

ACTION ITEM MEMO

Port of Tacoma Commission



Item No: 6A
Meeting Date: 10/20/26

DATE: October 16, 2026 (Updated)

TO: Port of Tacoma Commission

FROM: Eric Johnson, Executive Director
Sponsor: Jason Jordan, Sr. Director Environmental & Planning Services
Heather Burgess, Dickson Frolich Phillips Burgess PLLC, Port General Counsel
Project Manager, Engineering: Brett Ozolin, Project Manager II
Project Manager, Environmental: Scott Hooton, Project Manager II

SUBJECT: USG Agreed Order, Engineering Design and Cost Recovery (Project ID Nos. 101227.01 & 101501.01)

A. ACTIONS REQUESTED

1. Request authorization to enter Agreed Order No. DE 22443 (AO) with the Washington Department of Ecology for the US Gypsum (USG) Taylor Way Plant Site, generally located on and around 2301 Taylor Way. The Site also includes a portion of the former Arkema chemical plant referred to as the "North Boundary Area" (NBA).
2. Request additional project authorization in the amount of \$1,793,365, for a total authorized amount of \$2,043,365, for the NBA remedial design and associated tasks necessary to implement the draft Cleanup Plan in the AO, Project Identification No. 101501.01.
3. Request additional project authorization in the amount of \$1,232,200 for a total authorized amount of \$1,820,000 for the former USG rock wool manufacturing facility, Project Identification No. 101227.01, for contract legal services from Northwest Resources Law PLLC for cost recovery litigation under the Model Toxics Control Act, RCW 70A.305 against potentially liable parties.

Strategic Plan Initiatives:

EL 1: Remediate contaminated Port properties in a manner that ensures protection of human health and the environment while enabling economic development.

EV 3: Advocate for land use and infrastructure policies that protect and enhance the cargo supply chain and promote a robust employment base.

B. BACKGROUND

USG owned and operated a rock wool manufacturing plant at 2301 Taylor Way from the early 1940s until 1973, using slag from the Asarco copper smelter as a process material. USG's operations released petroleum and metals associated with the slag, including arsenic, antimony, lead, copper, zinc, and other heavy metals. Sampling conducted by EPA, Ecology, and others since

the early 1980s has identified these contaminants in soil, groundwater, stormwater, tidal seeps, and shoreline sediments.

USG entered an agreed order with Ecology in 1994. Among other things, Ecology required USG to:

- Implement a phased remedial investigation
- Replace the storm drain system
- Implement a stormwater pollution prevention plan
- Implement interim measures to control sources of sediment pollution to the Hylebos Waterway
- Remove soil from various areas of the site

Although Ecology concurred that these actions were sufficient to prevent recontamination of Hylebos Sediments, Ecology did not consider these interim actions to be final actions for the site, and the site remains on Ecology's Hazardous Sites List.

USG sold the site to Thermafiber in 1996, and indemnified Thermafiber for existing contamination. In 2001, USG filed for federal bankruptcy protection due to mounting costs of asbestos litigation, emerging from Chapter 11 under a 2006 reorganization plan. Thermafiber sold the property to the Port in 2002, similarly indemnifying the Port for USG-related contamination. Thermafiber was later acquired by Owens Corning (a Fortune-500 Company) in 2013.

In 2005, the Port demolished the manufacturing plant and constructed warehousing, truck terminals and office facilities as part of a long-term lease with Carlisle Transport Systems, Inc., expiring in 2054.

Thermafiber's indemnification protects the Port from "any and all present and future claims, liabilities, losses, damages, and expenses, including attorney fees, arising out of or relating to releases, seepage, discharge, or spills of any hazardous substances, waste or materials . . . on or around the Property, arising from the ownership, operation or control of the Property or any surrounding property by any entity or person prior to the Closing of Buyer's purchase of the Property."

Beginning in 2006, the Port and USG entered a series of agreed orders with Ecology to address contamination attributable to USG's operations. In 2013, after extensive site characterization, Ecology determined that contamination found on the adjacent Arkema property originated from USG's operations and required remediation of the Arkema NBA as part of the cleanup of the former USG plant.

The Port and USG have since performed additional investigation and remediation planning, with the Port funding and performing all the work in the NBA, and USG funding and performing all the work at the former USG property.

That Port, USG, and Ecology have concluded negotiations for a new agreed order that provides for the implementation of a Cleanup Action Plan to remediate the Site.

USG and the Port have exchanged proposals to resolve the Port's claims for indemnification under the purchase and sales agreement first tendered to Thermafiber in 2014. However, no agreement has been reached. The allocation of remediation costs for the NBA is in dispute.

