

# COMMISSION AGENDA

Item No: 9D

Meeting: 3/18/21

**DATE:** March 3, 2021

**TO:** Port Commission

**FROM:** Eric D. Johnson, Executive Director  
Sponsor: Jason Jordan, Director, Environmental and Planning Services  
Project Manager: Scott Hooton, Environmental Project Manager II

**SUBJECT:** Project Authorization for Work Associated with a Proposed Washington State Department of Ecology Enforcement Order for the Taylor Way and Alexander Avenue Fill Area

## A. ACTION REQUESTED

*As referenced in Resolution No. 2020-11-PT, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.B.(2), states project costs exceeding \$300,000 require approval from Port Commission.*

Request additional project authorization in the amount \$830,000 for a total authorized amount of \$1,367,000, for work associated with the Taylor Way and Alexander Avenue Fill Area, Master Identification No. 101082.01.

## B. SYNOPSIS

The overarching goal of this effort is to effectively manage the legacy contamination associated with three Port Parcels (Parcels 95, 111, 117) while also returning 30.48 acres of underutilized land assets to productive use. The purpose of this request is to provide funding for staff and outside counsel to formulate a favorable Port strategy allowing for good faith compliance with Enforcement Order (EO) No. 19410, while safeguarding the Port's right to seek cost recovery from the other TWAAFA parties, including Ecology.

## C. BACKGROUND

The Washington State Department of Ecology (Ecology) included three Port parcels (Parcels 95, 111, and 117) as part of a larger site ("Taylor Way and Alexander Avenue Fill Area" (TWAAFA)). See attached figure. The three Port Parcels were purchased in 2007 and 2008 for an aggregate sum of \$8.4M and comprise about 28 acres. The hazardous substances present in soil and groundwater on Port Parcels of most concern to Ecology at the TWAAFA Site originate from adjacent properties on which hazardous waste treatment facilities and an illegal landfill operated. The Port's liability as a Potentially Liable Party (PLP) solely stems from its current ownership of the Parcels potentially impacted by the adjacent TWAAFA

properties; neither the Port nor any of its tenants caused or contributed to TWAIFA Site impacts that are subject of the EO.

TWAIFA Site Impacts: General Metals of Tacoma (GM) and Occidental Chemical Corporation (OCC) are named TWAIFA PLPs as generators of substantial volumes of hazardous wastes disposed at an illegally operated landfill—notoriously known as the Don Oline Landfill—on property adjacent to the Port Parcels. Lime solvent sludge (OCC), byproducts of auto scrapping (auto fluff) (GM), wood waste, and other lime wastes were landfilled on the Oline property. Because the landfill was adjacent to the Port Parcels, Ecology suspects—based on fairly speculative evidence—that some portions of the Port Parcels are impacted from hazardous wastes spilling beyond Oline property boundaries and migration of impacted groundwater. [cite to figure?] The Oline property—later sold as two parcels—subsequently housed two separate dangerous/hazardous waste treatment (TSD) facilities constructed on top of the former landfill. On one parcel sits Burlington Environmental's (BE) TSD facility which is operational, permitted by Ecology, and expected to remain open for the foreseeable future. BE is liable as a TWAIFA PLP on two basis: 1) the TSD facility is linked to area-wide groundwater impacts within the TWAIFA Site, and 2) BE, is the current owner of property previously owned and operated by Oline for his landfilling practices. Hence, it makes sense that these three PLP signed onto the AO as they have a clean link to impacts at the TWAIFA Site.

On the other parcel, David Bromley (Bromley) operated a TSD facility—known as Clean Care—that closed in 1999 after years of operations known for its sloppy housekeeping, violation notices and confirmed and suspected releases of hazardous substances. Bromley, a Canadian national, resides in British Columbia and has no substantial financial assets. Clean Care therefore represents an “Orphan Share” in the overall TWAIFA cleanup.

