

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6a

ACTION ITEM

Date of Meeting March 27, 2012

DATE: March 16, 2012

TO: Tay Yoshitani, Chief Executive Officer

FROM: Fred Chou, Project Manager, Seaport Project Management
Kathy Bahnick, Manager, Seaport Environmental Programs
Susan Ridgley, Senior Port Counsel

SUBJECT: Agreed Order No. DE 8938 with the Washington State Department of Ecology for Environmental Remediation at Terminal 91

Source of Funds: Tax Levy

Est. Workers Employed: No Impact

ACTION REQUESTED:

Request Port Commission authorization for the Chief Executive Officer to execute an Agreed Order No. DE 8938 with Washington State Department of Ecology (Ecology) for the implementation of the Cleanup Action Plan, and to address contamination in the Upland area of Terminal 91. This Order will replace the 2010 Agreed Order No. DE 7321. Execution of the Order commits the Port to implement the work required by Ecology as outlined in the Order.

SYNOPSIS:

The purpose of this action is to sign on to a new agreed order for (1) implementation of the work identified in the final Cleanup Action Plan (CAP), including the installation of certain remedial actions and the completion of compliance monitoring, and (2) continue to investigate and manage contamination in the Upland Area of the Terminal 91 Facility (see map), including any units newly identified during implementation of the final CAP.

The Port developed a draft CAP which identified six cleanup alternatives for the cleanup at Terminal 91. After the public comment period ended, Ecology selected the alternative that the Port had recommended in the draft CAP and approved the final CAP in December 2010. In 2011, staff worked with Ecology on a new agreed order for implementation of the final CAP. On January 20, 2012, Ecology issued a new draft agreed order for public comment. With public comment incorporated, the 2012 agreed order is ready for execution. After execution of the order, the project will move into the design development/permitting phase.

The estimated total cost under this agreed order is \$11,730,000. This estimated cost does not include anticipated cost recovery opportunities, such as Ecology grants, nor does it include the

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costs to address any discrete units that may be discovered during implementation of the CAP. To date, the Port has spent approximately \$8,885,000 on work performed at the site since 1993. A portion of the funding to implement this order is already approved under the 2012 annual Environmental Remediation Liability (ERL) authorization (December 6, 2011). Over 80% of the estimated future agreed order costs have been booked. Additional funds to implement the future work under the order will be authorized and reported under subsequent annual ERL spending authorizations and five-year plans.

PROJECT DESCRIPTION AND JUSTIFICATION:

The Terminal-91 (T-91) site consists of the entire Terminal 91 facility, including a former tank farm that was constructed in the 1920s. A portion of the former tank farm was operated as a dangerous waste treatment and storage facility under a Resource Conservation and Recovery Act (RCRA) permit from 1980 until its closure in the late 1990s. The remainder of the tank farm was operated as a fuel storage facility until 2005.

The T-91 site is regulated under both an RCRA permit and a Model Toxics Control Act (MTCA) agreed order. The RCRA permit remains in place because a portion of the site (the tank farm) was formerly permitted to operate as an RCRA-regulated dangerous waste treatment and storage facility. The RCRA facility has not operated since 1995, and the tank farm structures that housed these operations were in fact demolished in 2005. Both the former RCRA facility, and the surrounding piers and terminal, are now being cleaned up under the MTCA program. The Port, as the property owner, is required to hold the permit until cleanup (“corrective action”) is completed. The permit imposes corrective action by incorporating a separate agreed order issued under the MTCA.

The Port of Seattle entered into an MTCA agreed order in 1998 (the “1998 agreed order”). Philips Services Corporation (PSC) and Pacific Northern Oil Corporation (PNO), as former operators of the tank farm, also signed the 1998 agreed order. Both PSC and PNO subsequently went out of business, however, leaving the Port as the sole responsible party on the 1998 agreed order. Under the 1998 agreed order, the Port was required to prepare a Remedial Investigation and Feasibility Study, and to develop a CAP.

The 1998 order was replaced by a new agreed order in 2010. The 2010 agreed order continued the requirement to complete the feasibility study and develop the draft CAP, and extended the geographic definition of the site beyond the tank farm to encompass the entire Terminal 91 property owned by the Port (including submerged lands). Ecology required this change to satisfy an RCRA permit requirement that corrective action must include all contiguous property under the permit-holder’s ownership.

Environmental investigations at the T-91 site have been ongoing since the early 1980s and continue to the present time. A summary of past investigative activities can be found in the final remedial investigation report and in the final feasibility study report. The primary area of contamination at the site is the tank farm and associated operations. Chemicals of concern found in the tank farm site groundwater and soils include total petroleum hydrocarbons (including

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floating product on the groundwater), volatile organic compounds, semi-volatile organic compounds, polychlorinated biphenyls, and metals. The cleanup activities are designed to address direct contact with site soil, indoor air quality due to site contamination, and impact to aquatic receptors.

The Ecology-selected cleanup approach is identified in the December 15, 2010, final CAP and the new 2012 agreed order will require the Port to implement the work identified in the final CAP, which includes remedial measures designed to prevent migration of contaminants to Elliott Bay and to prevent direct contact with contaminants. These remedial measures include installation of a barrier wall at the tank farm, installation of product recovery trenches, capping the tank farm area, and removal of subsurface structures. The final CAP also includes excavation to address contamination from a historic pipeline release on Pier 91, and decommissioning of old fuel pipelines located within the tank-farm-affected area and on the piers. In addition, long-term operation and monitoring of the installed systems and compliance monitoring are included. The order also requires investigation and cleanup of discrete units in the upland area not included in the CAP, and placement of a restrictive covenant on the property. The restrictive covenant will limit exposure to hazardous substances by regulating land uses on the property and providing notice to future users as to the presence of hazardous substances. The agreed order defers action on marine sediments in the vicinity of Terminal 91.

