

COMMISSION AGENDA

Item No: 4D

Meeting: 3/15/18

DATE: February 27, 2018

TO: Port Commission

FROM: John Wolfe, Chief Executive Officer
Sponsor: Jason Jordan, Director, Environmental and Planning Services
Project Manager: Rob Healy, Environmental Senior Project Manager

SUBJECT: Authorization to enter into Settlement Agreement with the U.S. Department of Justice for fees and costs incurred for previous remediation of the Hylebos Waterway

A. ACTION REQUESTED

Request authorization for the CEO or his delegate to execute a settlement agreement with the U.S. Department of Justice to reimburse the Port for fees and costs incurred for previous remediation of the Hylebos Waterway.

B. SYNOPSIS

With Commission authorization the settlement agreement with the U.S. Department of Justice will be executed and the funds will be dispersed to an escrow account. This will allow future mediation and allocation between the four performing parties (Port of Tacoma, Occidental, General Metals, and Arkema) later in 2018.

C. BACKGROUND

In September 1983 the Environmental Protection Agency (EPA) placed the Commencement Bay Nearshore Tidelands (CB/NT) site on the National Priorities List. After EPA conducted a Remedial Investigation and Feasibility Study in the mid-1980s and issued the Record of Decision in 1989, the Port and other PRPs began participating in the cleanup process. In the 1990's, EPA also decided to divide cleanup of the Hylebos into two areas, the Mouth and Head Hylebos Waterway problem areas.

Performing Parties for the Head of the Hylebos problem area were identified by EPA as General Metals and Arkema. Occidental Chemical Corporation (OCC) and the Port stepped forward to clean up the Mouth of the Hylebos Waterway. In December 1999 the Port and OCC entered into a cooperative agreement termed the "Slip 1 Disposal Site Agreement" to remediate the Mouth of the Hylebos Waterway and to dispose of contaminated dredged spoils into Former Slip 1 to form what is now upland Terminal space.

Simultaneous with cleanup work being conducted by the Performing Parties, EPA negotiated a cash out Consent Decree with several non-performing PRPs. Three PRPs remain liable for

their share of costs that exceeded cash-out estimates at the time of that settlement. These parties include the United States (primarily the Navy), the City of Tacoma (Tacoma Public Utilities), and Joseph Simon & Sons.

History – Mouth of the Hylebos

From 2002-2008 remedial actions in the Mouth of the Hylebos were conducted. Remedial Action Construction Reports (RACRs) were drafted and revised multiple times per EPA comments and finally approved by the EPA in December 2014. The Operation Maintenance and Monitoring Plans (OMMP) were approved in July 2016. The Pier 24/25 intertidal and subtidal cap inspections and bulk sediment sampling in Waterway Segments 3, 4, and 5 were conducted in the summer of 2016. Results indicate the implemented remedy is functioning as designed.

History – Head of the Hylebos

From 2004 through 2006, remedial actions in the Head of the Hylebos were conducted by the Performing Parties General Metals and Arkema. In 2007 the Port purchased Arkema assuming all environmental liabilities including obligations under the consent decree for the Head of the Hylebos. From 2006 through 2014 Remedial Action Construction Reports (RACRs) were drafted and revised multiple times per EPA comments. The RACRs were approved by EPA in August 2011. Pre-Operation Monitoring and Maintenance Plan (OMMP) sampling was conducted in 2012 with results indicating PCB recontamination. A similar sampling event was conducted in December 2017, with results pending.

Cost Recovery Status

Through cost recovery efforts from PRPs that did not participate in the cash out settlement with EPA, the Port of Tacoma received \$4.9M in total net settlement proceeds, as of March 2016. The Port has paid OCC \$199,527 for their portion of previous settlements pursuant to the Slip 1 Agreement. The Port has received disbursement of the second Zidell settlement for \$201K from the EPA.

Together with the other Performing Parties, the Port is now pursuing cost overrun claims against Joseph Simon & Sons, the City, and the United States. Anticipated settlements will be split among the four performing parties upon execution of all agreements, with a small portion (2.8%) to be received by EPA.

