

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6a
Date of Meeting May 4, 2010

DATE: April 16, 2010

TO: Tay Yoshitani, Chief Executive Officer

FROM: Stephanie Jones Stebbins, Senior Manager, Seaport Environmental Programs
Kathy Bahnick, Manager, Seaport Environmental Programs
Susan Ridgley, Senior Counsel

SUBJECT: Replacement Agreed Order with the Washington State Department of Ecology for Environmental Work at Terminal 91

Source of Funds: Tax Levy/Environmental Reserves -- **Est. Workers Employed:** No Impact

ACTION REQUESTED:

Request Commission authorization for the Chief Executive Officer to execute an Agreed Order with Washington State Department of Ecology (Ecology) for the completion of remediation investigation actions at Terminal 91. This order will replace the 1998 Agreed Order # DE 98HW-N108.

SYNOPSIS:

The purpose of this action is to replace an existing order with a new order that (1) encompasses all of Terminal 91 and (2) removes other signatories that have gone out of business (Pacific Northern Oil Corporation (PNO)) or filed for bankruptcy protection (Phillip Services Corp (PSC)). The action authorizes execution of the 2010 Agreed order. The current cost estimate for the work to be done under this 2010 Agreed Order is \$600,000 – 800,000. The authorization for the annual funding support work to meet this order comes from the annual Environmental Reserve authorization. To date, the Port has spent approximately \$4,500,000 on work performed under the 1998 Agreed Order. Additional funds will be required to perform the cleanup of the Site.

PROJECT DESCRIPTION AND JUSTIFICATION:

The Terminal-91 Site (T-91 Site), as originally defined, consists of a former tank farm that was constructed in the 1920s. A portion of the Site was operated as a dangerous waste treatment and storage facility under a Resource Conservation and Recovery Act (RCRA) permit, from 1980 until its closure in the late 1990s. The remainder of the Site was operated as a fuel storage facility until 2005.

The T-91 Site is regulated under both a RCRA permit and an Agreed Order. Because the Site was formerly a dangerous waste treatment and storage facility, the Port, as the property owner, is required to hold the facility RCRA Permit until corrective action is completed. The dangerous waste facility no longer operates, and, in fact, was demolished in 2005. As a result, the RCRA Permit's chief remaining purpose is to require cleanup (corrective action). It imposes corrective action by incorporating a separate Agreed Order issued under the State cleanup law, the Model Toxics Control Act (MTCA).

The Port of Seattle entered into this MTCA Agreed Order in 1998 (the "1998 Agreed Order"). PSC and PNO, as former operators of the tank farm, also signed the 1998 Agreed Order. Both PSC and PNO subsequently went out of business, however, leaving the Port as the sole responsible party on the 1998

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Agreed Order. Under the 1998 Agreed Order, the Port is required to develop a Remedial Investigation (RI), Feasibility Study (FS) and a draft Cleanup Action Plan (CAP).

For the last several years, the Port has been negotiating a replacement RCRA Permit and Agreed Order with Ecology for the RI, FS and CAP development. The most significant change in these replacement documents is that they will extend the geographic definition of the Site beyond the tank farm to encompass the entire Terminal 91, including the piers and all upland properties owned by the Port. Ecology required this change to satisfy a RCRA Permit requirement that corrective action include all contiguous property under the permit-holder's ownership. The negotiation is complete, and we are asking for Commission authorization to enter into this RCRA Permit and Agreed Order (the "2010 Agreed Order").

Environmental investigations at the T-91 Site have been ongoing since the early 1980's and continue to the present time. A summary of these investigative activities can be found in the 2007 final draft RI report and in the 2009 final draft FS report. The FS report sets forth a range of potential cleanup alternatives and their estimated costs, and a cleanup action was recommended for implementation. Once Ecology approves the final RI and FS, a Cleanup Action Plan (CAP) will be developed using the information generated in the FS. The CAP will identify the cleanup approach selected by Ecology. Ecology approval of the RI/FS, development of the CAP, investigation of identified upland areas, as well as product recovery and groundwater monitoring which will discontinue at the start of the cleanup implementation are the identified remaining actions proposed to be conducted under the 2010 Agreed Order.