Negotiation Among the PLPs: In anticipation of a TWAIFA order, the Port entered a Joint Defense, Common Interest Agreement and Cost-Sharing Agreement for Pre-Agreed Order Actions (JDA) with the other three PLPs (OCC, GM, and BE). The parties agreed to an equal allocation of limited consulting fees to produce the Remedial Investigation Data Gap Workplan (Workplan) that is now attached to the TWAIFA Orders. The Port agreed to share these costs on an equal basis at a cost to the Port of approximately \$40,000 to cooperate in good faith with Ecology and the other PLPs. However, the Port was careful—during and after negotiation of the JDA--to advise the other PLPs (and Ecology) that the Port would not commit to an equal share of costs going forward. Negotiations to implement the Workplan—under the AO—reached an impasse when the parties were unable to reach agreement on the allocation of future costs. The other three PLPs expected the Port to continue funding 25% of AO costs—including costs to investigate an abandoned dangerous waste facility and illegal landfill to which the Port has no connection. No compelling legal basis exists to justify the Port's participation in the AO on an equal basis with the other three PLPs.

The Port rejected the TWAIFA agreed order as did the other PLPs rationalizing that they would not sign onto the order if the Port would not do so. Consequently, the Joint Defense Agreement was terminated by the parties. Ecology responded with a proposed enforcement order (EO) on October 6, 2020. Under threat of an enforcement order—and indication by Ecology that it would issue an EO to the Port—GM, OCC, and BE subsequently agreed to enter the TWAIFA agreed order with an effective date of December 4, 2020. Ecology also issued the EO to the Port on December 4, 2020. The work required under the enforcement

order is the same work required under both Orders. The Port provided comments on February 4, 2021 to the EO administrative record, setting forth the basis for the Port's belief that it should not be considered a PLP for the TWAIFA Site.

Work Required by the EO on Port Parcels: Both Orders require the PLPs to implement the Data Gap Work Plan (DGWP), a groundwater monitoring plan, and generate a Remedial Investigation, Feasibility Study (RI/FS) Report, and preliminary draft Cleanup Action Plan (dCAP). The Port has already completed substantial remedial action tasks on Port Parcels, including work required under the DGWP and related to redevelopment. These remedial action activities include:

Parcel 95 (Former Prologis Site/Ave 55): The Port remediated Parcel 95 for redevelopment purposes under a 2017 agreed order, authorized by Commission in May 2017. Ecology has issued a determination that all work required under the order is complete and the order is terminated.

Parcel 111 (Potter Property): The Port granted an access agreement to BE to continue groundwater testing on Port Parcel 111 (currently leased to Handan Containers) as is required under BE's permit to operate a dangerous waste facility.

Parcel 117 (Hylebos Marsh Property): The Commission authorized implementation of elements of the Workplan germane to Parcel 117 in July 2019. The investigation results show no apparent contamination or TWAIFA hazardous waste material in soil, although groundwater is contaminated with hazardous substances potentially originating from the adjacent BE property.

The purpose of this request is to implement remaining aspects of soil and groundwater investigation required under the EO on Port Parcels. It does not include costs for work on the neighboring dangerous waste facilities and illegal landfill to which the Port has no connection. This request also includes additional staff and legal resources to continue discussions with the other PLPs to try and reach a cooperative agreement clarifying the parties' respective obligations to fulfill all requirements of the Orders.

Under MTCA, any person that incurs remedial action costs on behalf of another PLP is entitled to recover those costs. RCW 70.105.080. The Port is incurring MTCA investigation costs on the behalf of other PLPs and, therefore, is entitled to recover those costs.

## **D. PROJECT DETAILS**

### ***Scope of Project:***

- Remediated Parcel 95 as an Interim Action under Agreed Order DE 13921.
- Recorded an environmental covenant for Parcel 95 and closed out Agreed Order DE 13921.
- Implemented Workplan at Parcel 117.
- Cost-sharing agreement and development of a data gap workplan for incorporation into the TWAIFA agreed order and enforcement order.

- Provided extensive comments for the administrative record for the enforcement order.

**Scope of Work for This Request:**

- Install 8 soil borings and 5 groundwater monitoring wells at Parcel 95. Obtain soil and groundwater samples for laboratory analysis.
- Perform quarterly groundwater monitoring and sampling at Parcel 95 and Parcel 117.
- Prepare reports of findings and technical memos for the other PLPs and Ecology.
- Meetings and project coordination with the PLPs and Ecology.
- Ecology oversight costs.
- Staff time and outside legal counsel fees to support additional PLP and Ecology negotiations
- Contingency.

