

# COMMISSION AGENDA

Item No: 6A

Meeting: 2/21/23

**DATE:** February 8, 2023  
**TO:** Port Commission  
**FROM:** Eric D. Johnson, Executive Director  
Sponsor: Jason Jordan, Director, Environmental and Planning Services  
Project Manager: Sarah Weeks, Environmental Project Manager I  
**SUBJECT:** Alexander Avenue Former Petroleum Tank Facilities Project Authorization

## A. ACTION REQUESTED

As referenced in Resolution No. 2021-08-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 authorization in the amount \$150,000 for a total authorized amount of \$2,498,000 for work associated with the Alexander Avenue Petroleum Tank Facilities Cleanup Action, Master Identification No. 094217 and 101312.01

## B. SYNOPSIS

Staff is requesting additional project authorization to negotiate a consent decree with Washington State Department of Ecology (Ecology) for cleanup action at the Alexander Avenue Former Petroleum Tank Facilities (the Site), negotiate a new cooperative agreement with Occidental Chemical Corporation (Occidental) and continue cost recovery efforts.

The Port of Tacoma (Port) and Occidental are approaching completion of the requirements of Agreed Order DE 9835 (the Order). The Port and Occidental are currently assisting Ecology to prepare the Public-Review draft cleanup action plan (dCAP). When the dCAP is approved by Ecology the requirements of the Order are satisfied. In anticipation of project transition to cleanup action the Port, Occidental and Ecology have begun negotiating the terms of a consent decree for remedy implementation.

When the Order is satisfied the current cooperative agreement between the Port and Occidental expires and a new cooperative agreement will need to be negotiated. Per the terms of the existing agreement the Port and Occidental split consultant and Ecology oversight costs

60/40 (Port/Occidental). A new agreement will be negotiated for cleanup implementation and will potentially settle past cost expended on the project prior to the Order.

Cost recovery efforts to date have focused on researching corporate and operational histories at the Site and drafting project deliverables to strengthen the Port's cost recovery case. The next cost recovery task is to draft demand letters to the other potentially liable parties (PLPs). Legal support is also needed for consent decree negotiations and cooperative agreement negotiations.

### **C. BACKGROUND**

The Alexander Avenue former petroleum tank facilities occupied two bulk petroleum storage and distribution facilities that were in operation from the 1930s through the 1980s. The Port owns the property to the south (formerly 721 Alexander Avenue), and Occidental owns the property to the north (formerly 709 Alexander Avenue). The Port property is currently leased to Puget Sound Energy for the operation of a liquefied natural gas facility.

On July 10, 2013, Commission authorized the Port to enter Agreed Order DE 9835 with Ecology and Occidental for investigation and cleanup planning at the Site. Under the Order, the Port and Occidental are obligated to take the following actions: complete a remedial investigation (RI) and feasibility study (FS) and assist Ecology in preparing a dCAP. Around the same time the Port and Occidental entered a cooperative agreement for the term of the Order to split consultant and Ecology oversight costs 60/40 (Port/Occidental). To date, Occidental has reimbursed the Port \$566,310.

On July 1, 2021, the Port and Occidental submitted the dCAP for Ecology review, the dCAP is the final deliverable required by the Order. The preceding Order obligations, the RI and FS, were previously completed and approved by Ecology and will be submitted for public comment with the dCAP and consent decree.

On November 18, 2021, Commission authorized additional project authorization in the amount of \$100,000 for a total authorized amount of \$2,348,000 for work associated with the Alexander Avenue Petroleum Tank Facilities Cleanup Action, Master Identification No. 094217 and 101312.01. The additional authorization was required to respond to Ecology comments on the dCAP and to negotiate a consent decree for remedy implementation. The additional authorization was sufficient to respond to Ecology comments on the dCAP and reimburse Ecology for their oversight costs, but insufficient funding remains to negotiate the consent decree.

On January 13, 2023, staff notified Commission that the current authorization is not sufficient to complete the authorized scope of work. Negotiations over the terms of the dCAP have taken longer than anticipated. The period of dCAP negotiations (currently in month 18) has been drawn-out due to turnover of key Ecology staff (the Project Manager and the Assistant Attorney General) and resulted in additional project costs, including increased Ecology oversight costs. Issues of dissension between the Port and Ecology included the Site definition (e.g., exclusion of contamination related to the adjacent Occidental Chemical Corporation Site), description of the regulatory framework, termination criteria for the selected remedial technologies, and contingent actions in the event of remedy failure, all of which have implications for the Port's cost recovery case and required support from Port and Occidental legal counsel and the assistant attorney general. Significantly, after working through these

issues Ecology has agreed to a consent decree for remedy implementation. A consent decree, rather than an agreed order, is a critical tool for future cost recovery.

In addition to funding consent decree negotiations, the requested project authorization will fund negotiation of a new cooperative agreement with Occidental and cost recovery tasks. When these scope items have been completed Port staff will return to Commission to authorize the consent decree and cooperative agreement, as well as request additional funding to begin design. The requested dollar amount assumes that the consent decree and cooperative agreement will be negotiated by the end of the year (2023). Negotiations may take longer.

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

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

The basic terms of the Order obligate the Port and Occidental to the following scope of work:

- Screening Level Technical Memorandum [complete].
- Remedial investigation (RI) and RI Report [complete].
- Feasibility study (FS) and FS Report [complete].
- Assist Ecology in preparing a draft Cleanup Action Plan (DCAP) that will formally describe proposed remedial actions identified to be necessary through the RI/FS process [nearing completion].
- Reimburse Ecology for their oversight costs.

