

# PROJECT ACTION MEMO

Port of Tacoma Commission



Item No: 6B  
Meeting Date: 8/20/24

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**DATE:** August 12, 2024  
**TO:** Port of Tacoma Commission  
**FROM:** Eric Johnson, Executive Director  
Sponsor: Jason Jordan, Director, Environmental  
Project Manager: Rob Healy, Sr. Manager, Remediation  
**SUBJECT:** Parcel 91 Sound Mattress Cleanup Project Authorization

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**A. ACTION REQUESTED**

Request project authorization in the amount \$2,000,000 for a total authorized amount of \$3,530,000, for work associated with the Parcel 91 Sound Mattress Cleanup, Master Identification No. 101042.02.

**Strategic Plan Initiative:** EL-1.

**B. SYNOPSIS**

The Port entered an Agreed Order with Ecology in April 2022, to complete an updated Conceptual Site Model, Remedial Investigation, Feasibility Study, and submit a preliminary draft Cleanup Action Plan for the Site. Ecology approved the Remedial Investigation Work Plan in May 2024. This authorization request will allow remedial investigation activities to proceed.

**C. BACKGROUND**

In 2006, the Port of Tacoma purchased the property from Sound Mattress. Through due diligence prior to acquisition, contamination was discovered in groundwater and soil on the property. Between 2006 and 2015, Port staff oversaw Sound Mattress Site Investigation efforts under the Voluntary Cleanup Program. In 2010, in preparation for demolition of the 117,000-square foot building on the property, PCB-contaminated building coatings were discovered. In late 2014 to early 2015, under EPA oversight, the building was demolished and building coatings were abated. The building foundation and shallow PCB-contaminated soil surrounding the building was excavated and disposed offsite in Subtitle C and D landfills. A 2.6-acre area was capped and fenced to allow 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 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 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.

In December 2021, Commission authorized an Agreed Order with Ecology to complete an updated Conceptual Site Model, Remedial Investigation, Feasibility Study, and submit a preliminary draft Cleanup Action Plan for the Site. Wyeth was removed as a signatory to satisfy the Final Settlement Agreement with Wyeth. Commission also authorized reprogramming of the remaining funds to begin preliminary work need to develop the cleanup action. The Agreed Order was executed on April 7, 2022. A consultant was procured to develop a conceptual site model and prepare a remedial investigation work plan. The documents were revised several times based on Ecology feedback, and finally approved on May 25, 2024. Field investigation activities are ready to begin following Commission authorization.

**D. PROJECT DETAILS**

***Scope of Project:***

- All tasks necessary for cost recovery litigation associated with the former Brown & Haley/Sound Mattress Site Project (complete)
- 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:***

- Implement the remedial investigation activities outlined in the Ecology approved workplan.

**Schedule:**

<b>Remedial Investigation</b>	Q4 2024 through 2027
<b>Remedial Investigation Report</b>	2028
<b>Feasibility Study</b>	2028
<b>Draft Cleanup Action Plan</b>	2029

**E. FINANCIAL SUMMARY**

**Estimated Cost of Project**

The total project cost including all stages is estimated at \$4,230,000.

**Estimated Cost for This Request**

The total estimated cost of the Remedial Investigation for this project is \$2,000,000. If the estimate is anticipated to exceed the authorized amount, additional Commission authorization will be requested. It is anticipated that additional Commission authorization will be requested following completion of remedial investigations to draft the Remedial Investigation Report, Feasibility Study, and draft Cleanup Action Plan.

**Cost Details**

Item	This Request	Total Previous Requests	Total Request	Total Project Cost	Cost to Date	Remaining Cost
<b>TOTAL</b>	<b>\$ 2,000,000</b>	<b>\$ 1,530,000</b>	<b>\$ 3,530,000</b>	<b>\$4,230,000</b>	<b>\$1,490,587</b>	<b>\$2,739,413</b>

Project costs incurred to date for cost recovery litigation tasks total \$1,490,587. Final Settlements with the former property owners, Sound Mattress and Wyeth, total \$12.1M. This less the PCB Building demolition claim, litigation costs and preliminary cleanup action planning to date, leaves approximately \$8.5M of the Settlement to complete the cleanup action plan and implement a remedy.

**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)
\$ 8,819,127	\$ (1,183,939)	Cost Recovery Litigation to date (2016-Dec 27, 2021)
\$ 8,512,479	\$ (306,647.60)	Cleanup Action Planning (2022-present)

**Source of Funds**

The 2024-2029 Capital Investment Plan (CIP) allocates \$1,042,000 for this project and will be updated for the 2025 Budget.

**Financial Impact**

Project costs will be capitalized as a non-depreciable land asset. The \$12.1 million in settlements received had no impact on the income statement but are held to fund the planning phase of cleanup including additional investigation actions, a Feasibility Study and Cleanup Action Plan and Cleanup Implementation.

**F. 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.

**G. 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.**

**H. ENVIRONMENTAL IMPACTS/REVIEW**

Permitting: Not Applicable

Remediation: This is a remediation project

Stormwater: Not Applicable

Air Quality: Not Applicable

**I. PREVIOUS ACTIONS OR BRIEFINGS**

<b>DATE</b>	<b>ACTION</b>	<b>AMOUNT</b>
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
December 16, 2021	Commission Authorization to enter an Agreed Order to complete a cleanup action plan, and to reprogram remaining authorized funds to preliminary work needed to develop a cleanup action plan.	Not Applicable
	<b>TOTAL</b>	<b>\$1,530,000</b>

**J. NEXT STEPS**

Complete Remedial Investigation Activities and return to Commission for RI Reporting, Feasibility Study, and draft Cleanup Action Plan authorization in December 2027.