

COMMISSION AGENDA

Item No: 7B

Meeting: 11/19/20

DATE: November 4, 2020

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. 2020-04-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 \$75,000 for a total authorized amount of \$537,000, 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 (Port 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 negotiate an alternative to a proposed Ecology Enforcement Order (EO).

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" (TWAFA)). 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 Port indemnified the sellers for contamination. Hazardous substances are present in soil and groundwater due to a release that occurred prior to the Port's ownership or from releases from adjacent hazardous waste treatment facilities and an illegal landfill. The Port's liability as a Potentially Liable Party (PLP) stems from property ownership; the Port did not cause or contribute to any of the hazardous substance releases.

General Metals of Tacoma (GM) and Occidental Chemical Corporation (OCC) became TWAAFA PLPs because they are responsible for manufacturing hazardous substances used as fill prior to development. Lime solvent sludge, byproducts of auto scrapping (auto fluff), wood waste, and other lime wastes were used as fill in the TWAAFA.

Stericycle Environmental Solutions (Stericycle) and David Bromley (Bromley) are TWAAFA PLPs for releases from two separate dangerous/hazardous waste treatment facilities. The Stericycle facility is operational and is expected to remain open for the foreseeable future. Bromley operated a facility known as Clean Care which closed in 1999. Bromley, a Canadian national, resides in British Columbia and has no substantial financial assets. Clean Care therefore represents an “Orphan Share” of the PLP’s cleanup liability.

The Port entered a Joint Defense, Common Interest Agreement and Cost-Sharing Agreement for Pre-Agreed Order Actions between the Port, General Metals of Tacoma (GMT), Occidental Chemical Company (Occidental) and Stericycle Environmental Solutions (Stericycle). The parties agreed to an equal 25% allocation of consulting fees to produce a Remedial Investigation Data Gap Workplan (Workplan) to be incorporated into an Ecology Agreed Order for the TWAAFA.

The Port has already remediated Port Parcel 95 as an interim action under a 2017 agreed order, as authorized by Commission in May 2017. Ecology will soon require the installation of replacement monitoring wells and groundwater testing.

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

The Commission authorized implementation of elements of the Workplan germane to Parcel 117 in July 2019. The investigation results show that there is no apparent contamination or hazardous waste material in soil, although groundwater is contaminated with hazardous substances originating from the adjacent Stericycle property.

Although the Port has implemented most aspects of the Workplan at Port-owned properties, an implementation agreement was not reached with other TWAAFA PLPs. The negotiations reached an impasse when the parties were unable reach agreement on the allocation of future costs. The Joint Defense, Common Interest Agreement and Cost Sharing Agreement for Pre-Agreed Order Actions has been cancelled. Under threat of an enforcement order, GMT, Occidental, and Stericycle subsequently agreed to enter the TWAAFA agreed order.

The Port rejected the TWAAFA agreed order because there is no compelling legal basis for the Port to investigate and remediate an abandoned dangerous waste facility and illegal landfill to which the Port has no connection. Ecology responded with a proposed enforcement order on October 6, 2020.

This request is for additional staff and legal resources to explore alternatives to an EO with Ecology that will move the TWAAFA cleanup forward without expending public resources for corrective action at properties to which the Port has no legal liability.

The scope of work authorized by prior Commission actions is nearly complete and authorized funding will soon be exhausted. The costs to be incurred while negotiating a path forward with Ecology and other PLPs are anticipated to exceed the current authorization. Those costs, together with preparation efforts for a follow-up Commission authorization represent the minimum amount necessary to allow the project to proceed until additional Commission approval is obtained, pursuant to the Port's Master Policy Resolution 2020-04-PT, Exhibit A (IV.B.(3)(c)).

D. PROJECT DETAILS

Scope of Project:

- Remediated Parcel 95 as an Interim Action under Agreed Order DE 13921.
- Implemented Workplan at Parcel 117.
- Record an environmental covenant for Parcel 95 and close-out Agreed Order DE 13921.

