



**COMMISSION
AGENDA MEMORANDUM**

Item No. 6f

ACTION ITEM

Date of Meeting June 9, 2020

DATE: May 1, 2020
TO: Stephen P. Metruck, Executive Director
FROM: Sandy Kilroy, Director, Maritime Environment & Sustainability
Kathy Bahnick, Manager, Remediation Programs
Roy Kuroiwa, Sr. Environmental Program Manager
SUBJECT: Terminal 115 Plant 1 Ecology Agreed Order

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 Order with the Washington State Department of Ecology (Ecology) to complete a Remedial Investigation and Feasibility Study (RI/FS) at the Port's Terminal 115 property.
2. Sign a Potential Liable Party (PLP) Cost Sharing Agreement between the Port and The Boeing Company (Boeing) to share the costs and perform the scope of work required by Ecology's Order.
3. Procure and execute a project-specific, professional contract with an environmental consulting firm in the amount of \$3,000,000 to complete the scope of work (RI/FS) required by the Ecology Agreed Order.

EXECUTIVE SUMMARY

The Port's Terminal 115 site is located on the west bank of the Lower Duwamish Waterway (LDW) Superfund site and is considered a source control site within EPA's LDW Superfund site. The approximately 100-acre property has a long history of industrial and commercial activities, including aircraft manufacturing by Boeing (Plant 1 location), two historic and one current gas station, aluminum re-melting, and a 'refinery building'. As a result, the property is known to have contamination (e.g., petroleum and heavy metals) in site soil and groundwater and Ecology is requiring two parties – The Port of Seattle and Boeing – to jointly investigate and evaluate the nature and extent of contamination at the site.

Meeting Date: June 9, 2020

As former and current property owners of Terminal 115, Boeing and the Port have been identified as Potentially Liable Parties (PLPs) by Ecology for the T-115 site. Ecology has named the project site “Terminal 115 Plant 1.” From approximately 1969 through 1972, the Port developed the property into a container terminal, growing the property from approximately 30 acres to 100 acres by diking and filling in with imported material. By 1974, the terminal was developed into a marine cargo and container terminal. Current uses and operations at T-115 include transshipment of bulk cargo, seafood receiving, processing and cold storage, and container storage and repair. Boeing operations were terminated around 1969 when the Port purchased the property and demolished all the former Plant 1 buildings.

The two PLPs will share responsibility to perform the requirements of the Ecology Order and each will initially pay an equal amount or 50% toward the costs of the work. Final allocation of costs will be determined after more is known about the site. The Port will procure an environmental consulting firm to perform the work using their public procurement process and will hold the contract with the consultant. All invoicing and payables will be handled by the Port, and the appropriate portion reimbursed by Boeing.

JUSTIFICATION

As the owner of the terminal, the Port (and Boeing as the former owner) has been identified by Ecology as a PLP of the site. The Ecology Order is a binding agreement to perform work by the Port, therefore the signing of the Order requires Commission authorization.

The Ecology Order’s scope-of-work requires a Remedial Investigation (RI) and Feasibility Study (FS), which leads to the selection of a cleanup remedy, if necessary. The work will also help Ecology and the PLP’s determine the allocated share of their liability and share of the costs for this work and subsequent cleanup, if appropriate.

The project formally initiates the process of determining site cleanup and source control efforts necessary to meet EPA and Ecology’s source control needs and requirements, known as Sufficiency, for the larger LDW Superfund cleanup project.

Diversity in Contracting. For the upcoming procurement, the project team has contacted the Diversity in Contracting Department and has established a women- and minority-owned business enterprise (WMBE) aspirational goals and inclusion plan of 15%.

DETAILS

The Statement of Work (SOW) detailed in Ecology’s Order requires that the PLPs perform a Remedial Investigation, Feasibility Study, and, if appropriate, develop a draft Cleanup Action Plan for the project site. Although not anticipated, the Order also provides for any Interim Actions (i.e., hot spot removal or emergency response) should they be necessary. The RI will include the

Meeting Date: June 9, 2020

collection and chemical analysis of soil, groundwater, and stormwater samples to develop an environmental conceptual site model (CSM). The CSM will be used to prepare the FS – an evaluation of remedial alternatives suitable to eliminate or remove risks caused by the contamination. Relying on the FS, a remedy may be selected to address the contamination on the site. The work performed under this Order should enable the PLPs to assign (proportionate) responsibility for the cleanup. The actual cleanup is usually performed under a follow up order (often a consent decree with Ecology).

