

PROJECT ACTION MEMO

Port of Tacoma Commission



Item No: 6A
Meeting Date: 7/16/24

DATE: July 9, 2024

TO: Port of Tacoma Commission

FROM: Eric Johnson, Executive Director
Sponsor: Jason Jordan, Director, Environmental & Planning Services
Project Manager: Scott Hooton, Project Manager II, Environmental

SUBJECT: Project Authorization Increase for Work Associated with a Washington State Department of Ecology Enforcement Order for the Taylor Way and Alexander Avenue Fill Area (TWAAFA)

A. ACTION REQUESTED

Request additional project authorization in the amount \$430,000 for a total authorized amount of \$2,697,000, for work associated with the Taylor Way and Alexander Avenue Fill Area (TWAAFA), Master Identification No. 101082.01.

Strategic Plan Initiatives:

- **EL-1** Remediate contaminated Port properties in a manner that ensures protection of human health and the environment while enabling economic development.
- **OS-2** Protect the public's investment by maintaining existing assets and positioning them for future growth.

B. SYNOPSIS

The overarching goal of this effort is to effectively manage the legacy contamination associated with three Port Parcels (Parcels 95, 111, 117) while also returning 30.48 acres of underutilized land assets to productive use. This request provides funding for consulting support, staff and outside counsel to comply with Enforcement Order (EO) No. 19410 requirements and pursue cost recovery from the other TWAAFA Potentially Liable Parties (PLPs).

C. BACKGROUND

This project began as an Interim Action at Port Parcel 95 under a 2017 agreed order with the Washington State Department of Ecology (Ecology). Parcel 95 has since been redeveloped under a long-term lease agreement. In 2021, Ecology confirmed that all required remedial actions under the agreed order were satisfactorily completed.

Property owned by the Port and Burlington Environmental (a dangerous waste treatment and storage facility) overlies a former landfill (the TWAAFA). See attached figure. Hazardous substances present in soil and groundwater on Port Parcels originated from adjacent properties owned by others. The Port's liability as a Potentially Liable Party (PLP) stems solely from its

ownership of properties impacted by adjacent properties; neither the Port nor its tenants caused or contributed to releases from the TWAFA.

In 2017, the Port entered a Joint Defense, Common Interest Agreement and Cost-Sharing Agreement (JDA) with three TWAFA PLPs (Occidental Chemical Corporation (OCC), General Metals of Tacoma (GM), and Burlington Environmental LLC (BE)). The parties developed a Remedial Investigation Data Gap Workplan (Workplan) that would serve as an initial deliverable under an order sought by Ecology. Although the Port agreed to an equal allocation of consulting fees to produce the Workplan, the Port was careful — during and after negotiation of the JDA — to advise the other PLPs (and Ecology) that the Port would not commit to an equal share of future costs. In October 2020, OCC terminated the JDA after the parties were unable to reach an allocation agreement for implementation of the Ecology order.

In December 2020, Ecology issued the final agreed order to GM, OCC, and BE, and an enforcement order to the Port. The work required under both orders is identical: implementation of the Workplan, and completion of a remedial investigation, feasibility study and cleanup action plan.

Most of the remedial investigation work required on Port-owned properties has been completed, as authorized by Commission during public session in March 2021 and March 2023. Earlier this year, Ecology also required vapor testing on Port Parcel 111 to assess whether subsurface chlorinated solvent vapors may be migrating onto an adjacent dangerous waste facility operated by Emerald Services. Emerald has not been named as a TWAFA PLP. The Port has also proposed additional work on Port Parcel 117 to support interim action planning. The purpose of this additional work is to enable the Port to (1) fulfill cleanup requirements on the parcel; (2) support the eradication of the invasive Mediterranean Vineyard Snail; and (3) support the construction of a gravel surface to enable the Port to market the parcel and surrounding properties for redevelopment. Ecology approved the workplan in June.

On March 21, 2023, the Commission also approved funding for outside counsel (NW Resource Law Group PLLC) to issue a demand letter and pursue alternative dispute resolution with Burlington Environmental for the Port's past and future remediation costs at Port Parcel 111. Following an unsuccessful attempt to mediate the dispute in 2023, a complaint was filed in Federal Court in February, as was authorized by Commission in January 2024. The trial is set for ten days starting November 3, 2025.