An Ecology-led public comment period for the final draft RI/FS report occurred from February 12 – March 29, 2010, so that community or public concerns could be addressed prior to preparation of the CAP. This public comment period also included the 2010 RCRA permit and Agreed Order. The only substantial comments received concerned the RI/FS, not the terms of the 2010 Agreed Order. Ecology has indicated that the 2010 Agreed Order language is final and ready for Commission approval.

PROJECT SCOPE OF WORK AND SCHEDULE:

1. Today: Obtain authorization to execute the 2010 Agreed Order
2. Within the next six – eight months: complete the RI/FS and develop a draft CAP as contemplated in the 1998 Order.
3. Within the next year after the CAP is finalized: return to Commission for new authorization to perform any work described in the final CAP (i.e. actual cleanup at the Site). At that time, we will be asking Commission approval of a new legal document, which may be an amendment to the 2010 Agreed Order, a new Agreed Order or a Consent Decree.
4. Ongoing: Continued investigations into the non-tank farm portions of the Site; recovery of petroleum product from groundwater; and groundwater monitoring.

STRATEGIC OBJECTIVES:

This activity will further define threats to the environment from contamination and will develop a plan to address those threats. These efforts are required to meet regulatory mandates, and manage Port liabilities. They fit squarely within the goals and objectives of the Seaport and Real Estate Division business plan.

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BUSINESS PLAN OBJECTIVES:

Proceeding with this project ensures compliance and continued cooperation with Ecology and will allow productive use of the property in the future.

FINANCIAL ANALYSIS:

Cost Estimate

The Port has spent approximately \$4,500,000 on the RI/FS and other work performed under the 1998 Order. The current cost estimate for the work to be done under this 2010 Agreed Order is \$600,000 – 800,000. That amount includes completing the RI/FS, preparing the draft CAP, continuing the ongoing investigations on the non-tank farm (pier/upland) property, and continuing the petroleum product recovery from groundwater and groundwater monitoring.

Source of Funds

All costs will be paid from environmental reserves and charged to expense in accordance with Port Policy AC-9. The Port's Tax Levy will pay the upfront costs for the environmental cleanup project. This site was included in the Commission's 2010 environmental reserve spending authorization, approved on November 30, 2009. Additional environmental reserve funds that may be required as the project moves forward will be reported to the Commission via routine environmental reserve reports and spending authorization requests.

The Port also seeks to obtain reimbursements for T-91 costs from grants, insurance and cost recoveries. The Port has previously received grant monies from EPA and Ecology to fund a portion of the investigation work totaling \$220,000. We will continue to apply for additional grant funding in the future. In addition, the Port has recovered costs through settlements with other PRPs, has pursued reimbursement from insurance coverage by the Port's and PNO's carriers, and will continue to seek reimbursement from other potentially responsible parties.

SUSTAINABILITY AND LIFE CYCLE COSTS:

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 site remediation is the hallmark of responsible environmental stewardship.

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

- Do not enter into a new Order but continue the work under the existing 1998 Order and the RCRA Permit. Ecology requires, however, that the 1998 Order be expanded to cover the additional area. If the Port refuses to agree to this change, Ecology would likely impose the requirement through a unilateral enforcement order issued under MTCA (and incorporated into the RCRA Permit). Ecology would be required to do so due to its responsibilities under the federal RCRA requirements, as overseen by the U.S. Environmental Protection Agency.
- Agree to enter into the 2010 Agreed Order for the remainder of the required work. Port staff has negotiated the terms of the 2010 Agreed Order and recommend them as acceptable. Although the 2010 Agreed Order covers additional area, its terms reasonably account for the site-specific conditions at Terminal 91. Staff believes that the 2010 Order's terms would provide more efficient and cost-effective cleanup procedures than would be imposed through a unilateral order. **This is the recommended alternative.**

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OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

The following documents are available electronically:

- Agreed Order No. DE 7321
- Terminal 91 Exhibit A Port of Seattle T91 Facility
- Terminal 91 Exhibit B Contamination Contingency
- Terminal 91 Exhibit C Releases Required Corrective Action
- Terminal 91 Exhibit D Public Participation Plan
- Terminal 91 Exhibit E List of Reports Since 1998 Agreed Order

ATTACHMENT:

- Department of Ecology Fact Sheet for Terminal 91 Site