

COMMISSION AGENDA

Item No: 4A

Meeting: 4/19/18

DATE: April 4, 2018

TO: Port Commission

FROM: John Wolfe, Chief Executive Officer
Sponsor: Jason Jordan, Director, Environmental and Planning Services
Project Manager: Sarah Weeks, Environmental Project Manager I

SUBJECT: Project Authorization – Change in scope for work associated with the Parcel 103 Steam Plant Property Cleanup

A. ACTION REQUESTED

Request Commission authorization to modify the scope of site cleanup work associated with Parcel 103 Steam Plant Property (Site), Master Identification (MID) Nos. 101243.01 and 101243.02. Commission approval is required for a change in scope as described in Section C of the Port's Master Policy¹. Project authorization was previously approved in the amount of \$725,000.

B. SYNOPSIS

This authorization provides a change in scope for the Parcel 103 Steam Plant Property project. Previous scope items included enrollment of the property into the Washington State Department of Ecology's Voluntary Cleanup Program (VCP) and the completion of a remedial investigation, feasibility study, and draft cleanup action plan (RI/FS and DCAP) under Ecology supervision, and pursuit of cost recovery from Tacoma Public Utilities (TPU). The updated scope includes continuing to work towards resolving the Port's claim against TPU, negotiating a cost-sharing agreement for future cleanup efforts, and delaying an Ecology-supervised Site cleanup for future action.

C. BACKGROUND

The Port acquired the Steam Plant property, located at 1171 Taylor Way, from TPU in August of 2007. The Port and TPU anticipated that the Port would incur costs stemming from the proper characterization, handling, and disposal of hazardous waste and materials generated during demolition of Steam Plant structures. Accordingly, the Purchase and Sale Agreement (PSA) provides a broad indemnity from TPU covering such costs. TPU's indemnity also

¹ As referenced in Resolution No. 2017-01-PT, Exhibit A, Delegation of Authority Master Policy Paragraph IV.B.iii., projects with costs exceeding \$300,00 and have a change in the scope, schedule or budget require approval from Port Commission.

extends to investigation and cleanup of impacts to soil and groundwater from releases of hazardous substances during Steam Plant operations.

In 2010, Commission approved a \$267,000 contract authorization to conduct an initial investigation to determine the nature and extent of contamination associated with historical operations. The results of the investigation found Site soil and groundwater to be impacted by petroleum, metals, and elevated pH.

In July 2012, the Port submitted an open-ended claim to the City for costs then totaling \$676,000.² TPU did not agree with the Port's assessment of TPU's liability for waste disposal and remediation costs so in response they submitted a counter-offer to the Port that was woefully inadequate.³ Project progress stalled.

In March 2015, Port staff returned to Commission to request additional project authorization. The approved scope included completion of the RI and entry into VCP. Following acceptance into the VCP, the Port planned to complete an FS and DCAP. In tandem, Port staff intended to pursue a cost-sharing agreement with the City.

When Port staff discussed the Site's VCP enrollment with Ecology, the agency opined that the Site is likely too complicated for cleanup under the VCP.⁴ Ecology also indicated that the Site is not an agency priority, and no plans are in place to pressure the Port to enter into an administrative agreement to clean up the Site. The other option for cleanup is to conduct an independent remedial action which provides for an Ecology opinion and potential delisting after submission of an independent remedial action report. However, Ecology is currently issuing opinions only for properties enrolled in VCP or managed under an administrative agreement; a policy decision that conflicts with the regulation language.⁵ Regardless of this inconsistency, Port staff does not recommend pursuing an independent remedial action at this juncture due to the palpable risk that Ecology may conclude that the actions implemented are not sufficient to meet the substantive requirements of MTCA. In summary, the property currently has no development driver, no regulatory driver to pursue Site cleanup, and does not currently pose an ongoing or significant threat to human health and the environment. Given these changes, Port staff has begun to shift the focus of the project. The updated scope of work is to defer the FS and DCAP and focus on resolving the sizable claim against TPU.

Port staff met with TPU staff in October of 2017 to review Site history and project data. Leadership at TPU has recently changed and Port staff is hopeful that renewed discussions with TPU will result in meaningful forward progress. While TPU staff were eager to resolve the issue at the time of the meeting, they have since been unresponsive, leading Port staff to

² This included \$403,000 in hazardous waste characterization and disposal costs incurred during demolition and managed under a separate MID, and \$273,000 in remedial investigation costs. Since the submittal of the claim in 2012, an additional \$292,304 has been incurred, totaling \$565,000 in remedial investigation costs, and \$938,000 in total reimbursable costs (while updated the 2012 claim, the hazardous waste characterization and disposal costs were readjusted based on conversations with TPU and the discovery of an accounting error, the updated sum is \$373,000; $\$373,000 + \$565,000 = \$938,000$). Port staff is prepared to submit the updated claim to TPU.

³ TPU offered to pay a fraction of the Port's claim (\$200,000) conditional on the Port agreeing to hold the City harmless for any future claims.

⁴ The VCP is intended for simple sites with routine cleanup.

⁵ WAC 173-340-515.

assume TPU management may not be as motivated to resolve the claim as TPU staff. After the meeting, Port staff updated the July 2012 claim for resubmission to TPU, hoping a more formal pathway will bring TPU to the table. TPU has previously expressed willingness to enter mediation. After the submission of the updated claim, it is anticipated that the Port and TPU will enter mediation to resolve the claim if possible to avoid litigation. The recently updated claim brings reimbursable indemnity related costs to \$938,120.

