

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**

<b>Item No.</b>	<u>6d</u>
<b>Date of Meeting</b>	<u>October 13, 2009</u>

**DATE:** September 18, 2009

**TO:** Tay Yoshitani, Chief Executive Officer

**FROM:** Stephanie Jones Stebbins, Senior Manager, Seaport Environmental Programs  
Roy Kuroiwa, Environmental Program Manager

**SUBJECT:** Authorization to spend up to \$700k on source control planning and studies at Terminal 108 (project authorization); and authorization to execute a professional service contract to perform source control actions at Terminal 108

**Amount of This Request:** \$400,000 - \$700,000

**Source of Funds:** Tax Levy

**ACTION REQUESTED:**

Request Port Commission authorization to: 1) spend \$700,000 on Source Control Project at Seaport's Terminal 108 Site, and 2) execute a Category III professional services contract for consultant services and support for the Source Control Project at T108 Site ranging from approximately \$400,000 to \$700,000.

**SYNOPSIS**

The Port's Terminal 108 (T-108) is located on the eastern shoreline of the Lower Duwamish Waterway (LDW) approximately between river mile (RM) 0.5 and RM 0.7, as measured from the southern tip of Harbor Island. Terminal 106 West (T-106W) is located adjacent to T-108. The same tenant as T-108 occupies T-106W and consequently, the tenant-occupied portion of T-106 is included in this project. For purposes of this Source Control Project, T-108 and the tenant-occupied portion of T-106W are together referred to as the T-108 Site.

The Port is preparing Source Control Strategy Plans (SCSPs) for the T-108 Site in association with the Washington State Department of Ecology (Ecology) as part of the Source Control Program for the LDW Superfund site. The Port is currently developing two SCSPs, one each for T-108 West and T-108 East parcels. The plans consist of several steps, as follows: (1) identify and assess potential recontamination sources and pathways; (2) determine the most appropriate and effective source control methods and strategies; (3) design and implement the source control measures; and (4) establish long-term monitoring procedures to assess the performance of the strategy. Source Control can cover a broad range of activities, up to and including actual clean up and removal of contaminated materials.

The requested procurement is to provide the professional services to assist Port staff in strategy development, design and document implementation of the Ecology approved T-108 West and East Parcel SCSPs.

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We are reviewing the contract scope of work with the Office of Social Responsibility (OSR) to identify small business subcontracting availability for these contracts. Small business subcontracting goals will be established and stated in the request for qualifications (RFQ).

### **BACKGROUND**

Historic site owners, tenants, and operators at T-108 have contributed to existing contamination that remains in the upland and bank soil, and has been confirmed through past and recent sampling and analysis efforts. Large portions of the site have been backfilled and graded using native and non-native materials from both documented and undocumented sources (e.g., Duwamish River dredge spoils). These historic fill and waste materials remain on the site, beneath paved and unpaved portions of the site.

The LDW Source Control Program, under Ecology's lead, is designed to identify and manage current and future potential sources of contamination to LDW sediments, in coordination with the LDW Superfund cleanup activities. The ultimate focus of Ecology's source control strategy is to prevent recontamination of sediments to levels that exceed the Washington State Sediment Management Standards (SMS) and to meet the ultimate goals for LDW sediment cleanup.

The Port is supporting the goals of the LDW Source Control Program by developing Source Control Strategy Plans (SCSP) and implementing source control practices at Port-owned properties, including those either operated by the Port or leased to various tenants. To meet Ecology's intended outcome for this Source Control Program, the Port is developing SCSPs for the entire T-108 parcel and part of T-106West, which together are called the T-108 Site. In order to develop an understanding of the physical and environmental background conditions of the Terminal, the Port has already prepared an Environmental Conditions Report (ECR), which will help inform source control strategy planning at the T-108 Site.

The Port is proposing to perform these source control activities at T-108 under the Department of Ecology's Voluntary Clean Up program (rather than under a remedial investigation feasibility study (RI/FS) and Cleanup Agreed Order, or similar mandate). While the project is formally an independent action, Ecology has provided guidance and direction to the Port in the design of the project's scope, and will continue to do so throughout the project. We will seek Ecology's approval and endorsement at each step of the process.

