

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6g
Date of Meeting April 14, 2009

DATE: April 3, 2009

TO: Tay Yoshitani, Chief Executive Officer

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

SUBJECT: Authorization to 1) perform environmental investigation activities at Terminal 115N, and associated regulatory coordination; and 2) procure a professional service contract to support the environmental investigation and associated regulatory coordination activities, at a cost of over \$200,000.

ACTION REQUESTED:

Request Port Commission authorization for the Chief Executive Officer to (1) perform environmental investigation and associated regulatory coordination at T115N under an existing open order contract, in order to determine if the site warrants further cleanup; and (2) begin the procurement process for a Category 3 professional services contract for consultant support for these activities.

SYNOPSIS

The Department of 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 believes there is not enough information at this point to determine if that assessment is correct. Therefore, the Port intends to conduct sampling at the property to determine the nature and extent of contamination, and to coordinate with Ecology concerning the results. The Port needs consultant assistance in order to achieve this.

Ecology is concerned about the schedule and would like the Port to begin the investigation soon. Because of this schedule concern, staff proposes performing the initial work under an existing open order contract for remedial investigations. At the same time, we would like to start the procurement process for a category 3 contract for a consultant to perform the additional work, should it become necessary. If the environmental investigation shows a level of contamination at the site that warrants cleanup, further Commission action will be necessary to execute the Category 3 contract for professional services, and, potentially, enter into an agreement with Ecology.

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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 the State Department of 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 (often referred to as Early Action Areas or EAAs). 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 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.

PROJECT SCOPE OF WORK AND SCHEDULE

The Port believes that further sampling is necessary in order to determine the nature and extent of contamination at the site. The Port has proposed to Ecology that this sampling be conducted as an independent investigation. The Port will report the results to Ecology on a schedule that will allow both parties to evaluate the additional data and make a knowledgeable decision about the appropriate next steps.

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The project consists of the following elements:

- (1) Perform the initial environmental investigation under an existing remediation investigation open order contract to include:
 - Prepare and implement sampling plans and laboratory analysis
 - Validate and evaluate chemical data
 - Prepare report
 - Coordinate with Ecology concerning next steps
- (2) Advertise and select a consultant to perform additional remedial action work, if required, in the near future

ALTERNATIVES CONSIDERED/RECOMMENDED ACTION

1. Do Nothing - Do not respond to Ecology's request to negotiate an Agreed Order, and do not initiate an independent investigation. Under this scenario, Ecology could issue an enforcement order to carry out the work, or proceed with its own contractor and charge the costs to the Port. This is not the recommended alternative.
2. Agreed Order: Immediately sign on to an Agreed Order that would include the full range of activities necessary to clean the property. This would include performing the following steps under Ecology supervision: conducting a full Remedial Investigation; conducting a Feasibility Study; developing a Cleanup Action Plan; and ultimately performing remedial actions to clean up the site. Begin procurement for and execute a Category 3 consultant contract for this Agreed Order work. This option would be more expensive and would have limited flexibility in designing the appropriate cleanup. Due to the Port's lengthy procurement process, this approach will also delay start of the investigation, which is a concern of Ecology's. This is not the recommended alternative.
3. Phased Approach (Faster): First, perform initial environmental investigations under existing open order contract, and initiate consultant procurement for additional cleanup work if warranted: Then, continue to work with Ecology to determine whether it warrants further cleanup. Work to identify other potential PLP's. And then return to Commission for further authorization to enter into a Category 3 contract with an environmental consulting firm to perform additional remedial action work, if warranted. This is the recommended alternative.
4. Phased Approach (Slower) Same as above, except wait to perform the initial environmental investigation until a Category 3 consultant contract is in place for the entire work. This

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approach will delay start of any investigation work for 6-9 months. Because Ecology is concerned about delays, this is not the recommended alternative.

FINANCIAL IMPLICATIONS

Cost Estimate

The estimated cost for consultant services for the initial investigation and regulatory support work is \$150,000 to \$250,000.

Source of Funds

The cash funded by Environmental Reserves, which pays for the environmental cleanup projects, is funded by the Port's Tax Levy.

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.

PROJECT SCHEDULE

A Phase 1 independent environmental investigation is projected to be completed in 2010 depending on negotiations with Ecology and consultant procurement.

PREVIOUS COMMISSION ACTION

None specific to T115 N

On December 15, 2008, the Port Commission approved the project-wide authorization expenditure of \$10,396,000 for environmental cleanup action on Port properties during 2009.