



Item No.: 5B

Date of Meeting: May 17, 2018

Authorization for Parcel 91 (former Brown and Haley site) Settlement Agreements



Authorization Parcel 91 Settlement Agreement



Request authorization for the CEO or his delegate to execute:

1. A settlement agreement with Sound Mattress, whereby Sound Mattress pays the Port of Tacoma a lump sum of \$3,400,000, and the Port agrees to undertake all responsibility for further environmental investigation, cleanup, and remedial action at the Site (Port property Parcel 91).
2. A partial settlement and interim cost-sharing agreement with Wyeth, whereby Wyeth pays the Port of Tacoma a lump sum of \$1,500,000 and the Port and Wyeth agree to cooperatively participate in the further environmental investigation, cleanup, and remedial action at the Site (Port property Parcel 91).

Master Identification No. 101042.01

Background Parcel 91 Settlement Agreement



Details of the Settlement Agreement With Sound Mattress



The basic terms of the agreement include:

- Sound Mattress will pay the Port a lump-sum amount of \$3,400,000 within 45 days of entry of a claim bar order.
- The claim bar order, which bars claims by Wyeth against Sound Mattress, will be entered in the lawsuit within three weeks of the effective date of this agreement.
- The Port and Sound Mattress each fully release and discharge each other with respect to all released environmental claims.
- The Port will indemnify Sound Mattress against environmental claims related to hazardous substances from the Site.

Details of the Settlement Agreement With Wyeth



The basic terms of the agreement include:

- Wyeth will pay the Port a lump-sum amount of \$1,500,000 in exchange for amicable settlement of Port's past costs of \$2,955,725 incurred prior to November 28, 2017, including attorney's fees.
- Upon grant of a stay of the suit from the Court, Wyeth shall make the lump-sum payment within 45 days.
- Port shall credit \$1,000,000 to the Port's past costs and will release Wyeth from all claims related to past costs.
- For payment of future costs \$500,000 of the lump-sum payment will be credited toward Wyeth's ultimate responsibility for remedial action costs.
- Costs for additional costs for investigation and development of a DCAP will be paid 85% by Wyeth and 15% by the Port up to \$800,000. Costs in excess of \$800,000 will be paid 50% by Wyeth and 50% by the Port.
- A soil vapor extraction system or similarly effective extraction technology will be installed as an interim action while additional site studies are undertaken.

Financial Summary

Parcel 91 Settlement Agreement



- The total project cost for litigation support was estimated at \$1,530,000. Costs to date are \$1,055,305.93.
- Future costs for developing a feasibility study, and cleanup action plan are underdevelopment.
- Future costs for remedial design and remedial construction are not currently estimable.
- The current CIP allocates \$553,000 for this project between 2018 and 2022. This will be updated as estimates become available.

Anticipated Next Steps Parcel 91 Settlement Agreement



- Withdraw site from Ecology's Voluntary Cleanup Program.
- Negotiate an AO with Ecology to complete a Feasibility Study and Cleanup Action Plan to identify the preferred remedy.
- Request Commission authorization to complete the Feasibility Study and Cleanup Action Plan.

Conclusion

Parcel 91 Settlement Agreements



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