Scope of Work for This Request:

Staff time and outside legal counsel fees to negotiate a path forward with Ecology and then other TWAAFA PLPs to address the Port's remaining TWAAFA liability equitably.

E. FINANCIAL SUMMARY

Estimated Cost of Project

The cost incurred to date and estimate to explore alternatives to the proposed Ecology EO total \$537,000.

Estimated Cost for This Request

The estimated cost of this authorization is \$537,000. After alternatives to the EO have been discussed with Ecology, additional Commission authorization will likely be requested.

Cost Details¹

Item	This Request	Total Previous Requests	Total Request	Total Project Cost	Cost to Date	Remaining Cost
TOTAL	\$75,000	\$462,000	\$537,000	\$537,000	\$471,510	\$65,490

Source of Funds

The 2020-2024 Capital Investment Plan allocates \$90,000 for this project. It will be adjusted as part of the 2021 budget process.

¹ The August 17, 2020 staff briefing to Commission noted that costs to be incurred while negotiating a path forward with Ecology and other PLPs are anticipated to exceed the current authorization.

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 will likely be named in the EO.

Alternative 2) This request.

Alternative 2 is the recommended course.

H. PREVIOUS ACTIONS OR BRIEFINGS

<u>Date</u>	<u>Action</u>	<u>Amount</u>
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
TOTAL		\$462,000

I. ATTACHMENTS TO THIS REQUEST

- Computer slide presentation
- Site map

J. NEXT STEPS

Obtain Commission authorization once alternatives to the EO have been discussed with Ecology.



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

- Don Oline Landfill
- PQ Cleanup Site
- Redevelopment Opportunity = 30.48 Acres
- Clean Care
- Taylor Way and Alexander Fill Site
- Non Port Owned Property
- Port Owned 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.



Item No.: 7B

Date of Meeting: November 19, 2020

Project Authorization for Proposed Washington State Department of Ecology Enforcement Order

Scott Hooton

Environmental Project Manager II



Project Authorization

Proposed Department of Ecology Enforcement Order



As referenced in Resolution No. 2020-04-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 \$75,000, for a total authorized amount of \$537,000, and for funding for staff and outside counsel to negotiate and alternative to a proposed Washington State Department of Ecology (Ecology) Enforcement Order (EO) 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

Proposed Department of Ecology Enforcement Order



- 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 Parties

Background

Proposed Department of Ecology Enforcement Order



- 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).

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Background

Proposed Department of Ecology Enforcement Order



- 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

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PLP = Potentially Liable Parties



Background

Proposed Department of Ecology Enforcement Order



- The PLPs threatened not to enter into the Ecology AO unless the Port agreed to share workplan implementation costs equally.
- The Port informed Ecology that it was unwilling to enter into the AO because the Port has no relationship to the former landfill or dangerous waste facilities.
- On October 6, Ecology confirmed the AO signed by the other PLPs and planned to issue an EO to the Port.

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Project Description and Details

Proposed Department of Ecology Enforcement Order



- Remediate Parcel 95 under AO 13921
- Implement Workplan at Parcel 117
- Record an environmental covenant
- Ecology and PLP negotiations

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Project Schedule

Proposed Department of Ecology Enforcement Order



Activity	Timeframe
Commission Authorization	Q1 2021

TWAAFA = Taylor Way and Alexander Avenue Fill Area

AO = Agreed order

PLP = Potentially Liable Parties

Source of Funds

Proposed Department of Ecology Enforcement Order



- The cost incurred to date and estimate to respond to an Ecology EO is \$537,000.
- The estimated budget for this additional effort is \$75,000.
- The current Capital Investment Plan (CIP) allocates \$90,000 for this project.

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Financial Summary

Proposed Department of Ecology Enforcement Order



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Conclusion

Proposed Department of Ecology Enforcement Order



Request project authorization in the amount \$75,000, for a total authorized amount of \$537,000, for the TWAAFA remedial actions and proposed Ecology Enforcement Order, Master Identification No. 101082.01.

TWAAFA = Taylor Way and Alexander Avenue Fill Area

EO = Enforcement Order; AO = Agreed order

PLP = Potentially Liable Parties