

**PORT OF TACOMA COMMISSION**  
**ACTION ITEM MEMO**



Item No: 6C  
Meeting Date: 3/21/2023

**DATE:** 3/21/2023  
**TO:** Port of Tacoma Commission  
**FROM:** Eric Johnson, Executive Director  
Sponsor: Jason Jordan, Director, Environmental and Planning Services  
Project Manager: Scott Hooton, Environmental Project Manager II  
**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

**A. ACTION REQUESTED**

Request additional project authorization in the amount \$300,000 for a total authorized amount of \$1,667,000, for work associated with the Taylor Way and Alexander Avenue Fill Area (TWAAFA), 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 (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 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). The property 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.

Ecology has asserted that Port Parcels 95 and two additional port parcels (111, and 117) and other properties owned by others are part of a former landfill (the TWAAFA). See attached figure. Most of the hazardous substances present in soil and groundwater on Port Parcels originated from adjacent properties owned by others on which hazardous waste treatment facilities and an illegal landfill operated. The Port's liability as a Potentially Liable Party (PLP) solely stems from its ownership of properties impacted by adjacent properties; neither the Port nor any of its tenants caused or contributed to TWAAFA site impacts.

In anticipation of an Ecology order for the TWAAFA, the Port entered a Joint Defense, Common Interest Agreement and Cost-Sharing Agreement for Pre-Agreed Order Actions (JDA) with three

other 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 the 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. The Joint Defense Agreement was terminated after the parties were unable to reach an allocation agreement for implementation of the draft agreed order.

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

Staff is implementing elements of the workplan for the Port owned properties as authorized by Commission during public session in March 2021. Additional work is required on port-owned property to complete the remedial investigation and to select a remedy in the feasibility study.

Port staff have also worked with outside counsel to secure Burlington Environmental's agreement to engage in a dispute resolution process to allocate costs incurred by the Port at Parcel 111, currently leased to Handan Containers.

#### **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 confirmed 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 (ongoing effort). Replaced monitoring wells at Parcel 95 that were removed during redevelopment. Begin regular sampling of monitoring wells on Port-owned

properties (ongoing effort).

- Ongoing coordination with other TWAAFA PLPs.
- Completed a litigation strategy memorandum by the Port’s outside counsel and briefed Commission in Executive Session.
- Issued demand letter to Burlington Environmental

**Scope of Work for This Request:**

- Install compliance monitoring wells required by Ecology later in 2023. Obtain soil, vapor and groundwater samples for laboratory analysis.
- Perform quarterly groundwater monitoring and sampling on port-owned property.
- Complete vapor intrusion assessment at Port Parcel 111.
- Staff time, outside legal counsel and mediation fees to negotiate and implement alternative dispute resolution process with Burlington Environmental for costs incurred by the Port at Port Parcel 111.
- Prepare demand letters for other PLPs.
- Meetings and project coordination with the PLPs and Ecology to complete the Remedial Investigation.
- Ecology oversight costs.
- Staff time and outside legal counsel fees to support additional PLP and Ecology negotiations.
- Contingency.

**E. FINANCIAL SUMMARY**

**Estimated Cost for This Request**

The cost incurred to date and estimate to implement EO requirements on Port-owned properties during the next 12 to 16 months total \$1,667,000. 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
<b>TOTAL</b>	<b>\$300,000</b>	<b>\$1,367,000</b>	<b>\$1,667,000</b>	<b>\$1,667,000</b>	<b>\$1,177,139</b>	<b>\$489,861</b>

**Source of Funds**

The current Capital Investment Plan allocates \$1,410,000 for this project. It will be adjusted as part of the 2024 budget process.

**Financial Impacts**

Project costs will be expensed as incurred.

**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**

<b>Date</b>	<b>Action</b>	<b>Amount</b>
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
<b>TOTAL</b>		<b>\$1,367,000</b>

**H. NEXT STEPS**

Use structured dispute resolution process to reach cost allocation agreement with Burlington Environmental (final agreement subject to Commission approval).

Authorize environmental investigation of Port-owned properties under an existing on-call contract as required by Ecology under the EO.