

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

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BACKGROUND:

The Port, King County, the City, and the Boeing Company are participating in the investigation of sediment contamination in the Lower Duwamish Waterway (LDW) Superfund Site under an administrative order issued by the U.S. Environmental Protection Agency (EPA). Assessment activities identified a number of localized contaminated areas that EPA has determined should be addressed through cleanup actions taken prior to a final EPA determination of cleanup requirements for the LDW as a whole ("Early Action Areas"). One such location is the LDW sediments and adjoining bank and upland area in the vicinity of the Port property at T-117.

Contamination in the T-117 area is primarily from polychlorinated biphenyls (PCBs), which were used widely for decades, including for transformers and other electric equipment, before their manufacture and use was banned in the United States in 1978. An asphalt shingle plant operated on this property by Malarkey Asphalt Company and its predecessors for many decades and, for a period of time in the 1970s, that facility used waste transformer oil obtained from Seattle City Light as fuel, which was likely tainted with PCBs. Asphalt plant mishandling of waste transformer oil is the most likely source for the majority of the PCB contamination in the vicinity of T-117.

Following EPA's decision to list the LDW as a federal Superfund site and its subsequent designation of the T-117 sediment site as an "Early Action Area," in May 2003, the Port and the City entered into a Memorandum of Agreement to jointly fund the investigation and remediation of contamination within the sediments and in the adjoining bank area of this Early Action Area. In December 2005, the Port, the City and the EPA entered into an Administrative Settlement Agreement and Order on Consent for Removal Action at the T-117 EAA (the "2005 Order"). The Agreement required the Port and the City to prepare the site's cleanup alternatives report, also known as the Engineering Evaluation/Cost analysis (EE/CA).

During the investigation of the bank area, additional areas of contamination above action levels were discovered on T-117 uplands that required immediate action. In June 2006, the Port Commission agreed to enter into a new Order (the "2006 Order") to conduct a time-critical removal action. The cleanup of the hotspots required under the 2006 Order was performed that summer.

Subsequent investigations of the upland area (by the Port) and adjacent streets and residential yards (by the City) resulted in an expanded area of cleanup. These changes were formally established in a revised Statement of Work (SOW) which was approved by EPA in September 2007, and which replaced the SOW for the 2005 Order.

In July 2008, the Port entered into a Settlement, Indemnity and Release Agreement ("the T117 Settlement Agreement") with the City of Seattle, the Malarkey Asphalt Company and other parties. Under this Agreement, the Port received over \$10 million from Malarkey's insurance companies and the City agreed to pay 40% of the future sediment and upland remediation costs to be incurred at T117.

A final revised EE/CA was formally approved by EPA in an Action Memorandum dated September 30, 2010. In the Action Memo, EPA selected Cleanup Alternative 2: Upland and Sediment Removal and Backfilling (no capping.) Alternative 2 provides a full soil and sediment cleanup approach that requires no significant long-term monitoring or administrative controls, and which will allow a full range of future site uses, including industrial/commercial operations, public access and habitat

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restoration. At its May 24, 2011, meeting, the Commission authorized entering into a new Administrative Settlement Agreement and Order on Consent (the 2011 Order) for the design, cleanup implementation, and O&M of Cleanup Alternative 2. The design of the cleanup is complete and has been approved by the EPA. The next step is to begin implementation of the cleanup.

PROJECT JUSTIFICATION:

The overall goal of the T-117 cleanup is to significantly reduce or eliminate the exposure of ecological and human receptors to sediment and soil contamination and thereby reduce or eliminate adverse effects on resources in the project site. Subsequently, the cleanup will allow a full range of future site uses, including industrial/commercial operations, public access and habitat restoration.

Further, the Port is required to complete cleanup of T-117 in accordance with EPA's 2011 Order to perform design and implementation of the selected removal action/cleanup as presented in the Final EE/CA and EPA's Action Memorandum (September 30, 2010).

Project Objectives:

- Perform the required cleanup construction and operation and maintenance activities required by EPA's 2011 Order.
- Perform the work in accordance with EPA's Statement of Work and Schedule (i.e., attachments to the 2011 Order).
- Manage and perform the work in accordance with local, state, and federal cleanup laws and regulations, with project controls and contract systems in place.
- Maximize cost recovery opportunities.
- Identify and consider community values and concerns, as part of a formal Community Involvement Plan.

PROJECT SCOPE OF WORK AND SCHEDULE:

Scope of Work:

The scope includes advertisement and execution of the construction contract. Environmental services during construction and post construction include the following:

- Construction Observation
- Permitting Support
- Cleanup Compliance Monitoring, such as soil and sediment sampling
- Health and Safety Monitoring
- Community Outreach and Communication
- First Year Operations and Monitoring
- Management, Controls, and Administration Support of field services
- Documentation and Reporting

Schedule:

The contracting process for T-117 construction (cleanup) and project support is expected to be concluded in May 2013 just prior to initiation of the construction phase of the cleanup work, which is anticipated for June 2013. The schedule for the construction activities is expected to run from May 2013 to April 2014.

