

COMMISSION AGENDA

Item No: 4E

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 a settlement agreement with Portac

A. ACTION REQUESTED

Request authorization for the CEO or his delegate to execute a settlement agreement with Portac, whereby Portac pays the Port of Tacoma a lump sum of \$8,600,000 and the Port agrees to undertake all responsibility for further environmental investigation, cleanup, and remedial action at the Site (Port property Parcel 15).

B. SYNOPSIS

Over the last four years the Port and Portac have been working together toward a fair and equitable solution to address legacy contamination associated with Portac's 35 years of operations on the Port property. We have jointly worked with Ecology to identify a MTCA compliant cleanup action. The cost estimate for the cleanup action were developed by a joint consultant and thoroughly reviewed by both parties including a Port Facilities Engineer. The resulting cost estimate has been a key element for negotiating this Settlement offer.

C. BACKGROUND

The site is owned by the Port and was leased by Portac (a subsidiary of Mitsui) and operated as a log yard and sawmill from 1974 to 2009. The northern and eastern portions of the site include the former Log Yard area with an environmental cap covering metals-containing slag present in soil. The rest of the site includes the former sawmill area (Sawmill). In June 2013, Ecology issued notice letters to Portac and the Port identifying each entity as a potentially liable person (PLP) under MTCA for contamination at the site. Ecology included both the Log Yard area and the Sawmill area within its definition of the Site.

In response to Ecology's notice letters, Portac and the Port entered into settlement negotiations in 2014 with an interest in resolving Portac's environmental liabilities at the site. An Executive Authorization was approved in January 2014 to support settlement negotiations with Portac, conduct additional investigational studies to support those negotiations and negotiate an AO with Ecology, the Port, and Portac. Settlement negotiations with Portac were unsuccessful, largely due to the uncertainty around what Ecology would require for the cleanup action plan.

In March 2016, following the public notice period, the Port and Portac jointly entered into an Agreed Order with Ecology to complete a Remedial Investigation and Feasibility Study. The Port and Portac have completed the requirements of the Agreed Order and the preferred remedy has been identified. Cost of the preferred remedy is estimated at \$10.6M net present value without contingency. Portac's estimated share is \$6.63M

D. TERMS OF AGREEMENT

The basic terms of the agreement include:

- Portac pays lump sum of **\$8,600,000 (US dollars)** within thirty (30) days of execution of Settlement Agreement.
- Port agrees to undertake all responsibility for any Environmental Claim, Environmental Contamination, Loss, Order or Release relating to the Site, and any further environmental investigation, cleanup, and remedial action at the Site, including any actions ordered, requested, or required by Ecology under MTCA or any other Environmental Law or by the U.S. Environmental Protection Agency under any Environmental Law.
- Port agrees to indemnify Portac and its Related Parties for, and defend and hold Portac harmless against, any Loss arising from, related to or connected with any Environmental Claim relating to Environmental Contamination, including any Environmental Claim brought by Ecology or a third party relating to Environmental Contamination.
- Upon execution of the settlement agreement and Portac's payment to the Port, the Port shall waive any and all objections to any corporate dissolution by Portac except to the extent any such objection is based on a Portac's failure to fulfill the terms of this Agreement.

E. PREVIOUS ACTIONS OR BRIEFINGS

<u>Date</u>	<u>Action</u>	<u>Amount</u>
January 21, 2014	Executive Authorization for Portac Cleanup Investigation	\$150,000
December 2, 2015	Executive Authorization for Portac Cleanup Investigation	\$25,000
August 13, 2015	Commission Authorization for Cost Sharing Agreement	--
December 17, 2015	Commission Authorization for AO and Cleanup Investigation	\$1,158,000
TOTAL		\$1,333,000

F. FINANCIAL SUMMARY

Estimated Cost of Project

The project cost through the RI/FS is estimated at \$1,333,000. Future actions including the DCAP and remedy implementation will require additional project authorization.

Cost Details

Source of Funds

The 2018-2022 Capital Investment Plan (CIP) allocates \$13,037,000 for this project, which includes future cleanup costs and long-term monitoring

Financial Impact

The settlement will be recorded as an environmental liability and will offset future cleanup and monitoring costs. At the currently estimated cost, the lump sum payment and project expense has been recognized in prior year financial results and no additional environmental expense will be recognized on the Port's income statement. Additional costs will be recognized in the future if the cost of the clean-up exceeds the current estimate.

G. ECONOMIC INVESTMENT/JOB CREATION

Future remediation will facilitate property redevelopment to a more productive use. Employment opportunities will arise during remediation, construction of future improvements and long-term leasing of the property.

H. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1) This request.

Alternative 2) Do Nothing. Under this scenario Portac may attempt to setup a trust to fund future cleanup, and dissolve the company.

Alternative 1 is the recommended course.

I. ENVIRONMENTAL IMPACTS/REVIEW

Permitting: Not Applicable

Remediation: This is a remediation project

Water Quality: Not Applicable

Air Quality: Not Applicable

J. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation.
- Settlement Agreement and Full Site Release

K. NEXT STEPS

Negotiate AO amendment with Ecology to remove Portac as a signatory and add the Draft Cleanup Action Plan as the next deliverable.