**E. FINANCIAL SUMMARY**

**Estimated Cost for This Request**

The cost incurred to date and estimate to implement certain EO requirements on Port-owned properties during the next 12 to 16 months total \$830,000. The total cost to resolve the Port's liability under the orders and pursue cost recovery is not currently estimable.

**Cost Details**

Item	This Request	Total Previous Requests	Total Request	Total Project Cost	Cost to Date	Remaining Cost
<b>TOTAL</b>	<b>\$830,000</b>	<b>\$537,000</b>	<b>\$1,367,000</b>	<b>\$1,367,000</b>	<b>\$547,000</b>	<b>\$820,000</b>

**Source of Funds**

The current Capital Investment Plan allocates \$76,000 for this project. It will be adjusted as part of the 2022 budget process.

**Financial Impact**

Project costs will be expensed as incurred.

**F. ECONOMIC INVESTMENT/JOB CREATION**

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

**G. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

Alternative 1) No immediate action. The Port may be subject to penalties under the EO.

Alternative 2) This request.

**Alternative 2 is the recommended course.**

**H. PREVIOUS ACTIONS OR BRIEFINGS**

<b><u>Date</u></b>	<b><u>Action</u></b>	<b><u>Amount</u></b>
April 10, 2017	Executive Authorization	\$100,000
May 31, 2017	Commission Authorization to Enter into Ecology Agreed Order	\$0
March 13, 2018	Executive Authorization	\$150,000
July 18, 2019	Project Authorization	\$212,000
July 16, 2020	Executive Session Briefing	\$0
August 17, 2020	Staff Briefing (Friday Packet)	\$0
November 19, 2020	Project Authorization	\$75,000
February 26, 2021	Staff Briefing (Friday Packet)	\$0
<b>TOTAL</b>		<b>\$537,000</b>

**I. ATTACHMENTS TO THIS REQUEST**

- Computer slide presentation
- Site Map

**J. NEXT STEPS**

Reinitiate discussions with the other PLPs to try and reach a cooperative agreement clarifying the parties' respective obligations to fulfill all requirements of the Orders.

Authorize environmental investigation of Port-owned properties under an existing on-call contract.





**EXHIBIT A**

TAYLOR WAY PROPERTIES  
 PORT OF TACOMA  
 TACOMA, WA 98421  
 PORT PARCELS: 6, 65, 102, 114, 116, 117

SHEET: 1 OF 1  
 PURPOSE: INFORMATION  
 DATE: 4/17/2019  
 AUTHOR: Brian Archer

- Taylor Way and Alexander Fill Site
- PQ Cleanup Site
- Redevelopment Opportunity = 30.48 Acres
- Non Port Owned Property
- Port Parcels



DISCLAIMER: The information included on this map has been compiled by Port of Tacoma staff from a variety of sources and is subject to change without notice. These data are intended for informational purposes and should not be considered authoritative for engineering, navigational, legal and other site-specific uses. The Port of Tacoma makes no representations or warranties, expressed or implied, as to accuracy, completeness, timeliness, or rights to the use of such information.





# Project Authorization for Washington State Department of Ecology Enforcement Order DE 19410

Scott Hooton  
Environmental Project Manager II



# Project Authorization Enforcement Order DE 19410



*As referenced in Resolution No. 2020-11-PT, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.B.(2), states project costs exceeding \$300,000 require approval from Port Commission.*

Request project authorizations in the amount \$830,000 for a total authorized amount of \$1,367,000, and for funding for professional services, staff and outside counsel to implement aspects of Washington State Department of Ecology (Ecology) Enforcement Order (EO) DE 19410 for the Taylor Way and Alexander Avenue Fill Area (TWAAFA), Master Identification No. 101082.01.

TWAAFA = Taylor Way and Alexander Avenue Fill Area  
EO = Enforcement Order; AO = Agreed order  
PLP = Potentially Liable Party

# Background Enforcement Order DE 19410



- The Port purchased three parcels of property adjacent to a former landfill.
- Hazardous substances from Occidental Chemical and General Metals were placed in the landfill.
- Dangerous Waste facilities were developed on the landfill and were responsible for subsequent releases of hazardous substances.