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The consultant work pertaining to this authorization (T-117 Environmental Compliance support) is intended to begin around May 1, 2013, and continue until approximately June 1, 2015, after completion of the cleanup work, plus an additional one year of operations and maintenance.

The Port will secure long-term monitoring services under a separate future procurement.

FINANCIAL IMPLICATIONS:

There is no funding request as part of this authorization. The funding required for these contracts was previously included in the 2012 Plan of Finance and included as part of the 2012 Environmental Remediation Liability Annual Authorization.

Budget Status and Source of Funds:

The costs are eligible for state grant recovery when it is available. The City of Seattle will be paying 40% of the costs as agreed under the T-117 Settlement Agreement.

Any additional environmental remediation liability will be booked as the project moves forward and will be reported annually to the Commission via routine environmental liability reports and spending authorization requests. The source of funds will be the tax levy.

STRATEGIC OBJECTIVES:

This project will achieve the strategic objective of accomplishing cleanup of the Port's property, while assuring that other responsible parties are paying their fair share.

ENVIRONMENTAL SUSTAINABILITY:

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), EPA reviews cleanup projects to ensure that they meet the substantive requirements of federal and state laws and regulations that are applicable or relevant and appropriate.

The project is located adjacent to the City of Seattle neighborhood of South Park, recognized as a socially diverse and economically disadvantaged neighborhood with significant environmental justice concerns. The T-117 site is located adjacent to single and multi-family residences. Cleanup planning and design efforts are considering and incorporating opportunities for materials reuse, recycling, and/or reduction. Finally, cleanup implementation will include significant environmental controls and performance monitoring to ensure public health and safety.

BUSINESS PLAN OBJECTIVES:

As a signatory on the Order, the Port is legally obligated to do this work as directed by the EPA. The Port continues to carefully control costs associated with the effort to minimize overall economic impact.

TRIPLE BOTTOM LINE SUMMARY:

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. Cleanup also returns contaminated land to a more productive use and provides an opportunity for future possible habitat restoration.

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ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

Alternative 1: Perform in-house services related to environmental construction support and services associated with the T-117 cleanup. The Port does not have sufficient construction support and field services to provide this level of effort required to carry out an EPA CERCLA cleanup project. Do not proceed with advertisement of the construction contract. The Port will not be in compliance with the terms of the Administration Settlement Agreement and Order on Consent.

Alternative 2: Execute a contract for construction contract and services for environmental construction support. **This is the recommended alternative.**

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- 2011 EPA Administrative Settlement Agreement and Order on Consent (2011 Order)

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- August 24, 1999 – The Commission approved the purchase and sale agreement for the acquisition of the Malarkey Asphalt Property at a cost of \$176,400 and implementation of required environmental cleanup measures on adjoining Port property at a cost not to exceed \$800,000.
- August 24, 2004 – The Commission approved execution of the Memorandum of Agreement (Cost Allocation) between the Port and the City of Seattle for Malarkey Early Action Area.
- October 11, 2005 – The Commission approved execution of (1) Administrative Settlement Agreement and Order on Consent for Removal Action T-117 Early Action Area; and, (2) Administrative Settlement Agreement and Order on Consent for the T-117 Upland Investigation.
- June 27, 2006 – The Commission (1) approved execution of Administrative Settlement Agreement and Order on Consent for Time Critical Removal Action in the T-117 Upland Area; (2) directed staff to develop a work plan to expand the cleanup options in the T-117 Upland Area and (3) amended the 2006 project-wide authorization expenditure in the amount of \$6,000,000.
- October 27, 2008 – The Commission authorized the Chief Executive Officer to Sign a Settlement, Indemnity and Release Agreement with the Malarkey Parties, the Duwamish Parties, the City of Seattle and King County regarding T-117 Site and Lower Duwamish Site Cleanup Costs, and Natural Resource Damage Liability.
- November 30, 2009 – The Commission approved the authorization to perform pollution remediation activities relating to environmental reserve funds in 2010.
- May 24, 2010 – The Commission approved execution of Administrative Settlement Agreement and Order on Consent for Removal Design/Removal Action at the T-117 Early Action Area.

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- June 1, 2010 – The Commission authorized Chief Executive Officer to execute a Category III professional services contract to provide consultant services and support for planning and pre-design; design services, construction and monitoring support, and post-construction monitoring for the 2011 Order.
- May 24, 2011 – The Commission authorized Chief Executive Officer to execute an Administrative Settlement Agreement and Order on Consent for the Removal Action Implementation at Terminal 117, an Early Action Area for the Lower Duwamish Waterway Superfund.
- December 6, 2011 – The Commission authorized \$56,500,000 for the 2012-2016 Environmental Remediation Liability Program, including spending of \$23,600,000 for environmental liabilities in 2012.