



**COMMISSION  
AGENDA MEMORANDUM**

**Item No.** 6e

**ACTION ITEM**

**Date of Meeting** May 12, 2020

**DATE:** April 29, 2020

**TO:** Stephen P. Metruck, Executive Director

**FROM:** Sandy Kilroy, Director, Maritime Environment & Sustainability  
Kathy Bahnick, Senior Manager, Remediation Programs  
Roy Kuroiwa, Senior Environmental Program Manager

**SUBJECT:** Terminal 108 EPA’s Engineering Evaluation and Cost Analysis (EE/CA) and Cost Sharing Agreement with the City of Seattle and King County

**Amount of this request:** \$0

**Source of Funds:** ERL Non Ops

**Total estimated project cost:** \$3,500,000

**ACTION REQUESTED**

Request Commission authorization for the Executive Director to:

- (1) Sign and execute an EPA Administrative Settlement Agreement and Order on Consent (Order) requiring the Port of Seattle to perform an Engineering Evaluation and Cost Analysis (EE/CA) at Terminal 108,
- (2) Sign a Potential Responsible Party (PRP) Cost Sharing Agreement between the Port of Seattle, City of Seattle, and King County to share the costs to perform the scope of work required by EPA’s Order including EPA oversight costs; and,
- (3) Procure and execute a joint, project-specific, professional environmental consulting contract to prepare the EPA EE/CA in the amount of \$3,000,000. If needed, execute future Amendments which exceed \$300k to this contract to address scope items and changes required by EPA under the Order.

**EXECUTIVE SUMMARY**

Terminal 108 (T-108) has been identified as a potential upland source control site for the Lower Duwamish Waterway Superfund Site due to its adjacency to the river and the past uses at the site. Source control is the process of identifying sources of contamination, then stopping or reducing them before they reach the river.

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Historically, the T-108 site was a municipal sewage treatment plant between 1938 and 1969, first owned and operated by the City then later by Metro/King County. In 1975, the U.S. Army Corps of Engineers negotiated an agreement with Chiyoda, the property owner at that time, to dispose of dredge spoils containing PCBs at T-108. The dredge spoils came from Slip 1, about 2,400 feet upstream of T-108, where a General Service Administration contractor had dropped a transformer containing 265 gallons of concentrated PCB fluid.

The Port purchased the property in 1984. As the current owner, the Port has performed site investigations in coordination with the Department of Ecology (Ecology) to study and address possible source control issues. More recently, Ecology asked the U.S. Environmental Protection Agency (EPA) to take the lead on this site due to the federal government's role in contributing to suspected contamination at the site. Subsequently, EPA directed the Port to perform a Preliminary Assessment and Site Investigation (PA-SI), which was completed in December 2018.

Using the results of the PA-SI, EPA identified several Potential Responsible Parties (PRPs) that may have liability on the future investigation and cleanup of T-108; some, including the Port and City, will be signatories to the Order. These PRPs include the Port, City of Seattle, King County, Chevron, Chiyoda, LaFarge, and the US Air Force. The Port, City and County negotiated with EPA to reach agreement on the Order to perform an Engineering Evaluation and Cost Analysis (EE/CA). An EE/CA is similar to a state performed Remedial Investigation and Feasibility Study (RI/FS).

The Port, City and County will share responsibility to perform the requirements of the EPA Order and each will contribute towards the costs to prepare an EE/CA. The cost-sharing percentages are subject to reallocation in the future. Final allocation of the shared EE/CA costs between the Port, City and County will be determined after more is known about the site, and the parties will pursue reimbursement from other, non-participating PRPs as well. The Port will procure the environmental consulting firm to perform the EE/CA work using our public procurement process and the Port will hold the contract with the consultant. All invoicing and payables will be handled by the Port and the appropriate portion reimbursed by the City and County.

Today, most of the terminal is used by our tenant as an off-dock facility for storage and maintenance of empty cargo containers.

Funding for this work was included in the 2020-2024 Environmental Remediation Liability (ERL) Program. Accordingly, additional funding is not requested at this time.

### **JUSTIFICATION**

The EPA Order is a binding agreement to perform work by the Port, therefore the signing of the EPA Order requires Commission authorization. The project will formally initiate the process of determining upland site cleanup and/or source control efforts at T-108, as necessary and required, to meet EPA and Ecology's source control objectives and requirements as related to

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the larger Lower Duwamish Waterway Superfund Site. The project will also help EPA and the PRPs substantiate the appropriate PRPs and their allocated share of the costs for follow on source control and cleanup, as appropriate.

**Diversity in Contracting.** For the upcoming procurement, the project team has contacted the Port’s Diversity in Contracting Department and will establish a women-and minority-owned business enterprise (WMBE) aspirational goal (likely 15%) and inclusion plan.

**DETAILS**

The Statement of Work detailed in the Order requires that the Port, City, and County perform the work necessary to prepare an Engineering Evaluation and Cost Analysis. These work tasks are routine site assessment efforts and are used to determine: a) what is the source, nature and extent of the release; b) is there an imminent threat to human health or the environment; c) are there sources of contamination to the river; and, d) is a removal action necessary.