TWAAFA = Taylor Way and Alexander Avenue Fill Area

EO = Enforcement Order; AO = Agreed order

PLP = Potentially Liable Party

# Background Enforcement Order DE 19410



- The Port's cleanup liability is tied to property ownership; the Port did not cause or contribute to any releases of hazardous substances.
- The Port agreed to equally share costs to develop a workplan to investigate the landfill with three other PLPs: General Metals of Tacoma (GMT), Occidental Chemical Company (Occidental), and Stericycle Environmental Solutions (Stericycle).

TWAAFA = Taylor Way and Alexander Avenue Fill Area

EO = Enforcement Order; AO = Agreed order

PLP = Potentially Liable Party

# Background Enforcement Order DE 19410



- During PLP negotiations with Ecology, the Port took action to:
  - Remediate and redevelop Port Parcel 95.
  - Grant access to Port Parcel 111 to monitor groundwater for contamination associated with an adjacent dangerous waste facility operated by Stericycle.
  - Implement the workplan at Port Parcel 117.

TWAAFA = Taylor Way and Alexander Avenue Fill Area

EO = Enforcement Order; AO = Agreed order

PLP = Potentially Liable Party



**EXHIBIT**

TAYLOR  
PORT OF TACOMA  
PORT PLAN

SHEET:  
PURPOSE:  
DATE: 4/1/11  
AUTHOR:

- Don
- PQ C
- Rede
- Clear
- Taylor
- Non
- Port

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DISCLAIMER: This map is for informational purposes only and should not be used for any legal or financial decisions without the assistance of a professional.

# Background Enforcement Order DE 19410



- The PLPs claimed that they would refuse to enter into the AO unless the Port agreed to share all implementation costs equally.
- The Port was not willing to expend the taxpayer resources required to investigate or remediate a former landfill and dangerous waste facilities to which the Port has no relationship.
- On October 6, Ecology confirmed the AO signed by the other PLPs, and issued an EO to the Port on December 4.

TWAAFA = Taylor Way and Alexander Avenue Fill Area

EO = Enforcement Order; AO = Agreed order

PLP = Potentially Liable Party

# Project Description and Details

## Enforcement Order DE 19410



- Remediate Parcel 95 under AO 13921.
- Implement Workplan at Parcel 117.
- Record an environmental covenant.
- Ecology and PLP negotiations.
- Cost-sharing agreement and workplan development.
- EO comments for the administrative record.

TWAAFA = Taylor Way and Alexander Avenue Fill Area

EO = Enforcement Order; AO = Agreed order

PLP = Potentially Liable Party

# Project Description and Details

## Enforcement Order DE 19410



### *Scope of Work for This Request:*

- Install 8 soil borings and 5 groundwater monitoring wells at Parcel 95. Laboratory analysis of soil and groundwater samples.
- Perform quarterly groundwater monitoring and sampling at Parcel 95 and Parcel 117.
- Prepare reports of findings and technical memos for the other PLPs and Ecology.

# Project Description and Details Enforcement Order DE 19410



## *Scope of Work for This Request:*

- Meetings and project coordination with the PLPs and Ecology
- Ecology oversight costs
- Staff time and outside legal counsel fees to support additional PLP and Ecology negotiations
- Contingency

# Project Schedule Enforcement Order DE 19410



<b>Activity</b>	<b>Timeframe</b>
Authorization	March 18, 2021
Investigation	Q2 2021
Monitoring	Q3 2021 through Q3 2022
Periodic Reporting	Q2 2021 through Q3 2022

# Source of Funds Enforcement Order DE 19410



- The cost incurred to date and estimate to respond to an Ecology EO is \$1,367,000.
- The estimated budget for this additional effort is \$830,000.
- The current Capital Investment Plan (CIP) allocates \$76,000 for this project. It will be adjusted as part of the 2021 budget process.

# Financial Summary

## Enforcement Order DE 19410



Item	This Request	Total Previous Requests	Total Request	Total Project Cost	Cost to Date	Remaining Cost
<b>TOTAL</b>	<b>\$830,000</b>	<b>\$537,000</b>	<b>\$1,367,000</b>	<b>\$1,367,000</b>	<b>\$547,000</b>	<b>\$820,000</b>

## Conclusion Enforcement Order DE 19410



Request project authorization in the amount \$830,000, for a total authorized amount of \$1,367,000, for the Taylor Way and Alexander Avenue Fill Area remedial actions and Ecology Enforcement Order DE 19410, Master Identification No. 101082.01.