

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
ACTION ITEM

Item No. 4a
Date of Meeting July 1, 2014

DATE: June 23, 2014
TO: Tay Yoshitani, Chief Executive Officer
FROM: Stephanie Jones Stebbins, Director Seaport Environmental and Planning
Kathy Bahnick, Manager, Seaport Environmental and Planning
SUBJECT: Second Amendment of the Lower Duwamish Waterway Administrative Order on Consent; Second Amendment of the Lower Duwamish Waterway Group Memorandum of Agreement

Amount of This Request: N/A **Source of Funds:** Environmental Remediation
Liability Non Ops

Est. Total Project Cost: \$3,000,000 - \$5,000,000, 25% of which is the Port's responsibility

ACTION REQUESTED

Request Commission authorization for the Chief Executive Officer to execute (1) a Second Amendment to the Administrative Order on Consent (Order) for Remedial Investigation/Feasibility Study (RI/FS) for the Lower Duwamish (LDW), entered into with the U.S. Environmental Protection Agency (EPA) to conduct an Enhanced Natural Recovery (ENR)/Activated Carbon (AC) Pilot Study at a total estimated cost in the range of \$3,000,000 to \$5,000,000 and (2) a Second Amendment to the Lower Duwamish Waterway Group (LDWG) Memorandum of Agreement (MOA) to provide for equal sharing of the costs of the ENR/AC Pilot Study between the LDWG members (Port of Seattle, King County, City of Seattle and The Boeing Company). Funds to perform this work will be included in the Environmental Remediation Liability annual authorization.

SYNOPSIS

A final Remedial Investigation and final Feasibility Study was completed by the LDWG and conditionally approved by EPA and the Department of Ecology. However, EPA is now requiring the performance of additional investigations, including the ENR/AC Study, to further the agency's decision-making process for site remedial actions. The MOA amendment is for implementation of an ENR/AC pilot study requested by the EPA and Department of Ecology under the amended Order, and for cost sharing for this work and the agency oversight costs. King County will be administering the contracts following public procurement procedures, but the LDWG will retain authority to select contractors and oversee the work.

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BACKGROUND

In December 2000, the Port, the City of Seattle, King County, and The Boeing Company entered into an Administrative Order on Consent for Remedial Investigation/Feasibility Study (the "Order") with EPA, the goals of which were to determine the nature and extent of contamination in the Duwamish Superfund Site, and to determine and evaluate alternatives for remedial action to clean up the site. In June 2000, the same parties entered into the Lower Duwamish Waterway Group Memorandum of Agreement, in order to split the costs of performing the Order.

EPA released the conditionally-approved final FS, the Proposed Plan and Environmental Justice report for public comment in late February 2013. The Proposed Plan comment period closed in June 2013. The final agency Record of Decision (ROD) is expected to be issued no sooner than late 2014.

EPA has now determined that additional investigations are necessary in order to finalize its remedy decision as part of the Feasibility Study process. The first additional investigation that EPA is requiring is the Fisher Study. In March 2013, the First Amendment to the Order was signed by all the LDWG parties. Under the First Amendment, the LDWG agreed to conduct a Fisher Study designed to help improve the effectiveness of the institutional controls (e.g. fishing restrictions and education efforts) that are expected to be required by the ROD. Joint public outreach activities were also covered under the First Amendment to the Order. The LDWG MOA was also amended in March 2013 at the same time that the Order was amended, to enable the LDWG parties to share the Fisher Study costs.

The next required investigation is the ENR/AC Pilot Study. The Second Amendment to the Order will require that the parties investigate the potential use of alternative cleanup technologies (specifically, activated carbon) to enhance natural recovery. LDWG has proposed the use of activated carbon as an enhanced natural recovery supplement in order to reduce the bioavailability of PCBs and other contaminants and to potentially allow enhanced natural recovery to be used to a greater degree. This technology involves the addition of activated carbon to a thin layer of sand that is mixed in with surface sediments. The results of the investigation will be used to determine if activated carbon is effective for this site and what its impacts might be. LDWG believes that focused use of activated carbon within the range of expected concentrations would present minimal risks to benthic organisms and could be used to provide better overall remedy performance and possibly decrease the dredging footprint.