- Joseph Simon & Sons, Inc. settlement – \$710,380.05 – Commission approved 2015.02.19 Item 3C, with funds in an escrow account.
- City of Tacoma settlement – \$287,999.71 – Commission approved 2015.02.19 Item 3C, with funds in an escrow account.
- United States DOJ settlement - \$4,328,812 (plus interest) – Commission approval requested under this action.

Upon execution the US DOJ settlement will fund the escrow account and the four performing parties will mediate a final allocation.

D. TERMS OF AGREEMENT

The basic terms of the agreement include:

United States' shall reimburse Performing Parties' Response Costs Incurred from October 1, 2001, Through September 30, 2015.

- The United States shall pay \$4,328,812, plus interest on that amount accruing from January 31, 2017, until the date of payment.
- 97.1836% of the full amount due shall be paid directly to the Performing Parties.
- 2.8164% of the full amount due shall be paid directly to the EPA.

For Response Costs incurred by the Performing Parties after September 30, 2015, the Performing Parties may periodically submit an invoice for 7.74% of the total Response Costs incurred by the Performing Parties up to the date of that invoice.

E. PREVIOUS ACTIONS OR BRIEFINGS

<u>Date</u>	<u>Action</u>	<u>Amount</u>
June 20, 2013	Initial Project Authorization	\$200,000
September 19, 2013	Commission Authorization Increase	\$325,000
February 19, 2015	Commission Authorization to execute settlement agreements with Joseph Simon & Sons, Inc., and the City of Tacoma	--
February 19, 2015	Commission Authorization Increase	\$1,705,000
TOTAL		\$2,230,000*

*Due to favorable conditions encountered the project estimate has been reduced to \$1.3M.

F. PROJECT DESCRIPTION

The scope of work contained in the consent decree obligates the Port and OCC to submit a post-remedial action Operation, Maintenance, & Monitoring Plan (OMMP) for each discrete remedial action design element of the Mouth of the Hylebos Waterway, and an overall Mouth of the Hylebos long-term OMMP. Long-term monitoring of the Waterway is required to confirm that performance standards are achieved by the remedial action, however the duration of the monitoring is unknown. Should the performance standards of the remedial action not be maintained, enhanced natural recovery or additional dredging actions may be needed.

The majority of the consent decree work has been completed. The required OMMP's were submitted to the EPA and approved in June 2016. Long-term monitoring requirements have been implemented. The only remaining tasks on this project are as follows:

- Issuance of quarterly reports.
- Resolution of cost overrun claims for previous remedial actions (Complete upon Commission authorization of this settlement agreement).
- Monitor the design and construction of American Construction's habitat area.
- Obtain certification of completion of construction for tasks previously accomplished.

G. PROJECT SCHEDULE

Four Party Mediation of Cost Overrun Settlements	3Q 2018
Monitor design and construction of American Construction's habitat area	If design is approved by the EPA, construction may be completed in 2018

H. FINANCIAL SUMMARY

Estimated Cost of Project

The total project cost including, initial long-term monitoring requirements, is estimated at \$1,300,000. Cost to date are \$1,199,285.

Source of Funds

The 2018-2022 Capital Investment Plan (CIP) allocates \$1,237,000 for this project and for future long-term monitoring obligations. Multiple MIDs have been used to track overall project costs over time (092134, 092135, 092653, 092685, and 092836).

Financial Impact

The settlement will be recorded as an environmental liability and will offset future cleanup and monitoring costs. The current estimated expense has been recognized in prior year financial results. Additional environmental expense will be recognized if the cost of any future cleanup or long-term monitoring exceeds the estimate.

I. ECONOMIC INVESTMENT/JOB CREATION

Not Applicable.

J. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1) Do Nothing, and forgo possibly forgo the Port's share of the US DOJ settlement amount.

Alternative 2) This request.

Alternative 2 is the recommended course.

K. ENVIRONMENTAL IMPACTS/REVIEW

Permitting: Not Applicable

Remediation: This is a remediation project

Water Quality: Not Applicable

Air Quality: Not Applicable

L. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation
- Settlement Agreement

M. NEXT STEPS

The Port, Occidental, General Metals, and Arkema will mediate to apportion the funds in the escrow account.

Port staff will continue to monitor American Construction's progress on completing their habitat mitigation area.