



COMMISSION
AGENDA MEMORANDUM

Item No. 8h

ACTION ITEM

Date of Meeting September 9, 2025

DATE : August 26, 2025

TO: Stephen P. Metruck, Executive Director

FROM: Sarah Ogier, Director-Maritime Environment & Sustainability

Joanna Florer, Sr. Manager, Environmental Programs

Brick Spangler, Sr. Program Manager, Maritime Environment & Sustainability

SUBJECT: **East Waterway Remedial Design Order and Memorandum of Agreement with City of Seattle and King County**

Amount of this request: \$0

Source of Funds: ERL Non Ops

Total estimated project cost: \$30,000,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to (1) sign and execute an EPA Administrative Settlement Agreement and Order on Consent requiring the Port of Seattle, City of Seattle, and King County to perform remedial design for the East Waterway Operable Unit of the Harbor Island Superfund Site; and (2) to sign a Potential Responsible Party (PRP) Cost Sharing Agreement between the Port of Seattle, City of Seattle, and King County to share the costs to perform the scope of work required by EPA's Order including EPA oversight costs.

EXECUTIVE SUMMARY

Sediment in the East Waterway contain contaminants that include polychlorinated biphenyls (PCBs), arsenic, dioxins/furans and carcinogenic polycyclic aromatic hydrocarbons (cPAHs) that pose risk to human health and the environment and need to be addressed. The East Waterway Group (EWG), comprising the Port of Seattle, the City of Seattle, and King County, completed the investigation and feasibility study phases of the cleanup of the East Waterway Superfund Site. The Port led the previous work under a legal agreement with the EPA, supported by the City of Seattle and King County through a Memorandum of Agreement (MOA) that has been in place since 2006.

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The EWG reached an agreement with EPA on an Order to develop the remedial design for the cleanup. Under a new cost sharing MOA, the three EWG parties will share responsibility to implement the required work. The Port will procure an environmental consulting firm to perform the work, with costs reimbursed by the City and County on a preliminary (subject to reallocation) basis of 1/3 each. The remedial design work is estimated to cost a total of approximately \$30 million. Funding for this work was included in the 2025-2029 Environmental Remediation Liability (ERL) Program. The request for procurement of a consultant will be completed under a separate commission request.

BACKGROUND

The Harbor Island Superfund Site is one of the first Superfund sites in the country, listed on the National Priorities List in 1983. Harbor Island is a human-built, industrial island in Elliott Bay. Built in the early 1900s, the 420-acre island supports businesses that conduct commercial and industrial activities, including a former lead battery recycler, ocean and rail transport operations and petroleum fuel farm storage and operation. Prior operations at the site resulted in contaminated groundwater, sediment and soil with lead and other contaminants. The EPA divided the Harbor Island site into six smaller areas, known as “Operable Units” (OUs) to better address site cleanup. Cleanups have been completed at five of the OUs, and the remaining OU for cleanup is the East Waterway. The East Waterway cleanup area stretches one mile and covers 157 acres. It is located downstream and north of the Lower Duwamish Waterway Superfund Site, along the east side of Harbor Island.

The East Waterway is proposed for cleanup due to unacceptable risks to human health and to the environment. Sediments at the bottom of the waterway contain contaminants that include polychlorinated biphenyls (PCBs), arsenic, dioxins/furans and carcinogenic polycyclic aromatic hydrocarbons (cPAHs) that pose risk to human health. There are 29 contaminants, including PCBs and mercury, which pose risks for benthic invertebrates that are the base of the food chain. PCBs also pose risk to fish within the waterway. The EPA released its Interim Record of Decision (ROD) for cleanup of the East Waterway in 2024. The next step to implement the Interim ROD is Remedial Design.

The EPA oversees the East Waterway cleanup. The EWG, comprising the Port of Seattle, the City of Seattle, and King County, completed the investigation and feasibility study phase of the cleanup of the East Waterway operable unit of the Harbor Island Superfund Site. The Port led the investigation work under a legal agreement with the EPA, supported by the City of Seattle and King County through a MOA that has been in place since 2006.

The EWG has reached agreement with EPA on an Order to develop the remedial design for the cleanup. Under a new cost sharing MOA, the three EWG parties will share responsibility to implement the required work. The Port will procure an environmental consulting firm to perform the work, with costs reimbursed by the City and County on a preliminary (subject to potential reallocation) basis of 1/3 each. The Port will hold the contract with the consultant and all

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invoicing will be handled by the Port with appropriate portions reimbursed by the City and County.

Total cleanup cost estimates were developed for each cleanup alternative as part of the East Waterway Feasibility Study completed in 2019. In 2023, the EWG updated the cleanup cost based on the EPA's preferred alternative and updated market pricing for a total of \$419,000,000. Of that total, \$30,000,000 is estimated for Remedial Design, baseline monitoring, project management and EPA oversight effort to be completed under the proposed Order.