C. AGREED ORDER TERMS

The Agreed Order requires the Port and USG to implement the draft Cleanup Action Plan for the USG Taylor Way Plant Site and the NBA. The Scope of Work (SOW) is divided into Phase 1 for the Taylor Way Property and concurrent Phase 2 for the NBA. Both phases incorporate enforceable schedules for completing the SOW. The SOW is built around the assumption that USG implements Phase 1 tasks at the Taylor Way Property and the Port implements Phase 2 tasks in the NBA. However, both parties are named Potentially Liable Parties under the Model Toxics Control Act, and are each strictly, jointly and severally liable for compliance with the terms of the AO.

Tasks For Phase 2 in NBA	Completion Times
Submit Agency Draft pre-design investigation (PDI) Work Plan	Within 120 days after the agreed order effective date
Submit Final PDI Work Plan	Within 30 days after final resolution of any and all Ecology comments on the Agency Draft PDI Work Plan
Initiate PDI	Within 120 days after Ecology approves the Final PDI Work Plan
Submit Agency Draft PDI Report	Within 120 days after all PDI laboratory reports and data validations are completed
Submit Final PDI Report	Within 30 days after final resolution of any and all Ecology comments on the Agency Draft PDI Report
Submit Agency Draft Engineering Design Report (EDR)	Within 120 days after Ecology approves the Final PDI Report
Submit Final EDR	Within 30 days after final resolution of any and all Ecology comments on the Agency Draft EDR
Submit 90% construction plans and specifications for NBA excavations	Within 120 days after Ecology approves the Final EDR
Submit 100% construction plans and specifications for NBA excavations	Within 30 days after final resolution of any and all Ecology comments on the 90% construction plans and specifications

Initiate NBA excavations	Within the dry weather construction season following Ecology approval of the 100% construction plans and specifications
Complete NBA excavations	Within two dry weather construction seasons following Ecology approval of the 100% construction plans and specifications
Submit Agency Draft Construction Completion Report for NBA excavations	Within 120 days after completion of NBA excavations
Submit Final Construction Completion Report for NBA excavations	Within 30 days after final resolution of any and all Ecology comments on the Agency Draft Construction Completion Report for NBA excavations
Submit 90% construction plans and specifications for NBA hard cap	Within 120 days after completion of NBA excavations
Submit 100% construction plans and specifications for NBA hard cap	Within 30 days after final resolution of any and all Ecology comments on the 90% construction plans and specifications
Initiate NBA hard cap construction	Within the dry weather construction season following Ecology approval of the 100% construction plans and specifications
Complete NBA hard cap construction	Within two dry weather construction seasons following Ecology approval of the 100% construction plans and specifications
Submit Agency Draft Construction Completion Report for NBA hard cap	Within 120 days after completion of NBA hard cap construction
Submit Final Construction Completion Report for NBA hard cap	Within 30 days after final resolution of any and all Ecology comments on the Agency Draft Construction Completion Report for NBA hard cap
Submit Agency Draft Compliance Monitoring Plan	Within 120 days after completion of NBA hard cap construction
Submit Final Compliance Monitoring Plan	Within 30 days after final resolution of any and all Ecology comments on the Agency Draft Compliance Monitoring Plan

Submit recorded environmental restrictive covenants for Taylor Way and the NBA	Within 1 year after completion of NBA hard cap construction
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D. SCOPE OF WORK

Action 1: The Port of Tacoma Executive Director or designee will execute Agreed Order No. 22443 with the Washington Department of Ecology for the USG Taylor Way Plant Site. Ecology will solicit public comments on the Agreed Order and draft Cleanup Action Plan, issue a responsiveness summary, and then finalize both documents. USG has requested additional time to comment on the AO and draft Cleanup Action Plan. In the unlikely event that changes result in a material change to the scope of this request, Port staff will return to Commission for additional authorization.

Action 2: The NBA remedial design scope of work will include consulting services to complete:

- Pre-Design Investigation Work Plan, implementation and reporting
- Forensics and expert witness support
- Engineering Design Report
- Permit Support
- Design (30%, 60%, 90%, 100%)
- Bidding Support
- Port Staff

Action 3: This includes Northwest Resource Law PLLC outside counsel litigation services for pretrial work against potentially liable parties.

E. PROJECT SCHEDULE

The project schedule and milestones assume timely approval of required submittals. The goal of the project is to combine remedial construction for the 6-acre North Boundary Area with the separate 24-acre Phase II remediation at Arkema required under another Ecology agreed order. Procuring the work as a public works project would support completion of the combined 30-acre capping project and enable future commercial use. Staff are targeting final completion by 2030 or earlier, if possible. Drafting the complaint will begin as soon as NWRL is under contract for this work. We anticipate filing the complaint in Federal Court before the end of 2026.

F. FINANCIAL SUMMARY

Estimated Cost of This Project

The estimated cost of the work covered by this request is \$3,863,365, as detailed in the table below. The current request totals \$3,025,565, and prior authorizations total \$838,000. If the anticipated cost exceeds the authorized amount, staff will return to the Commission for additional authorization.