Scope of Work

The Order’s Scope of Work is expected to be performed by a professional consulting firm hired by the Port (and Boeing pays their share of costs). As detailed in Exhibit B of the Order, the SOW is divided into four major tasks:

- (1) **Task 1 – Remedial Investigation Work Plan**
- (2) **Task 2 – Remedial Investigation (field sample collection and lab analysis)**
- (3) Task 3 – Interim Action(s), if required
- (4) **Task 4 – Feasibility Study**
- (5) Task 5 – SEPA Compliance
- (6) Task 6 – Public Participation
- (7) **Task 7 – draft Cleanup Action Plan**

Schedule

The schedule of the required work associated with a PLP Agreement and as presented in the Ecology Order is as follows:

Activity

Commission authorization to sign PLP Agreement and Ecology order	Q2 – 2020
Procure and Sign a Joint Consultant Contract Agreement	Q1 – 2021
Prepare an RI Work Plan and Perform RI Sampling and Report	2021 – 2022
Prepare a Feasibility Study	2023
Prepare a draft Cleanup Action Plan	2024

Cost Breakdown

Estimated Total Project

Remedial Investigation	\$1,750,000
Interim Actions	\$0
Feasibility Study	\$200,000
Cleanup Action Plan / SEPA	\$250,000
Project Management and Controls	\$300,000

Meeting Date: June 9, 2020

Public Participation	\$100,000
Ecology Agency	\$150,000
Contingency (30%)*	\$750,000
Total Project Costs:	\$3,500,000

* The Port has extensive experience with EPA and Ecology Investigations and Cleanup, including the existing T115N MTCA AO site. A contingency for these projects is warranted and may eventually be higher than shown.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do Not Authorize Signature of the Settlement Agreement

Cost Implications: Not signing the Ecology Order may result in the issuance of an enforcement order by Ecology, or Ecology may elect to perform this work itself. This would result in the State recovering the cost of the work from the Port and Boeing, increasing the 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 Ecology prepares the enforcement order.
- (2) May delay the work and costs while Ecology has to contract and perform the work itself, then compels the Port to reimburse Ecology for the costs.

Cons:

- (1) Increased legal and staff time and efforts to respond to an enforcement order and provide ancillary support to Ecology to carry out the enforcement order (gain access to the site, etc.)
- (2) The ultimate costs of the work will be much higher if Ecology elects to perform the work itself.
- (3) Not performing this work could tarnish the Port’s reputation with Ecology 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 Agreed Order and begin the required Statement of Work

Cost Implications: Likely \$3,500,000, which includes a 30% contingency to account for additional work due to changing site conditions or requirements by Ecology.

Pros:

- (1) Complies with the Order and furthers the Port’s collaborative working relationship with Ecology.
- (2) Takes the next step leading to Terminal 115’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.

Meeting Date: June 9, 2020

- (4) Demonstrates the Port’s value of being responsible stewards of community resources and the environment.

Cons:

- (1) Costs of approximately \$3,500,000 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 is from the Tax Levy and costs are included in the annual Environmental Remedial Liability (ERL) authorization. Further, all of the project costs except Port staff costs will be shared equally by Boeing. Certain costs may also be eligible for insurance reimbursement and Ecology grant. Cost recovery from other, former owners or operators at the terminal may be pursued in the future.

<i>Cost Estimate/Authorization Summary</i>	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$0	\$3,500,000	\$3,500,000
AUTHORIZATION			
Previous authorizations	0	0	0
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 115
- (2) T115 Plant 1 Ecology Order and Scope of Work
- (3) Common Interest and Cost-Sharing Agreement with the Boeing Company

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.

November 2, 2010 – The Commission authorized the signing of an Ecology Agreed Order for Environmental Investigations at Terminal 115 North.