***Scope of Work***

As presented in the Statement of Work attached to the Order, the PRP Group will perform the following tasks:

1. Prepare an EE/CA Work Plan, that includes the following appendices:
  - a. Quality Assurance Project Plan
  - b. Health and Safety Plan
  - c. Groundwater Monitoring Plan
2. Conduct Site Investigation
  - a. Field investigation work, including drilling, monitoring and sampling
  - b. Laboratory analytical work and data validation
3. Prepare the EE/CA Report that includes the following sections:
  - a. Site Characterization, including data presentation and Conceptual Site Model
  - b. Assessment and Need for a Removal Action
  - c. Identification and Analysis of Removal Action Alternatives, including cost
  - d. Recommended Removal Action Alternative

***Schedule***

The schedule of the required work is based on the Statement of Work in the Order. The total time to complete this work is approximately 48 months.

<i>Activity</i>	<i>Estimated Schedule</i>
Commission Authorization of Order	Q2 – 2020
Firm Procurement	Q3-2020 – Q4-2020
Prepare EE/CA Work Plan	Q1-2021 – Q4-2021
Perform Site Investigation	Q1-2022 – Q2-2023

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Prepare a final EE/CA Report	Q1–2024 – Q4-2024
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**Cost Breakdown**

Estimated Total  
Project

Site Investigation	\$850,000
EE/CA Report	\$500,000
Groundwater Monitoring and Community	\$250,000
Project Management and Controls	\$400,000
EPA Agency and Technical Support	\$500,000
Contingency (40%)	\$1,000,000
<b>TOTAL PROJECT COSTS:</b>	<b>\$3,500,000</b>

**ALTERNATIVES AND IMPLICATIONS CONSIDERED**

**Alternative 1 – Do Not Authorize Signature of the Order**

Cost Implications: Not signing the Order may result in the issuance of an enforcement order by EPA, or EPA may elect to perform this work itself. This would result in the EPA recovering the cost of the work from the Port, increasing the Port’s estimated costs by 1.5 to 3 times, roughly \$5 to \$10.5 million (from \$3.5 million).

Pros:

- (1) May delay the Port’s spending by a year or more while EPA prepares the enforcement order.
- (2) May delay the work and costs while EPA has to contract and perform the work itself, then compels the Port to reimburse EPA for the costs.

Cons:

- (1) Increased legal and staff time and efforts to respond to an enforcement order and provide ancillary support to the EPA to carry out the enforcement order (gain access to the site, etc.)
- (2) The ultimate costs of the work will be much higher if EPA elects to perform the work itself.
- (3) Not performing this work could tarnish the Port’s reputation with EPA and the community as having a commitment to public health and being a steward of community resources and the environment.

*This is not the recommended alternative.*

**Alternative 2 – Authorize the Signing of the Order and begin the required Statement of Work**

Cost Implications: Likely \$3,500,000 costs shared with our partners but may increase to \$4,000,000 or more depending on the findings during the work.

Pros:

- (1) Complies with the Order and furthers the Port’s collaborative working relationship with EPA.

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- (2) Takes the next step leading to Terminal 108’s cleanup and long-term protection of human health and the environment.
- (3) Will likely lead to the identification of other responsible parties for past releases.
- (4) Demonstrates the Port’s value of being responsible stewards of community resources and the environment.

Cons:

- (1) Costs up to \$2,000,000 (approximately half of the estimated costs) by the Port to complete the Order’s Statement of Work.

***This is the recommended alternative.***

**FINANCIAL IMPLICATIONS**

There is no funding request as part of this authorization. Funding for the associated scope of work and costs is included in the annual Environmental Remedial Liability (ERL) authorization (tax levy). Project costs will be shared by the Port, City, County, subject to reallocation after the EE/CA is complete. As the contracting party, the Port will pay all costs upfront, and the City and County will reimburse the Port for their respective shares. Certain costs may also be eligible for insurance reimbursement. Cost recovery from other PRPs who declined to participate in the EE/CA will be pursued in the future.

***Cost Estimate/Authorization Summary***

	Capital	Expense	Total
<b>COST ESTIMATE</b>			
Original estimate	\$0	\$3,500,000	\$3,500,000
<b>AUTHORIZATION</b>			
Previous authorizations	0	\$3,500,000	\$3,500,000
Current request for authorization	0	0	0
Total authorizations, including this request	0	0	0
Remaining amount to be authorized	\$0	\$0	\$0

**ATTACHMENTS TO THIS REQUEST**

- (1) Site map of Terminal 108
- (2) Draft Administrative Settlement Agreement and Order on Consent for Engineering Evaluation/Cost Analysis (EE/CA) (T-108, Lower Duwamish Waterway Superfund Site, Seattle, WA)
- (3) Draft Common Interest and Cost-Sharing Agreement by and Between the Port of Seattle, the City of Seattle, King County, and the United States

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**PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

November 19, 2019 – The Commission authorized 2020 – 2024 Environmental Remediation Liability (ERL) Programs fund for 2020 and approved a five-year spending plan for the 2020 – 2024 ERL program.

March 27, 2018 – The Commission authorized for the Executive Director to execute an EPA order requiring the Port of Seattle to perform an to perform a Preliminary Assessment and Site Investigation at Terminal 108.