### **PROJECT SCOPE OF WORK AND SCHEDULE**

The Ecology approved project scope includes:

- Implementing Ecology-endorsed SCSPs and Data Gaps and Design Assessment activities to support the continued development of the strategy plans
- Developing, negotiating, and selecting of Source Control alternatives and strategy, and selection with Ecology's endorsement
- Implementing the SCSPs, including design and permitting, up to bid and award of any source control construction efforts

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- Providing support and services for regular Ecology reporting and Public Outreach, as required by the plans

This work is intended to begin in January 2010 and continue until 2012, when a construction contract will be awarded as necessary.

## **FINANCIAL IMPLICATIONS**

### **Cost Estimate**

The initial estimated cost for professional consulting and associated subcontract services will be based on the final Ecology approved SCSPs for the West and East parcels. We anticipate the costs of this phase of the project and the contract to be in the range of \$400,000 to \$700,000.

### **Source of Funds**

All costs will be accounted for as environmental reserves and charged to expense in accordance with Port Policy AC-9. The Port's Tax Levy, which funds the cash funded by Environmental Reserves, will pay for this environmental cleanup project. 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.

This phase of the project will likely be followed by site improvement/construction activity that would be funded and approved as a capital or an expense project, or a combination of the two.

At this time, no supplementary outside sources, such as grant funding or cost-sharing agreements with other Potentially Liable Parties (PLPs) have been established for this site. There are no known PLPs for this Site, at this time.

## **ENVIRONMENTAL SUSTAINABILITY/COMMUNITY BENEFITS**

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 source control efforts is the hallmark of responsible environmental stewardship. The Port's source control program at the T-108 Site, as part of the LDW Source Control Program, will ensure that the sediments in the waterway are not re-contaminated.

## **ALTERNATIVES CONSIDERED/RECOMMENDED ACTION**

This authorization requires the recommendation and selection of two decisions: whether to proceed with environmental assessment, planning, and 'cleanup' work associated with T-108 as an independent remedial action (project authorization); and whether to perform the project work using in-house professional staff or outside contractors (contract authorization). These two authorizations along with options to consider are provided below followed with a Recommended Action.

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1. Continue to perform the source control work under the Department of Ecology's Voluntary Cleanup Program. This will likely provide an expedited schedule; some flexibility in selecting the remedy; and potentially lower capital and cleanup costs. We will receive a No Further Action letter from Department of Ecology stating that the source control efforts comply with the Model Toxics Control Act (state's cleanup regulations). However, an independent action does not provide a final, regulatory cleanup approval or closure (i.e., covenant or consent decree) and limits options for cost recovery. For example, there is a \$200,000 cap for MTCA grant funds for Independent Actions.
2. Continue to perform the source control work, but request that the Department of Ecology supervise it under an Agreed Order. This means schedules are negotiated with Ecology and plans are subject to public review and Ecology approval. The additional process associated with Agreed Orders can result in higher capital and cleanup costs. However, performing the work under an Agreed Order does enable "allowable costs" for 50% MTCA grant match. Due to the current budget crisis, we are only receiving about 10% reimbursement from MTCA grants.
3. Do not perform or participate in any source control activities at T-108. This alternative will probably result in Ecology enforcement action, which would incur legal costs and result in a less cooperative cleanup process, as well as having negative public reaction. The likely result of the enforcement action would likely be requiring the Port to conduct a site assessment and cleanup under an Ecology formal cleanup program (e.g., Agreed Order).
4. Perform the assessment, planning and cleanup using primarily Port staff and resources, without outside professional consulting assistance. There are insufficient staff resources and expertise to conduct this remediation without consultant support.
5. Conduct a competitive procedure to procure and contract with a qualified environmental consultant to conduct the T-108 source control activities outlined in the Project Scope of Work above.

**The recommended action alternative is:** Move forward with both Alternative 1 and 5. Continue to perform work under the Voluntary Cleanup Program with the Department of Ecology; and conduct a competitive procedure to procure and contract with a qualified environmental consultant to conduct the T-108 source control activities outlined in the Project Scope of Work above.

If the Department of Ecology prefers to bring this under an Agreed Order, we will need to come back to the Commission for further Authorization.

## **PROCUREMENT SCHEDULE**

**This authorization enables initiation of a Category III procurement process in the fourth quarter of 2009 and execution of a contract in December 2009 or January 2010.**