D. PROJECT DETAILS

Scope of Project:

- Facilitated a long-term lease agreement at Port Parcel 95 at 1514 Taylor Way by entering an agreed order with Ecology for implementation of an Interim Action Plan by Avenue 55 during property redevelopment in 2017. The property has since been redeveloped.
- Negotiated and executed 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). This agreement was concluded on May 22, 2017, and cancelled in 2021 after the parties could not reach agreement on allocation of future costs.

- Agreed Order negotiations between Ecology, the Port, GMT, Occidental, and Stericycle to prepare a remedial investigation/feasibility study (RI/FS) and draft Cleanup Action Plan (DCAP). As part of that effort, the PLP Group requested a waiver of past costs incurred by Ecology (\$362,132.24). Ecology declined the request.
- Complete a Pre-Agreed Order Data Gaps Work Plan (Work Plan). The Work Plan has been approved by Ecology and incorporated into the Agreed Order signed by the other PLPs and the Enforcement Order issued to the Port. That work was completed in early 2023.
- Implemented portions of the Work Plan portions relevant to Parcel 117 during 2019 and 2020. The work showed that there are no hazardous substances present at actionable concentrations in the soil.
- Develop and implement an investigation of remnant petroleum vapors from the adjacent Burlington Environmental Clean Earth Dangerous Waste facility into structures located at 1801 Taylor Way. Replaced monitoring wells at Parcel 95 that were removed during redevelopment. Completed regular sampling of monitoring wells on Port-owned properties.
- Ongoing RI & FS coordination with other PLPs' consultant.
- Completed a litigation strategy memorandum by the Port's outside counsel and briefed Commission in Executive Session.
- Issued a demand letter to Burlington Environmental, unsuccessfully completed mediation before the Hon. Ronald Leighton (Ret) and filed a complaint in Federal Court.
- Litigation budget to trial (defined as written discovery, document production, witness depositions and dispositive motions) which has been reviewed by Port staff and Port General Counsel and discussed with Commission in Executive Session.

Scope of Work for This Request:

- Implement Ecology-approved vapor monitoring workplan on Port Parcel 111.
- Implement Ecology-approved soil and groundwater investigation workplan on Port Parcel 117.
- Develop an Interim Action Work Plan for Port Parcel 117 and obtain Ecology approval.
- Consulting support to provide comment and influence the outcome of RI/FS/dCAP currently under development by GM, OCC and BE.

E. FINANCIAL SUMMARY

Estimated Cost for This Request

The estimated costs implement EO requirements on Port-owned properties during the next 12 to 16 months total \$430,000. If the cost of this estimate is anticipated to exceed the authorized amount, additional Commission authorization will be requested.

The total cost to resolve the Port's liability under the orders and pursue cost recovery is not currently estimable.

Cost Details

Item	This Request	Total Previous Requests	Total Request	Total Project Cost	Cost to Date	Remaining Cost
TOTAL	\$430,000	\$2,267,000	\$2,697,000	\$2,697,000	\$1,642,258	\$1,054,742

Source of Funds

The current Capital Investment Plan allocates \$2,385,000 for this project and will be updated during the 2025 budget process.

Financial Impact

Project costs will be expensed as incurred.

In addition to past and future remediation costs, the Port will seek attorneys' fees associated with cost recovery litigation as part of the suit against Burlington Environmental LLC pursuant to RCW 70A.305.080.

F. ECONOMIC INVESTMENT/JOB CREATION

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. PREVIOUS ACTIONS OR BRIEFINGS

Date	Action	Amount
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
November 19, 2020	Project Authorization	\$75,000
February 26, 2021	Staff Briefing (Friday Packet)	\$0
March 18, 2021	Project Authorization	\$830,000
October 20, 2022	Executive Session Briefing	\$0
February 21, 2023	Executive Session Briefing	\$0
March 21, 2023	Project Authorization	\$300,000
January 24, 2024	Executive Session Briefing	\$0
January 24, 2024	Project Authorization Increase and Approval to File Complaint Against Burlington Environmental LLC	\$600,000
TOTAL		\$2,267,000

H. ATTACHMENTS TO THIS REQUEST

- TWAAFA Site Map

I. **NEXT STEPS**

Upon Commission approval staff will authorize environmental investigation of Port-owned properties under an existing on-call contract as required by Ecology under the EO. Coordinate clean-up efforts with the long-term redevelopment opportunity in the area (total 30 acres).

Return to Commission in Q2 of 2025 to seek interim action authorization/approval. Continue participating in and monitoring progress on the TWAIFA DCAP and future cleanup implementation (including potential future Commission action).