendants or making any claims resolved by the Settlement Agreement.” The Council further authorizes the Director of Public Works, Kevin Blayton, to sign the documents necessary, including but not limited to, completing and submitting forms electronically to opt out of the settlements.

Dated this 16th day of September 2024

Marilyn Hatley, Mayor

ATTEST:

Allison K. Galbreath, City Clerk

Resolution: RES-24-07