

COMMISSION AGENDA

Item No: 7A

Meeting: 12/16/21

DATE: December 1, 2021

TO: Port Commission

FROM: Eric D. Johnson, Executive Director

Sponsor: Jason Jordan, Director, Environmental and Planning Services

Project Manager: Rob Healy, Environmental Senior Project Manager

SUBJECT: Authorization for work associated with the Parcel 91 Former Sound Mattress Cleanup Site

A. ACTION REQUESTED

- Request authorization for the Executive Director or his delegate to execute an Agreed Order with Ecology to complete a cleanup action plan for the former Sound Mattress Site, Master Identification No. 101042.01.
- Request authorization to reprogram the remaining authorized funds, totaling \$354,326 through October 2021, to begin preliminary work needed to develop a cleanup action plan for the former Sound Mattress Site, Master Identification No. 101042.02.

B. SYNOPSIS

In August 2021 Commission Authorized a final Settlement Agreement with Wyeth, a subsidiary of Pfizer, for an additional lump-sum payment of \$7.2M for a release and indemnity against all claims arising out of the Site. The settlement payment was received by the Port in November. Staff have negotiated an Agreed Order with Ecology to complete a cleanup action plan for the Site.

Through October 2021 \$1,175,674 has been spent on cost recovery efforts, under an authorized amount of \$1,530,000, with \$354,326 in authorized funds remaining. Pending Commission authorization, the balance of the remaining authorized funds will be applied to the next phase of work, and the preliminary work needed to develop a scope of work and cost estimate to complete a cleanup action plan will begin.

C. BACKGROUND

In 2006, the Port of Tacoma purchased the property from Sound Mattress. Through due diligence prior to acquisition, chlorinated solvents were discovered in groundwater and soil on the property. Under the purchase and sale agreement, Sound Mattress indemnified the Port for past contamination subject to their insurance limits.

In 2010, in preparation for demolition of the 117,000-square foot building on the property, PCB-contaminated building coatings were discovered. This included interior and exterior paints on the walls and foundation. PCBs were found to have leached into soil and groundwater surrounding the building and were also discovered in the property stormwater system.

In late 2014 to early 2015, under EPA oversight, the building was demolished and building coatings were abated. Shallow PCB-contaminated soil surrounding the building was excavated and disposed offsite in Subtitle C and D landfills. The building foundation with embedded PCBs was removed and disposed offsite in a Subtitle D landfill. A 2.6-acre area was capped and fenced to allow Sound Mattress access for future remedial actions to address source concentration chlorinated VOCs and metals in soil and groundwater.

In 2015 to mid-2018, the Port prepared and submitted a \$2M claim to the former property owner Sound Mattress and their insurance company in accordance with the purchase and sale agreement to recoup environmental liability costs associated with building demolition. Following nonpayment, the Port filed suit against Sound Mattress and Wyeth as successor to Washington Steel.

In May 2018, following mediation, the Port Commission approved a settlement of the claims. The Port settled with Sound Mattress for a lump-sum payment of \$3.4M in exchange for a full release and indemnity against environmental claims related to hazardous substances. The Port entered into a partial settlement with Wyeth, a subsidiary to Pfizer, whereby Wyeth paid the Port a lump-sum amount of \$1,500,000 and agreed to pay for 85% of future costs for Site investigation and development of a draft cleanup action plan, with those cost subject to future reallocation. Both Settlements were executed following Commission Authorization and the litigation was stayed.

Following this Port staff approached Ecology to begin AO negotiations to complete a cleanup action plan. Staff were informed that Ecology did not have the staff levels needed to enter these negotiations. It wasn't until April 2020, when an Ecology project manager was assigned, that the Port, Wyeth, and Ecology began negotiating an Agreed Order.

Late during the Agreed Order negotiations, in discussions between Wyeth and the Port, it became apparent there was room for more negotiations around the previously executed partial settlement. In concert with Commission Executive Session briefings, settlement negotiations were reinitiated with Wyeth. This resulted in a final settlement agreement with Wyeth for a lump-sum payment of \$7.2M for a full release and indemnity against all claims arising out of the Site. The settlement agreement was executed in September 2021 and payment was received by the Port in early November 2021.

Negotiations with Ecology on the Agreed Order are complete. Wyeth was removed as a signatory to satisfy the Final Settlement Agreement with Wyeth. This Agreed Order requires Commission Authorization for execution to allow the next phase of the cleanup project to begin.