Funding for this work was included in the 2025-2029 Environmental Remediation Liability (ERL) Program, therefore funding is not requested at this time.

The request for procurement of a consultant will be completed under a separate commission request.

JUSTIFICATION

The EPA Order is a binding agreement to perform work by the Port; therefore, the signing of the EPA Order requires Commission authorization. The project will formally initiate the process of remedial design for the East Waterway, as necessary and required, to meet EPA's cleanup objectives in its interim Record of Decision. The MOA will permit the EWG parties to share the costs of the required work and obligates the Port to fulfill EPA's financial assurance requirements for the work.

DETAILS

The Statement of Work detailed in the Order requires that the Port, City, and County perform the work necessary to complete Remedial Design. A request to procure and execute a joint, project-specific, professional environmental consulting contract to complete the tasks identified in the order will be presented separately and is anticipated at the October 14, 2025, Port Commission meeting.

Schedule

The preliminary East Waterway Cleanup project schedule milestones are as follows:

<i>Activity</i>	<i>Estimated Schedule</i>
Commission Authorization of Order	Q3 – 2025
Consultant designer procurement	Q1 2026
Remedial Design	2026-2031

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ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do Not Authorize Signature of the Order

Cost Implications: Not signing the Order may result in the issuance of an enforcement order by EPA, or EPA may elect to perform this work itself. This would result in EPA recovering the cost of the work from the Port, increasing the Port's estimated costs by 1.5 to 3 times.

Pros:

- (1) May delay the Port's spending by a year or more while EPA prepares the enforcement order.

Cons:

- (1) Increased legal and staff time and efforts and costs to respond to an enforcement order and provide ancillary support to the EPA to carry out the enforcement order (gain access to the site, etc.)
- (2) The ultimate costs of the work will be much higher if EPA elects to perform the work itself.
- (3) Not performing this work could tarnish the Port's reputation with EPA and the community as having a commitment to public health and being a steward of community resources and the environment.

This is not the recommended alternative.

Alternative 2 – Authorize the Signing of the Order and begin the required Statement of Work

Cost Implications: Likely \$30,000,000 costs shared with our partners.

Pros:

- (1) Avoids potential enforcement order and furthers the Port's collaborative working relationship with EPA.
- (2) Takes the next step leading to East Waterway cleanup and long-term protection of human health and the environment.
- (3) Demonstrates the Port's value of being responsible stewards of community resources and the environment.

Cons:

- (1) None, but will cost approximately \$30,000,000 to complete the Order's Statement of Work, shared equally among the Port, City, and County.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

There is no funding request as part of this authorization. Funding for the associated scope of work and costs is included in the annual Environmental Remedial Liability (ERL) authorization. Project costs will be shared by the Port, City, County, subject to reallocation after the Remedial Design is complete. As the contracting party, the Port will pay all costs upfront, and the City and

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County will reimburse the Port for their respective shares. The Port will pursue future options to recover its costs from other parties.

ATTACHMENTS TO THIS REQUEST

- (1) Administrative Settlement Agreement and Order on Consent for Remedial Design (East Waterway Operable Unit, Harbor Island Superfund Site, Seattle, WA)
- (2) Memorandum of Agreement Between the Port of Seattle, the City of Seattle and King County Regarding the East Waterway Operable Unit of the Harbor Island Superfund Site
- (3) Presentation

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

November 1, 2024 - The Commission authorized the Chief Executive Officer to (1) spend environmental remediation funds for 2025 in the amount of \$19,700,000 and (2) approve a five-year spending plan for \$211,000,000 for the environmental remediation liability program for 2025-2029, of which an estimated not-to-exceed amount of \$50,000,000 will be obligated during 2025 to be spent in future years.

July 25, 2006 – The Commission authorized the Chief Executive Officer to Execute the Administrative Settlement Agreement and Order on Consent for a Supplemental Remedial Investigation/Feasibility Study for the East Waterway Operable Unit of the Harbor Island Superfund Site issued by the United States Environmental Protection Agency.

March 14, 2006 – The Commission authorized the Chief Executive Officer to Execute a MOA between the Port and the City of Seattle and King County for the East Waterway Operable Unit of the Harbor Island Superfund Site Supplemental Remedial Investigation/Feasibility Study.

September 23, 2003 – The Commission issued project-wide authorization for the design, permitting, and construction required for the Port’s full compliance with Administrative Order on Consent for Removal Action issued by the United States Environmental Protection Agency in the matter of Harbor Island Superfund Site East Waterway Operable Unit, Phase 1 Remedial Design and Removal Action, and Phase 2 Remedial Design Activities for an estimated cost of \$19,400,000.