Construction costs to remediate the Taylor Way Property and NBA, last estimated in 2024, total \$17.228M, with \$5.438M allocated to the Taylor Way Property and \$11.85M allocated to the NBA. The SOW in the AO assumes that USG remediates the Taylor Way Property, and the Port remediates the NBA. Ecology has named both USG and the Port Potentially Liable Parties under

MTCA; both parties are jointly, severally and strictly liable for complying with the terms of the AO. If USG chooses not to enter the AO, Port staff anticipate that Ecology would issue an Enforcement Order. However, USG recalcitrance could result in Ecology compelling the Port to complete the remediation of the Taylor Way Property in addition to the NBA.

Source of Funds

The proposed 2026-2030 Capital Investment Plan (CIP) budget for MID 101501.01 allocates \$13,875,000 to fund the NBA remedial design and construction, and NW Resource Law's litigation budget to trial.

The proposed 2026-2030 Capital Investment Plan (CIP) budget for MID 101227.01 allocates \$105,000 to fund Port staff costs to oversee USG's remedial efforts at the Taylor Way Property. It does not include funding for the remediation of the Taylor Way Property.

These budgets will be adjusted during the 2027 budget cycle.

MID 101227.01/096242 - US GYPSUM CLEANUP INVESTIGATION – 3RD PARTY COORDINATION

Item	This Request	Total Previous Requests	Total Request	Total Project Cost	Cost to Date	Remaining Cost
Consulting Services	\$0	\$240,000	\$240,000	240,000	\$225,854	\$14,146
Legal Services	\$1,232,000	\$98,000	\$1,330,000	\$1,330,000	\$72,213	\$1,257,000
Port Staff	\$0	\$250,000	\$250,000	\$250,000	\$241,155	\$8,845
Miscellaneous	\$0	\$0	\$0	\$0	\$342	\$0
TOTAL	\$1,232,000	\$588,000	\$1,820,000	\$1,820,000	\$539,564	\$1,279,991

MID 101501.01 – ARKEMA NORTH BOUNDARY AREA INTERIM ACTION

Item	This Request	Total Previous Requests	Total Request	Total Project Cost	Cost to Date	Remaining Cost
Consulting Services	\$1,543,365	\$185,879	\$1,729,244	\$1,729,244	\$185,879	\$1,543,365
Port Staff	\$250,000	\$64,121	\$314,121	\$314,121	\$64,250	\$249,871
Construction	\$0	\$0	\$0	\$12,000,000	\$0	\$12,000,000
TOTAL	\$1,793,365	\$250,000	\$2,043,365	\$14,043,365	\$250,129	\$13,793,236

Financial Impacts

The investigation costs for this project are expensed as they are incurred. Remediation costs will be capitalized as a land asset, so there will be no depreciation expense. Future cost recovery efforts are expected to recoup most of the costs incurred under this project.

Reimbursements or payments received from Thermafiber and/or USG will be accounted for in accordance with GASB 49 and applicable capitalization guidance. The accounting treatment of such recoveries, including whether they reduce the carrying value of the related capitalized remediation costs or are recognized separately, will be evaluated based on the nature and timing of the recovery. In addition to past and future remediation costs, the Port will seek attorneys' fees associated with cost recovery litigation pursuant to RCW 70A.305.080.

G. ENVIRONMENTAL IMPACTS / REVIEW

Permitting: State Environmental Policy Act (SEPA) review will be completed, and all applicable environmental and construction permits will be obtained prior to construction.

Remediation: Ecology will require remediation to be performed as provided for in the AO.

Stormwater: The design will include stormwater treatment prior to discharge to the Hylebos Waterway. A construction stormwater permit will be obtained and compiled during construction.

The site will fall under the Port's Municipal Separate Storm Sewer Systems (MS4) permit or Industrial Stormwater General Permit as applicable based on the site's use and activities.

Air Quality: No significant air quality issues or concerns are anticipated.

H. PREVIOUS ACTIONS OR BRIEFINGS

MID 101227.01 - US GYPSUM CLEANUP INVESTIGATION – 3RD PARTY COORDINATION

Date	Action	Amount
July 14, 2010	Executive Authorization	\$50,000
July 14, 2010	PSA Award	\$25,000
December 28, 2010	PSA Amendment	\$15,070
March 6, 2014	Project Approval	\$247,930
January 25, 2018	Project Authorization Increase	\$150,000
October 17, 2024	Executive Session	
October 21, 2025	Project Authorization Increase	\$50,000
January 21, 2026	Project Authorization Increase	\$50,000
TOTAL		\$ 588,000

MID 101501.01 – ARKEMA NORTH BOUNDARY AREA INTERIM ACTION

Date	Action	Amount
September 21, 2021	Executive Authorization	\$200,000
May 3, 2022	Executive Authorization	\$50,000
TOTAL		\$ 250,000

I. NEXT STEPS

Return to Commission to request construction authorization and funding.