

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



MARKET SURVEY FOR OUTSIDE LEGAL COUNSEL

TO: POTENTIAL RESPONDENTS

Survey Number: DCCB-2021-S-0014

Caption: Outside Legal Services for Potential Chlordane and PFAS Litigation

Issuance Date: March 10, 2021

Response Due Date: March 24, 2021

The Office of the Attorney General for the District of Columbia (OAG) is conducting market research to identify the availability and interest of qualified law firms to assist with investigation of, and potential litigation involving, environmental enforcement cases against: (1) Velsicol Chemical Corporation (Velsicol) and/or any other subsidiary, affiliate, successor-in-interest or other manufacturer responsible for the manufacture, distribution and/or sale of chlordane, a synthetic pesticide widely used in residential homes and for commercial and agricultural uses; and (2) 3M Company (3M) and E.I. du Pont de Nemours and Company (DuPont), and/or any other subsidiary, affiliate, successor-in-interest or other manufacturer responsible for the manufacture, distribution and/or sale of perfluorooctane sulfonate and perfluorooctanoic acid (collectively, PFAS), synthetic chemicals used in the production of consumer, household, and commercial products and promoted by 3M and DuPont as heat- and stain-resistant, long-lasting, and water- and oil-repellant.

Under D.C. Code §2-354.13(3), the procurement for these legal services is exempt from the competitive procurement process. The responses to this market survey may be used to determine the availability of qualified firms, but it is not intended to be the basis for award.

BACKGROUND OF CHLORDANE MATTER

In 1945, Velsicol developed and patented chlordane, under the name of “Velsicol 1068.” Velsicol produced chlordane for domestic use until EPA’s suspension of its use in 1988 and continued to manufacture chlordane for export until 1997. Velsicol is still in business today and continues to manufacture other chemicals.

From 1948 to 1978, chlordane was used as a pesticide to control termites in homes, on agricultural crops, lawns, and gardens, and as a fumigating agent. From 1978 to 1988, chlordane's only approved use was to control termites in homes, through underground application around the perimeter of the foundation of homes. Due to its persistence, chlordane remains an environmental hazard decades after its removal from the market, including in sediment, wetlands, surface water, and drinking water in wells. In 1988, EPA suspended all domestic uses of chlordane because it posed a cancer hazard to humans.

The District Government has spent significant funds studying and attempting to address chlordane contamination in soil, sediment, and surface water. Chlordane has impacted the Anacostia River and at least one known site adjacent to the river. The District has also established water quality standards for chlordane. The Department of Energy and Environment updated its water quality standard for chlordane (and other pollutants) on May 22, 2020 (67 D.C. Reg. 5,371, 5,379). As of 2016, twenty-one of the District's 38 miles of rivers and streams are currently not meeting or are threatened to not meet the water quality standard for chlordane.

The District is also investigating chlordane contamination at Poplar Point adjacent to the Anacostia River. On portions of Poplar Point, chlordane in soil exceeds residential screening values.

BACKGROUND OF PFAS MATTER

PFAS comprise a family of approximately 3,500 man-made chemicals that have been manufactured and in use since the 1940s. The two most recognized members of the PFAS family are perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). Since their formulation, PFAS have been used to produce consumer, household, and commercial products. From the 1940s to 2002, 3M manufactured PFOA and PFOS. DuPont started using PFOA in commercial products in the 1950s and manufactured PFOA from approximately 2002 until 2013.

Studies have shown PFAS is toxic, meaning that they pose significant threats to public health and the environment. PFAS exposure is associated with a variety of illnesses, including increased risk of testicular cancer, kidney cancer, thyroid cancer, high cholesterol, ulcerative colitis, and pregnancy-induced hypertension. The chemicals are particularly dangerous for pregnant women and young children.

PFAS dissolve in water easily, are mobile and readily spread in the environment, and are persistent. PFAS have degradation periods of years, decades, or longer under natural conditions and have a half-life in the human body of two to nine years. PFAS are strong, stable, bioaccumulative, and biomagnifying, meaning that they resist degradation due to light, water, and biological processes and tend to accumulate in organisms up the food chain.

In limited sampling, PFAS has been detected in the District's drinking water and some groundwater.

SUBMISSION OF INFORMATION

Interested firms should submit the following no later than 2:00 pm on March 24, 2021 to OAG.BusinessOpportunities@dc.gov with a copy to gena.johnson@dc.gov . The submission should be no longer than seven (7) pages (excluding resumes) and include:

1. A short statement of interest and availability, including which matter the firm is interested in assisting OAG;
2. A description of the firm's experience in handling environmental enforcement cases including toxic tort, Superfund and related state brownfields and national resource claims, and representing state Attorney Generals and other government actors in similar proceedings.
3. Resumes for the attorneys who would handle these services;
4. The contingency fee percentage of gross recovery and additional fees, if any, recovered for similar environmental enforcement cases;
5. Certified Business Enterprise status; and
6. Disclosure of any actual or potential conflicts of interest.

Although this will not be a competitively awarded procurement, OAG values diversity, as well as working with firms located in the District of Columbia, and encourages firms certified as small or local business enterprises by the District of Columbia Department of Small and Local Business Development pursuant to §2-218.31 et seq. to respond to this Market Survey.

If you have questions regarding this market survey, please contact Kathleen Konopka, Deputy Attorney General, at Kathleen.Konopka@dc.gov.