An Ecology-led public comment period for the 2012 agreed order occurred from January 20 through March 5, 2012, so that community or public concerns could be addressed prior to signing the agreed order. One comment was received during the public comment period. The comment from King County asked Ecology to remove the west yard area from the order.

PROJECT SCHEDULE:

1. Today: Obtain authorization to execute the 2012 agreed order
2. 2Q 2012 - 3Q 2013: Develop plans and specifications. Obtain permit approvals.
3. 4Q 2013 – 4Q 2014: Implement the cleanup remedy. Construction may be deferred to begin in 2Q 2014 to avoid wet season construction.
4. 2015 – 2045: Perform long-term compliance monitoring, product recovery, and inspection and maintenance of remedial components.
5. Ongoing: Continued investigations into the non-tank-farm portions of the site; recovery of petroleum product from groundwater; and groundwater monitoring if required.

FINANCIAL ANALYSIS:

Terminal 91 Cleanup-up Project Estimate and Sources of Funding

Previous Amounts Spent on Cleanup	\$8,885,000
Cost Estimated Associated with this Agreed Order	\$11,730,000
Estimated Total Project Costs	<u>\$20,615,000</u>

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Estimated/Actual Sources of Funding:	
Past Amount Recovered (Settlement, Insurance, Grant)	\$2,933,000
Committed Future Grant Funding ¹	\$2,637,000
Port of Seattle ²	<u>\$15,045,000</u>
Total Sources of Funding	<u>\$20,615,000</u>

Note 1: Staff will continue to seek additional future grant funding

Note 2: Port is also seeking recovery from insurance companies

Cost Estimate Associated with this Agreed Order:

The actual cost for the cleanup design and implementation, including compliance monitoring, is expected to vary, depending on actual site conditions, labor and material costs at the time of construction, and any changed conditions or requirements established by the oversight agency (Ecology). However, based on the final CAP, the current estimated costs for this work are approximately \$11,730,000.

Source of Funds:

The costs to implement the cleanup design and implementation, including compliance monitoring, were included in the Commission's 2012 ERL spending authorization and five-year plan, approved on December 6, 2011. The ERL cost estimates were also included in the 2012 plan of finance. Additional costs may be incurred if continuing investigations identify any new areas requiring cleanup. Any additional cleanup costs that may be required as the project moves forward will be recorded as a liability and a non-operating expense in accordance with Port Policy AC-9. These amounts will be reported annually to the Commission via routine environmental remediation liability reports and spending authorization requests.

The Port's Tax Levy will pay the costs for the environmental cleanup project that are not ultimately covered by cost sharing agreements, settlements, insurance, or other cost recovery sources. In addition, Port staff is pursuing additional grant funding from Ecology for the design and construction work.

Potential Net Costs to the Port:

The cost summary table above presents a breakdown of all the paid, committed, and/or anticipated total known costs and recoveries associated with the T-91 cleanup, including both prior and future design and cleanup activities. As shown, the total (start to finish) Port cost is approximately \$20,615,000. The total received and committed grant funds (not including future settlement, insurance or uncommitted grant money) are approximately \$5,570,000. Therefore, the potential net cost to the Port to complete the T-91 cleanup work is expected to be up to approximately \$15,045,000. This estimated cost does not include additional cleanup if required for new discrete units not yet discovered or ERL costs for the marine sediments.

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STRATEGIC OBJECTIVES:

This activity will remediate known threats to the environment from contamination and further define other threats to the environment from contamination. These efforts are required to meet regulatory mandates and manage Port liabilities, and support the Port's objective to "Exhibit Environmental Stewardship through our Actions." After the remedial work, the areas could be developed to maximize asset utilization and support financial performance and to "Ensure Airport and Seaport Vitality."

BUSINESS PLAN OBJECTIVES:

Proceeding with this project ensures compliance and continued cooperation with Ecology and will allow productive use of the property in the future.

ENVIRONMENTAL SUSTAINABILITY:

State and federal laws require elimination of unacceptable levels of environmental risk caused by the presence of contaminants in soil, groundwater and sediment. From the perspective of the surrounding communities and the customers that we serve, the Port's participation in site remediation is the hallmark of responsible environmental stewardship.

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

- Do not enter into a new agreed order but continue the work under the existing 2010 order and the RCRA permit. The 2010 agreed order includes the requirement to continue investigation of newly discovered areas of concern but does not include implementation of the CAP. If the Port does not sign the 2012 agreed order, Ecology would likely impose the requirement through a unilateral enforcement order issued under the MTCA (and incorporated into the RCRA permit). Ecology would be required to do so due to its responsibilities under the federal RCRA requirements, as overseen by the U.S. Environmental Protection Agency. This alternative is not recommended.
- Agree to enter into the 2012 agreed order. Port staff has negotiated the terms of the 2012 agreed order and recommend them as acceptable. Staff believes that the 2012 agreed order's terms would provide more efficient and cost-effective cleanup procedures than would be imposed through a unilateral order. **This is the recommended alternative.**

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

The following documents are available electronically:

- Agreed Order No. DE 8938 (39 Pages plus Exhibits A-F)
- A copy of the Agreed Order and Exhibits will be available at the Commission Meeting.

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The following documents are attached to this memorandum:

- Map - Aerial Photo of the Terminal 91 Site
- Department of Ecology Fact Sheet for Terminal 91 Site

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

May 4, 2010, Commission authorized the Chief Executive Officer to execute the 2010 agreed order with the Washington State Department of Ecology.

December 6, 2011, Commission authorized \$23,600,000 spending in 2012 for Environmental Remediation Liabilities.