

# COMMISSION AGENDA

Item No.: 6B

Meeting: 1/25/18

**DATE:** January 10, 2018

**TO:** Port Commission

**FROM:** John Wolfe, Chief Executive Officer  
Sponsor: Jason Jordan, Director, Environmental Programs  
Project Manager: Scott Hooton, Environmental Project Manager

**SUBJECT:** Project authorization increase for work associated with the former USG rock wool manufacturing facility at 2301 Taylor Way

## A. ACTION REQUESTED

As referenced in Resolution No. 2017-01-PT, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.B.ii., states project costs exceeding \$300,000 require approval from Port Commission.

This is a request for Commission authorization for additional funding in the amount \$150,000 for a total authorization of \$488,000 for staff, legal and other expenses associated with the former USG rock wool manufacturing facility at 2301 Taylor Way, Master Identification No. 101227.01 (096242).

## B. SYNOPSIS

The 2301 Taylor Way property is subject to an Ecology order requiring the development of a Remedial Investigation, Feasibility Study (RI/FS) and Cleanup Action Plan (CAP). A former owner is leading this effort, as provided for in a purchase and sale agreement. The RI has been approved, and work is underway to select future cleanup actions under the FS. Future cleanup actions must be compatible with current land use (subject to a long-term lease expiring in 2054), future land use, and other Model Toxics Control Action (MTCA) cleanup requirements.

Continued engagement in the cleanup decision-making process for the 2301 Taylor Way property is necessary to minimize impacts to the current tenant and mitigate future costs associated with remnant contamination when the property is redeveloped. This request includes staff and legal costs for that effort.

A related issue (but not associated with this request) is the USG-related contamination that has migrated onto adjacent Port-owned property. USG denies responsibility for contamination beyond the 2301 Taylor Way property boundary. An allocation report prepared on behalf of Port counsel concluded that sufficient quantities of USG wastes have come to be located on the adjacent Port-owned property to trigger MTCA remediation requirements and to support

an indemnification claim under the purchase and sales agreement. Future Commission authorization will be required to perform such remediation and pursue cost recovery.

### **C. BACKGROUND**

USG owned and operated a rock wool production facility at 2301 Taylor way, where slag from the Asarco copper smelter as raw material from the early 1940's until 1973. USG operations resulted in releases of metals associated with Asarco slag (arsenic, antimony, lead copper, zinc and other heavy metals) and petroleum. Sampling performed by EPA, Ecology and others since the early 1980's showed that metals associated with Asarco slag were present in soil, groundwater, stormwater, tidal seeps, and shoreline sediments.

Ecology entered into an agreed order with USG 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 site 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.

The Port redeveloped the property in 2005. The rock wool manufacturing facility was demolished, and warehousing, truck terminal and office facilities were constructed as part of a long-term lease with Carlile Transport Systems, Inc., expiring in 2054. The property is entirely covered with buildings and pavement, except for a few small landscaped areas.

In 2006, Ecology amended the agreed order to identify USG (as the polluter) and the Port (as the property owner) as Potentially Liable Parties (PLPs). The agreed order requires the PLPs to prepare a Remedial Investigation, Feasibility Study (RI/FS) and draft Cleanup Action Plan (CAP). Ecology approved the RI in 2016, allowing work under the agreed order to move forward to the FS. The Port anticipates that substantial quantities of contaminated soil and groundwater will remain after the property has been remediated, which will increase the cost and complexity of future redevelopment. This authorization request will enable Port staff to advocate for a remedial approach that will: (1) minimize impacts to tenant operations resulting from implementation of the CAP; and, (2) minimize future redevelopment costs associated with remnant contamination by incorporating a financial assurance mechanism into the

cleanup action plan to address soil handling and other related costs during future redevelopment of the property.

A related issue (but not associated with this request) is the USG-related contamination that has migrated onto adjacent Port-owned property. Work performed by the Port under a different Ecology order for the Arkema property identified arsenic and lead contamination originating from the former rock wool facility on an approximate 7-acre portion of the Arkema property (the North Boundary Area “NBA”).

In November 2014, the Port submitted its initial claim for indemnification to Thermafiber under the PSA for oversight and NBA related costs. Thermafiber promptly tendered the Port’s indemnification claim to USG. As of August 2016, the Port has submitted cost demands to USG in the amount of \$325k (\$207k oversight, \$118k NBA). USG has not responded judiciously to the Ports cost demands. Rather, USG asserts that it’s responsible for only a fraction of oversight costs and no NBA costs. Consequently, USG’s latest proposal was to offer a one-time \$25,000 payment to the Port in return for a meeting to discuss the FS and achieve a cohesive path forward in selecting a remedy for the USG site. The Port soundly rejected USG’s position and its proposed payment as inadequate, and USG was informed that it cannot expect the Port’s collaboration in selecting a remedy. Currently the Port is involved in remedy selection discussions primarily through its valuable working relationship with Ecology.

The Port is confident that USG is liable for a significant portion of the oversight costs incurred related to the USG site. Moreover, a 2017 allocation report authorized by Commission in 2014 concluded that all contamination in the NBA was caused by USG. Pursuit of cost recovery actions and/or remediation of the NBA will require future Commission authorization; however, this authorization provides for cost recovery efforts related to oversight costs from USG.

#### **D. PROJECT DETAILS**

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

- Technical review of ongoing USG deliverables
- Legal Support
- Allocation Report
- Staff Time & Consultant Support
- Consultations with Department of Ecology

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

- Technical review of ongoing USG deliverables
- Staff Time & Consultant Support
- Legal Support

- Consultations with Department of Ecology

***Schedule***

RI FS/dCAP Completed	December 31, 2020
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**E. FINANCIAL SUMMARY**

**Estimated Cost of Project**

The total estimated cost of the project is \$488,000. If the cost of this estimate is anticipated to exceed the authorized amount, additional Commission authorization will be requested.

**Estimated Cost for This Request**

The total estimated cost of the staff time and external legal and technical support for this request is \$150,000. If the cost of this estimate is anticipated to exceed the authorized amount, additional Commission authorization will be requested.

**Cost Details**

**Source of Funds**

The current Capital Investment Plan allocates \$690,000 for this project.

**Financial Impact**

The investigation costs for this project will be expensed as they are incurred. Remediation will be capitalized as a land asset so there will be no depreciation expense. Cost recovery efforts are expected to recoup most if not all of the oversight costs incurred under this project approval. Any reimbursements or payments received from Thermafiber and/or USG will offset project costs.

**F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

Alternative 1) Do Nothing. Port will influence on Ecology's remedy selection process will be minimal. This may result in disruption of tenant operations during remedy implementation and increased costs associated with remnant contamination during redevelopment.

Alternative 2) This request. Influence the remedy selection process to minimize impacts to the current tenant and incremental costs associated with remnant contamination during redevelopment

**Alternative 2 is the recommended course.**

**G. ENVIRONMENTAL IMPACTS/REVIEW**

Permitting: No impacts related to this action

Remediation: This is a remediation action

Water Quality: No impacts related to this action

Air Quality: No impacts related to this action

**H. PREVIOUS ACTIONS OR BRIEFINGS**

<u>Date</u>	<u>Action</u>	<u>Amount</u>
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	\$247,330
<b>TOTAL</b>		<b>\$337,400</b>

**I. ATTACHMENTS TO THIS REQUEST**

- Power Point presentation.

**J. NEXT STEPS**

Staff will review legal strategy recommendations for cost recovery with Commission in executive session.