If TPU is not willing to enter mediation, the Port would be forced to litigate. Port staff feels that given the amount of funds expended on hazardous waste disposal, and characterization of historical impacts to Site soil and groundwater, the Port is incentivized to resolve the claim without further delay.

If external conditions change, i.e., if there is a development or regulatory driver that requires Site cleanup, the work on the RI/FS and DCAP will resume. Port staff will return to Commission at that time.

D. PROJECT DETAILS

Scope of Project:

- Resolve the Port's claim against TPU.
- Conduct an Ecology-supervised Site cleanup.

Scope of Work for This Request:

- Work towards resolving the Port's claim against TPU and negotiate a cost-sharing agreement for future cleanup efforts. The remaining budget will allow for resolution through mediation, or if litigation is necessary, costs through pre-trial.
- Delay Ecology-supervised Site cleanup for future action.

Schedule

Negotiations with TPU	2018
RI/FS and DCAP	To Be Determined

E. FINANCIAL SUMMARY

Estimated Cost of Project

The total project cost including past project authorization, contract authorization, staff, legal, and the anticipated scope of work for this request is estimated at \$725,000.

Estimated Cost for This Request

No increase to the budget is being requested. Currently, \$141,000 remains in the project budget. These funds are adequate to take the project through mediation with TPU. If mediation is unsuccessful and the Port pursues litigation, the funds are adequate to commence litigation

efforts. The budget also allows for at least one groundwater sampling event over the next two years. Groundwater data will help establish trends and support future cleanup action.

If the Port were to pursue the completion of the RI/FS and DCAP at this time, the remaining budget is not adequate to deliver these documents in full. The authorized increase in 2015 was optimistic and changes in external conditions have further taxed the budget.

If the cost of the project is anticipated to exceed the authorized amount, additional Commission authorization will be requested.

Estimated Sales Tax

The total estimated sales tax to be paid to local and state governments for this project is \$0.

Cost Details

	This Request	Total Previous Requests*	Total Request	Total Project Cost**	Cost To Date	Remaining Cost
Total	\$0	\$725,000	\$725,000	\$725,000	\$584,000	\$141,000

* Total previous requests include contract authorization of \$395,000 (\$302,000 spent to date) for the environmental consultant as well as Ecology oversight costs, legal, and staff.

** Does not include past costs of \$373,000 in hazardous waste characterization and disposal costs incurred during demolition (managed under separate MID No. 096502). Or, future cost of cleanup action or long-term monitoring, these costs are not currently estimable.

Source of Funds

The 2018-2022 Capital Investment Plan (CIP) allocates \$30,000 for MID 101243.01 Steam Plant Investigation, and \$122,000 for MID 101243.02 Steam Plant Cost Recovery.

Financial Impact

Project costs for the investigation and cleanup will be capitalized as land and will not be depreciated. Project costs related to cost recovery will be expensed as incurred.

F. ECONOMIC INVESTMENT/JOB CREATION

Port Parcel 103, otherwise known as the Steam Plant Property, includes a total area of 17.29 acres. TPU owns a powerplant and a freshwater well on this parcel that includes 0.86 acres (separate tax parcel) and numerous easements. Three acres are leased to the Pacific Maritime Association (PMA) for longshore training. The City of Tacoma is scheduled to build a new fire station that will require approximately one to two acres. TOTE Maritime Alaska is currently leasing approximately 11 acres for its satellite trailer parking. TOTE regularly uses this property for temporary off-dock storage as provided in its marine terminal agreement. The property use is compatible with current site conditions.

G. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1) Do Nothing.

Alternative 2) This request. Pursue resolution of the existing claim with TPU and enter into a cost-sharing agreement for the completion of future cleanup action.

Alternative 2 is the recommended course.

H. ENVIRONMENTAL IMPACTS/REVIEW

Permitting: Not applicable.

Remediation: This authorization will support the Parcel 103 Steam Plant property cost recovery and position the property for future cleanup action.

Water Quality: Not applicable.

Air Quality: Not applicable.

I. PREVIOUS ACTIONS OR BRIEFINGS

<u>Date</u>	<u>Action</u>	<u>Amount</u>
May 20, 2010	Contract Authorization*	\$267,000 (\$427,000 spent)
March 10, 2015	Project Authorization Increase**	\$298,000
TOTAL		\$725,000

* Contract authorization of \$267,000 for environmental consulting provided by Dalton, Olmsted & Fuglevand, Inc. (DOF). Between May 2010 and October 2014, \$250,000 was spent on the DOF contract, and \$177,000 was spent on Port staff, legal, and miscellaneous costs, bringing the project total over this period to \$427,000. The scope of the 2010 authorization was to assess contamination at the property in preparation for filing a claim under the PSA indemnity. Between November 2014 and March 2015, the project was fairly quiet due to the unresponsiveness of TPU to the Port claim, \$1,600 was charged to the project for staff time.

** Includes contract authorization of \$128,000 for environmental consulting provided by DOF, \$170,000 was budgeted for Port staff, legal, and anticipated Ecology oversight costs, bringing the total authorization increase to \$298,000.

J. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation.

K. NEXT STEPS

Submit an updated claim to TPU (March 2018), and pursue resolution of the claim.