

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5c

Date of Meeting August 11, 2009

DATE: July 14, 2009

TO: Tay Yoshitani, Chief Executive Officer

FROM: Stephanie Jones Stebbins, Senior Manager, Seaport Environmental Programs
Kathy Bahnick, Senior Environmental Program Manager

SUBJECT: Professional Service Contract Supporting further Environmental Investigation
and Associated Regulatory Coordination Activities at Terminal 115N.

ACTION REQUESTED:

Request Port Commission authorization for the Chief Executive Officer to execute a Category 3 professional services contract for consultant support for environmental investigation and associated regulatory coordination at T115N ranging from approximately \$750,000 to \$1,000,000.

SYNOPSIS

The Department of Ecology (Ecology) has informed the Port that it believes T115N is sufficiently contaminated by hazardous substances from past practices that a cleanup at the site is necessary, and that the work should be conducted under Ecology supervision via an Agreed Order. The Port is currently conducting independent sampling at the property using a consultant from our open order contract to determine the general nature and extent of contamination, and to coordinate with Ecology concerning the results. Authorization to perform this initial independent investigation was obtained at the April 14, 2009, commission meeting. Based on the results, it is anticipated that Ecology will follow up with their request to enter into an Agreed Order. A consultant will be needed to support negotiation of and to perform the work required by Ecology.

Staff will return to Commission to obtain authorization to enter into a negotiated Agreed Order, if an Order is required.

Staff will also return to Commission once the investigation work to be conducted under this procurement is completed, and before entering into the cleanup phase of work.

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

July 14, 2009

Page 2 of 4

BACKGROUND

Terminal 115 is located along the Lower Duwamish Waterway (LDW), which is a listed Superfund site. The U.S. Environmental Protection Agency (EPA) is the lead agency for in-water (i.e., sediment) assessment and cleanup, while Ecology is the lead agency for source control for adjacent and upland sites to the LDW. Assessment activities conducted as part of the investigation of the LDW sediments have identified a number of localized contaminated areas. One of these areas of localized contaminated sediments, called Glacier Bay because of its proximity to the property owned by Glacier Northwest, is adjacent to and north of the northern portion of T115.

T115N was the site of a tin reclamation facility from approximately 1963 to 1998 under a variety of Port tenants. The industrial operation utilized a number of hazardous substances, including sodium hydroxide, spent plating solution, lacquer sludge and “black mud.” Limited information currently exists about the degree of contamination of the soil and groundwater at the site. In 1998, a site hazard assessment was conducted by Seattle-King County Department of Public Health. Sites are ranked on a scale of 1 to 5, with 1 representing the highest level of risk and 5 the lowest. T115N was ranked as a 5.

On January 20, 2009, Ecology issued a “Notice of Potential Liability under the Model Toxics Control Act (MTCA) for the Release of Hazardous Substances and Notice of Intent to Conduct Site Hazard Assessment” for Terminal 115 N. The purpose of the Notice is to provide the Port with the opportunity to comment on Ecology’s proposed findings. Ecology stated its belief that a release of hazardous substances had occurred at the site that posed a threat to human health or the environment, and that further action was necessary. Ecology proposed to find the Port liable as a potentially liable party (PLP) because it is the current owner of the property. Ecology’s proposed next steps were (1) initiate negotiations for an Agreed Order to further evaluate specific levels and areas of contamination; and (2) “clean the site up to standards.”

In its response, the Port acknowledged that it is nominally a PLP because it is the property owner and because there has been one sample that exceeded MTCA standards. However, the Port objected to Ecology’s determination that this was sufficient to find that the site posed a threat to human health or the environment.

The Port is currently conducting independent investigation work for T 115 N. This work is expected to be completed by the end of the year.

PROJECT SCOPE OF WORK AND SCHEDULE

The scope of work that will be performed by the selected consultant will be defined by the Agreed Order negotiated by the Port and Ecology. Although not negotiated yet, we are reasonably certain of the principal elements of the scope of work that will be required in the RI/FS Agreed Order, and that will be assigned to the selected consultant. This includes but is not limited to:

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

July 14, 2009

Page 3 of 4

- Support for Agreed Order scope negotiation.
- Prepare a Public Participation Plan and support the Port's public involvement effort.
- Prepare a RI/FS Work Plan.
- Perform the Remedial Investigation as defined in the work plan.
- Perform the Feasibility Study to determine the method of site remediation.
- Prepare a draft Cleanup Action Plan.
- If a Remediation Agreed Order is required following the RI/FS, the selected consultant scope will also include but is not limited to: Support the Port's implementation of the cleanup action plan.
- Coordination and documentation of site investigation and remediation activities.
- Support associated regulatory coordination and negotiation activities.

FINANCIAL IMPLICATIONS

Cost Estimate

The initial estimated cost for consultant services for additional investigation and regulatory support work is highly variable, due to the lack of current site data and the fact that the scope and schedule has yet to be negotiated with Ecology. However, we expect the costs of this contract to be in the range of \$750,000 to \$1,000,000.

Source of Funds

All costs will be accounted for as environmental reserves and charged to expense in accordance with Port Policy AC-9. The cash funded by Environmental Reserves, which pays for the environmental cleanup projects, is funded by the Port's Tax Levy. This site was included in the Commission's 2009 environmental reserve spending authorization, approved on December 15, 2008. Additional environmental reserve funds may be established as more site-specific information is generated, in compliance with Port policy AC-9, and will be reported to the Commission via routine environmental reserve reports and spending authorization requests.

In addition, there are other possible supplementary outside sources that could be pursued, such as grant funding from Ecology and EPA, and cost sharing agreements with other PLPs. At this time it is not known if supplementary outside sources will be available for this site.

ENVIRONMENTAL SUSTAINABILITY/COMMUNITY BENEFITS

Elimination of unacceptable levels of environmental risk caused by the presence of contaminants in soil, groundwater and sediment is not only required by state and federal law, it is the hallmark of responsible environmental stewardship, from the perspectives of both the surrounding communities and the customers that we serve.

COMMISSION AGENDA

T. Yoshitani, Chief Executive Officer

July 14, 2009

Page 4 of 4

ALTERNATIVES CONSIDERED/RECOMMENDED ACTION

1. Do not contract for further investigation and remediation at T115N. This alternative could result in a delay in responding to Ecology and could result in Ecology enforcement action. Ecology could step in and do the work themselves, which would eliminate Port control over investigation and remediation activity and cost.
2. Conduct the investigation and remediation using Port resources, without outside consultant assistance. There are insufficient staff resources and expertise to conduct this remediation without consultant support.
3. Conduct a competitive procedure to procure and contract with a qualified environmental consultant to conduct the T115N investigation as defined under the RI/FS Agreed Order that will be negotiated, and site remediation under the Remediation Agreed Order to follow. This alternative will result in continuation and completion of remediation of Port property, as required by state law. **This is the recommended alternative.**

PROJECT SCHEDULE

This authorization enables initiation of a Category 3 procurement process in the third quarter of 2009.

PREVIOUS COMMISSION ACTION

On April 14, 2009, the Commission approved performing independent environmental investigation activities at Terminal 115N, and associated regulatory coordination.