

# COMMISSION AGENDA

Item No: 3B

Meeting: 02/17/17

**DATE:** February 2, 2017  
**TO:** Port Commission  
**FROM:** John Wolfe, Chief Executive Officer  
Sponsor: Jason Jordan, Director, Environmental and Planning Services  
Project Manager: Rob Healy, Environmental Senior Project Manager  
**SUBJECT:** Requesting Litigation Funds for the former Brown & Haley Remediation Project

## A. ACTION REQUESTED

Request litigation funds in the amount of \$1,270,000, for a total authorized amount of \$1,530,000, for cost recovery litigation associated with the former Brown & Haley Site project, Master Identification No. 101042.01.

## B. BACKGROUND

In 2006, the Port of Tacoma purchased the property from Sound Mattress. Through due diligence prior to acquisition, chlorinated solvents were discovered in groundwater and soil on the property. Under the purchase and sale agreement Sound Mattress indemnified the Port for past contamination. Over a 10-year period Sound Mattress has taken the lead on investigating the nature and extent of contamination. In 2014 they completed a Feasibility Study Investigation under the Voluntary Cleanup Program. Since then, no further progress has been made toward cleaning up chlorinated solvents and associated contaminants at the property.

In 2010, in preparation for demolition of the 117,000 square foot building on the property, PCB-contaminated building coatings were discovered. This included interior and exterior paint on the walls and foundation. PCBs were found to have leached into soil and groundwater surrounding the building, and were also discovered in the property stormwater system.

In late 2014 to early 2015, under EPA oversight, the building was demolished and building coatings were abated. Shallow PCB-contaminated soil surrounding the building was excavated and disposed of offsite in Subtitle C and D landfills. The building foundation with embedded PCBs was removed and disposed of offsite in a Subtitle D landfill. A 2.6-acre area was capped and fenced to allow Sound Mattress access for future remedial actions to address source concentration chlorinated VOCs and metals in soil and groundwater.

In 2015 a \$1.9 million claim against the former property owner was submitted to Sound Mattress and their insurance company in accordance with the purchase and sale agreement to recoup environmental liability costs associated with building demolition. The claim has not been paid and settlement negotiations in 2016 were unproductive.

In June 2016 the Port of Tacoma filed suit against Sound Mattress and Wyeth as successor to Washington Steel in an effort to move this issue forward.

**C. PREVIOUS APPROVALS**

<u>Action</u>	<u>Date</u>	<u>Amount</u>
Executive Authorization	January 26, 2016	\$125,000
Executive Authorization	August 3, 2017	\$135,000

**D. PROJECT DESCRIPTION**

The scope of work will include Port staff, consulting and legal support for litigating the Port's suit. This could include discovery, depositions, expert witnesses, possible mediation, preparation for trial and the trial itself.

**E. REQUESTED AUTHORIZATION**

Authorization for this project includes all tasks necessary for the cost recovery litigation associated with the former Brown & Haley Site project. Specifics are presented in the Cost Details table below.

**F. PROJECT SCHEDULE**

Scheduled Trial Date	December 11, 2017
Feasibility Study and Cleanup Action Plan	To Be Determined
Remedial Design and Remedial Construction	To Be Determined

**G. FINANCIAL SUMMARY**

**Estimated Cost of Project**

The total project cost through litigation is estimated at \$1,530,000. If the cost of this estimate is anticipated to exceed the authorized amount, additional Commission authorization will be requested.

Future costs for developing the Cleanup Action Plan, Remedial Design and Remedial Construction are not estimable at this time. Additional Commission authorization will be requested to implement these future stages.

**Source of Funds**

The 2017-2021 Capital Improvement Plan allocates \$1,293,000 for this project.

**Cost Details**

<b>Project Budget - Brown and Haley Cleanup Investigation</b>			
<b>ITEM</b>	<b>BUDGET ESTIMATE</b>	<b>COSTS TO DATE</b>	<b>REMAINING</b>
<b>Building Demolition (Public Work Authorization - MID 091270)</b>			
Total*		\$3,398,839	
<b>Litigation and Remediation Project Authorization - MID 101042.01</b>			
<b>Settlement Negotiations and Remediation Oversight</b>			
Consultant(s)	\$69,000	\$11,146	\$57,854
Port Staff	\$35,000	\$12,874	\$22,126
Legal Support	\$146,000	\$213,479	(\$67,479)
Contingency	\$10,000	\$0	\$10,000
Subtotal	\$260,000	\$237,499	\$22,501
<b>Litigation Support</b>			
Consultant(s)	\$25,000	\$0	\$25,000
Port Staff	\$35,000	\$0	\$35,000
Legal Support	\$998,000	\$0	\$998,000
Contingency (20%)	\$212,000	\$0	\$212,000
Subtotal	\$1,270,000	\$0	\$1,270,000
Total	\$1,530,000	\$237,499	\$1,292,501
<b>RI/FS/DCAP</b>	Not Estimable		
<b>Design/Construction</b>	Not Estimable		
<b>Long-Term Monitoring</b>	Not Estimable		

**Financial Impact**

Project costs will be expensed as incurred and will be recorded as Operating Expenses.

**H. ECONOMIC INVESTMENT/JOB CREATION**

Litigation resolution will pave the way for redevelopment of the property through implementation of cleanup on the property. Temporary design and construction jobs are anticipated for implementing the cleanup, and permanent jobs are anticipated following property redevelopment.

**I. ENVIRONMENTAL IMPACTS/REVIEW**

Permitting: Not Applicable.

Remediation: Completion of this phase of the project will support future redevelopment of the property.

Water Quality: Not Applicable.

Air Quality: Not Applicable.

**J. NEXT STEPS**

Obtain a legal decision regarding recovery of remedial action costs from environmental contamination due to the release.

Complete the Feasibility Study, Cleanup Action Plan, Remedial Design and Remedial Construction in the future.