PROJECT JUSTIFICATION AND DETAILS

Project Objectives

This study will help guide where enhanced natural recovery can appropriately be used as part of the overall cleanup remedy.

Scope of Work

This amendment will allow the LDWG partners to design and implement an ENR/AC pilot study. ENR/AC is one of the cleanup options identified for Lower Duwamish Waterway sediments. The goal of the study is to verify that enhanced natural recovery amended with

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activated carbon can be successfully applied in the LDW and to evaluate if it will remain stable in more dynamic areas of the LDW. This will help inform the long-term design of the river-wide cleanup.

Schedule

The study is estimated to take approximately three years to complete, depending on the time required for agency review/public comment and construction constraints.

FINANCIAL IMPLICATIONS

Budget Status and Source of Funds

There is no funding request as part of this authorization. Funding for the associated costs will be included in the annual Environmental Remedial Liability (ERL) authorization. Assuming that we enter into a MOA amendment covering this work, ENR/AC costs would be shared with our LDWG partners. Investigation costs are also eligible for state MTCA grant funds when they are available. The pre-design estimate for this work is \$3,000,000 to \$5,000,000. In the draft MOA amendment covering this work, the Port would pay one quarter of the costs (\$750,000 to \$1,250,000).

STRATEGIES AND OBJECTIVES

This work supports the Century Agenda goal of being the greenest, most energy efficient Port in North America by moving toward cleanup of the Lower Duwamish Waterway. Meeting our Duwamish Superfund obligations is a critical component of the Green Gateway strategy of meeting our legal obligations as efficiently and effectively as possible.

TRIPLE BOTTOM LINE

Economic Development

The Port and the other LDWG parties continue to carefully control costs associated with the effort to minimize overall economic impact. The ENR/AC investigation is intended to assist with that effort.

Environmental Responsibility

Addressing unacceptable levels of environmental risk caused by the presence of contaminants in soil, groundwater, and sediment is not only the goal of numerous state and federal laws; it reflects our commitment to environmental stewardship, from the perspectives of both the surrounding communities and the customers that we serve. This study is a critical step for EPA and Ecology to create a cleanup plan for the LDW that is capable of implementation.

Community Benefits

ENR/AC can be an effective and less invasive cleanup technology when used in the appropriate setting. The study will help identify areas where this technology can be used.

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ALTERNATIVES AND IMPLICATIONS CONSIDERED

1. **Alternative 1)** – Do not authorize the CEO to enter into the Second Amendment to the Order. EPA could issue a unilateral enforcement order requiring that the Port pay its share of the work. Alternatively the remaining LDWG parties, who would be left solely responsible, could bring a claim for contribution. Not entering into the Second Amendment to the Order would seriously impair our working relationship with the other LDWG parties and with EPA. This is not the recommended alternative.
2. **Alternative 2)** – Authorize the CEO to enter into the Second Amendment to the Order, and the accompanying Second Amendment to the MOA with the City, Boeing and County, to allow continuation of the current working relationship and to continue sharing costs, pending a final allocation, for the required additional studies and agency oversight. **This is the recommended alternative.**

ATTACHMENTS TO THIS REQUEST

- Second Amendment to the Administrative Order on Consent for Remedial Investigation/Feasibility Study for the Lower Duwamish
- Second Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

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- February 26, 2013 – First Amendment to the Lower Duwamish Waterway Group Administrative Order on Consent
- January 22, 2013 – First Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement
- October 12, 2010 – Briefing on the Lower Duwamish Waterway Feasibility Study
- May 5, 2009 – Briefing on the Lower Duwamish Waterway Feasibility Study
- November 4, 2008 – Briefing on the Lower Duwamish Waterway Remedial Investigation and Feasibility Study
- November 6, 2007 – Briefing on Lower Duwamish Sediment Superfund site