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

- Negotiate the consent decree for cleanup implementation
- Negotiate a new cooperative agreement with Occidental.
- Prepare demand letters for the other potentially liable parties (PLPs).
- Reimburse Ecology for their oversight costs.
- Cover Port staff costs.
- Cover Port legal costs.

#### **E. FINANCIAL SUMMARY**

##### **Estimated Cost of Project**

The total request today is \$150,000. The total estimated project cost is \$2,498,000, which includes consulting, staff, legal, and Ecology oversight costs. If the cost of this estimate is anticipated to exceed the authorized amount, additional Commission authorization will be requested.

This cost estimate does not include cleanup construction costs or all anticipated cost recovery costs, cleanup construction and long-term monitoring are estimated at \$4,479,000.

**Cost Details**

To date, Occidental has reimbursed the Port \$566,310 per the terms of the cooperative agreement. Subtracting the reimbursements from Occidental and Ecology Remedial Action Grant reimbursements, \$750,534 the Port has a net outlay of \$1,007,671. Future requests for reimbursement will be made as future costs are accrued. Project costs are also recoverable from PLPs who operated the Site prior to Port ownership, ExxonMobil and U.S. Department of Defense.

**Costs**

Project Phase	This Request	Total Previous Request	Total Estimated Project Costs	Cost to Date	Remaining Costs
Investigation & Cost Recovery	\$ 150,000	\$ 2,348,000	\$ 2,498,000	\$ 2,324,515	\$ 173,485

**Reimbursements**

Agreement	Total Award	Reimbursements	Remaining Funds
Cost Share: 2013 Cooperative Agreement w/Mariana	\$ 590,310	\$ 566,310	\$ 24,000
Ecology Grant: TCPRA-2018-TacoPo-00031	\$ 150,000	\$ 150,000	\$ -
Ecology Grant: TCPRA-1921-TacoPo-00009	\$ 1,271,398	\$ 600,534	\$ 670,864
Ecology Grant: TCPRA-2123-TacoPo-00044	\$ 1,150,000	\$ -	\$ 1,150,000
<b>TOTALS</b>	<b>\$ 3,161,708</b>	<b>\$ 1,316,844</b>	<b>\$ 1,844,864</b>

Total net cost to the Port to date = \$1,007,671 (costs to date – reimbursements)

**Source of Funds**

The current Capital Investment Plan (CIP) allocates \$168,000 for the investigation and cost recovery projects, MID 094217 and 101312.01. The CIP will be updated during the next budget cycle.

**Financial Impact**

Project costs will be expensed as incurred. Reimbursements from Occidental reduce the project costs when requested. Grant funding will be recorded as non-operating income at the time the reimbursement is requested.

**F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS**

**Alternative 1:** Do nothing. Does not comply with the Agreed Order required activities. Cost recovery efforts will be lost.

**Alternative 2:** This request: (a) Complies with the Agreed Order, (b) strengthens the Port's cost recovery case by supporting consent decree negotiations and demand letter preparation, (c) continues the Port's efforts to productively cooperate with Occidental.

**G. ENVIRONMENTAL IMPACTS/REVIEW**

Permitting: Not applicable.

Remediation: This authorization will support the Alexander Avenue Former Petroleum Tank Facilities remediation project.

Stormwater: Not applicable.

Air Quality: Not applicable.

**H. PREVIOUS ACTIONS OR BRIEFINGS**

Commission actions and costs prior to project authorization:

Date	Action	Amount
December 3, 2007	Contract – Executive Authorization for data review and interim action cost estimates	\$100,000
December 4, 2008	Contract – Commission Authorization for further investigation and reporting	\$336,000(a) (actuals =\$53,000)
August 31, 2013	Other project costs prior to AO project authorization (staff time, legal, misc.), no Commission action	\$155,000
<b>TOTAL</b>		<b>\$308,000</b>

(a) Of this amount, only \$53,000 was expended, the contract is expired.

Project authorization by Commission and subsequent actions:

Date	Commission Action	Amount
July 10, 2013	Authorization to enter the AO and cooperative agreement with Occidental.	N/A
July 10, 2013	Authorization to complete the AO as a project.	\$626,000 (b)
May 27, 2014	Project authorization increase to account for past cost and fund additional RI sampling required by Ecology.	\$1,021,000 (c)

December 21, 2017	Project authorization increase for procurement of a new environmental consultant and preliminary cost recovery budget.	\$151,000
December 20, 2018	Project authorization increase for cost recovery efforts and additional funding to complete AO commitments due to schedule delays	\$450,000
November 18, 2021	Project authorization increase to complete AO commitments due to schedule delays	\$100,000
November 18, 2021	Authorization to enter Ecology RAG agreements for \$2,421,000.	N/A
<b>TOTAL</b>		<b>\$2,348,000</b>

- (b) Authorization to complete the Agreed Order commitments, excluding prior costs and included potentially recoverable costs.
- (c) Between the 2013 and 2014 Commission authorizations, Port management clarified the way cost reimbursements and past costs are accounted for: project authorizations are requested at the gross cost estimate, including prior cost, and excluding potentially recoverable costs. This change in accounting added \$508,000 to the project budget (\$307,000 added for past costs, and \$200,000 added to correct for prior inclusion of recoverable costs from Occidental). An additional project authorization (increase) of \$513,000 was also requested to pay for a significant amount of additional sampling Ecology required for the remedial investigation, bringing the total budget addendum to \$1,021,000.

**I. ATTACHMENTS TO THIS REQUEST**

- Computer slide presentation.

**J. NEXT STEPS**

After the scope of work for this request is complete, Port staff will return to Commission to request authorization to execute the consent decree and cooperative agreement, fund design and future cost recovery tasks.