D. AGREED ORDER SUMMARY OF TERMS

The basic terms of the agreement include the following:

- The Port will complete an Updated Conceptual Site Model Report, Remedial Investigation, Feasibility Study; and submit a preliminary draft Cleanup Action Plan for the Site.
- The Port shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter.
- If the Port wishes to conduct an interim action, the Port shall prepare and submit to Ecology an Interim Action Work Plan.
- If Ecology determines that the Port has failed to make sufficient progress or failed to implement the remedial action, Ecology may, after notice, perform the remedial action or at Ecology's discretion allow the Port opportunity to correct.
- The Port shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs.
- The Port shall pay to Ecology costs incurred by Ecology pursuant to this Order.

E. PROJECT DETAILS

Scope of Project:

- All tasks necessary for cost recovery litigation associated with the former Brown & Haley/Sound Mattress Site Project.
- All tasks necessary to complete the planning phase of cleanup including additional investigation actions, a Feasibility Study and Cleanup Action Plan
- Cleanup Implementation (future authorization – not estimable)

Scope of Work for This Request:

- Procure an environmental engineering firm to support development a draft cleanup action plan.
- Development of an updated Conceptual Site Model Report and Remedial Investigation Work Plan for Ecology's review and approval.
- Additional groundwater monitoring or other sampling to support the remedial investigation work plan development.

Schedule

Consultant Procurement	1 st Quarter 2022
Conceptual Site Model Update	2 nd Quarter 2022
Remedial Investigation Work Plan approval	4 rd Quarter 2022

Staff anticipates returning to Commission for additional authorization in Q4 2022, once future project costs are available.

F. FINANCIAL SUMMARY

Estimated Cost of Project

The total project cost that is currently estimable is \$1,530,000. Pending Commission authorization, \$354,326 of the remaining previously authorized funds will be applied to the Scope of Work for this request.

Future costs for implementing a remedial investigation, feasibility study and cleanup action plan will be estimated following development of the remedial investigation work plan.

Future costs to implement the remedy are not estimable at this stage. Additional Commission authorization will be requested to implement the identified cleanup remedy.

Cost Details

Project costs incurred to date for cost recovery litigation tasks total \$1,175,674. Final Settlements with the former property owners, Sound Mattress and Wyeth, total \$12.1M. This less the PCB Building demolition claim and litigation costs to date, leaves approximately \$8.8M of the Settlement to complete the cleanup action plan and implement a remedy.

Cost

Item	This Request	Total Previous Requests	Total Request	Total Project Cost	Cost to Date	Remaining Cost
TOTAL	\$0	\$1,530,000	\$1,530,000	\$1,530,000	\$1,175,674	\$354,326

Settlement Tracker

Settlement Funding	Port Project Costs	Description
\$ 12,100,000		from former property owners (2018 and 2021)
\$ 10,003,066	\$ (2,096,934)	PCB Building Demolition Claim (2014-2015)
\$ 8,827,392	\$ (1,175,674)	Cost Recovery Litigation to date (2016-Oct 2021)

Source of Funds

The 2022-2026 Capital Investment Plan (CIP) allocates \$1,001,000 for this project.

Financial Impact

Project costs will be capitalized as a non-depreciable land asset.

The \$7.2 million settlement received in November 2021 has no impact on the income statement but will be held to fund the planning phase of cleanup including additional investigation actions, a Feasibility Study and Cleanup Action Plan and Cleanup Implementation.

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: Do Nothing. This would likely result in Ecology issuing the Port an enforcement order to implement the Agreed Order work.

Alternative 2: This request.

Alternative 2 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. PREVIOUS ACTIONS OR BRIEFINGS

DATE	ACTION	AMOUNT
January 26, 2016	Executive Authorization	\$125,000
August 3, 2016	Executive Authorization	\$135,000
February 17, 2017	Commission Authorization	\$1,270,000
May 17, 2018	Commission Authorization for Settlement Agreement with Sound Mattress and Wyeth	Not Applicable
August 19, 2021	Commission Authorization for Final Settlement Agreement with Wyeth	Not Applicable
	TOTAL	\$1,530,000

K. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation
- Agreed Order No. DE 19403

L. NEXT STEPS

Complete the Scope of Work for this request and return to Commission for additional authorization to complete the Remedial Investigation, Feasibility Study, and Cleanup Action Plan.