



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8e

ACTION ITEM

Date of Meeting May 9, 2023

DATE: March 23, 2023

TO: Stephen P. Metruck, Executive Director

FROM: Sarah Ogier, Director-Maritime Environment & Sustainability
Kathy Bahnick, Sr. Manager-Environmental Programs
Joanna Florer, Senior Environmental Program Manager

SUBJECT: Terminal 91 Submerged Land Area – Sediment Feasibility Study and Cleanup Action Plan

Amount of this request: \$1,900,000

Total estimated Agreed \$3,000,000

Order project cost:

ACTION REQUESTED

Request Commission authorization for the Executive Director to (1) sign an Agreed Order amendment with the Washington State Department of Ecology to complete Feasibility Study and draft Cleanup Action Plan for the sediment at the Port's Terminal 91 submerged land area; and (2) amend consultant contract to authorize consulting services in the amount of \$1,900,000 to complete the Feasibility Study and draft Cleanup Action Plan.

No funding is being requested to perform this work because the funding was included in the 2023 – 2027 Environmental Remediation Liability (ERL) Program authorization.

EXECUTIVE SUMMARY

In 2020, the Port and Washington State Department of Ecology (Ecology) negotiated a Model Toxics Control Act (MTCA) order (2020 Order) to conduct a remedial investigation (RI) of the sediments in the submerged land area of Terminal 91. The RI will be completed by Q4 2023.

The next steps in the MTCA cleanup process are to prepare: 1) a feasibility study (FS) that will identify possible sediment cleanup options, and 2) a draft cleanup action plan (dCAP) that will identify Ecology's preferred sediment cleanup approach. An amendment to the 2020 Order is required to add these tasks, which are anticipated to take 3 years to complete.

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BACKGROUND

Terminal 91 is in an industrial area in the Interbay neighborhood of Seattle formerly owned and operated by the US Navy during the World War II era. Since 1991, the Port has been working with Ecology to address site contamination in the upland portions of the site. The upland cleanup work was completed in 2015 under an Ecology order issued in 2012. Long-term groundwater monitoring and maintenance of the upland cleanup is still ongoing under the 2012 Order. In 2016, the 2012 Order was amended requiring the Port to conduct two new, separate actions:

1. A regrade project to regrade the accumulated shoal material along the southeast portion of Pier 91 in the submerged lands area, which was completed in 2016.
2. Submerged Lands Preliminary Investigation that was completed in 2018, which indicated that an RI was warranted for the submerged lands area of Terminal 91 and initiated the 2020 Order.

The sediment cleanup of Terminal 91 submerged lands area is further complicated due to the existence of discarded military munitions from the Navy's use of the site.

JUSTIFICATION

The 2020 Order is a binding agreement to perform site environmental investigation work by the Port. The 2020 Order was approved by Commission; therefore, the amendment also requires Commission authorization for the Port to continue cleanup activities. By cleaning up the site, the Port advances the long-term protection of human health and the environment and reduces our environmental liability.

Diversity in Contracting

No procurement is needed. The scope to perform this work was included in the consultant scope when advertised. The prime consultant is a Women Owned Business and more than 20% of the future work will be performed by the prime consultant. Additional WMBE firms are also anticipated to be utilized.

DETAILS

The Scope of Work (SOW) detailed in Ecology's 2020 Order amendment describes the work required that will require consulting services, sampling and analysis, document preparation, coordination/meetings with Ecology and the Tribes. The FS will include a summary of key elements from the RI in compliance with the State sediment cleanup guidance and environmental policies, collection and chemical analysis of sediment samples for the cleanup evaluation, and a detailed analysis of each remedial alternative. Upon Ecology approval of the draft FS Report, the dCAP will be prepared that will include a general description of the proposed cleanup actions and will identify Ecology's preferred sediment cleanup approach.

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Scope of Work

The Order's Scope of Work will be performed by a professional consulting firm hired by the Port. As detailed in Exhibit B of the Order, the Scope of Work is divided into the following major tasks:

- (1) Feasibility Study Work Plan
- (2) Feasibility Study Investigation (field sample collection, lab analysis, data evaluation)
- (3) Draft Feasibility Study Report
- (4) Final Feasibility Study Report with State Environmental Policy Act Compliance
- (5) Draft Cleanup Action Plan

Schedule

The draft schedule of the required work associated with the Ecology 2020 Order Amendment is as follows:

Activity

Commission authorization to sign Ecology 2020 Order Amendment	Q2 – 2023
Amend consultant contract	Q3 - 2023
Prepare an FS Work Plan	Q1 – 2024
Draft FS Report	Q1 - 2025
Final FS Report	Q4 - 2026
Draft Cleanup Action Plan	Q2 - 2027

Additional future work including cleanup design, implementation, and long-term monitoring and maintenance will be required to complete the MTCA cleanup process, which will require entering a new Order and additional contracting approval request for Commission. Additional scope and budget information will be provided in the Commission Memo when the design and construction scope are further developed in 2027 after the dCAP is complete.

Estimated Cost Breakdown

	This Request	Total Project
Remedial Investigation	\$0	\$1,100,000
Feasibility Study	\$1,400,000	\$1,400,000
Draft Cleanup Action Plan	\$500,000	\$500,000
Total	\$1,900,000	\$3,000,000

ALTERNATIVES AND IMPLICATIONS CONSIDERED**Alternative 1 – Do Not Authorize Signature of the Ecology Order**

Cost Implications: Not signing the 2020 Order amendment would likely result in the issuance of an enforcement order by Ecology, or Ecology could elect to perform this work itself (i.e., contract

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the work to its support consultant) and bill the Port for the costs. This would likely increase the Port estimated costs by 1.5 to 2 times.

Pros:

- (1) May delay the Port's spending by a year or more while Ecology prepares an enforcement order.
- (2) May delay the work and costs while Ecology contracts and performs the work themselves, then compels the Port to reimburse them 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 conduct the order (gain access to the site, etc.).
- (2) The ultimate costs of the work will be much higher if Ecology performs the work itself.
- (3) Not performing this work could tarnish the Port's reputation, with Ecology and the community, as an organization committed 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 Ecology Order and perform the work

Cost Implications: \$1.9M, depending on the findings during the work.

Pros:

- (1) Complies with the order and furthers the Port's collaborative working relationship with Ecology.
- (2) Takes the next step leading to the Terminal 91's cleanup and long-term protection of human health and the environment at Terminal 91.
- (3) Demonstrates the Port's value of being a responsible steward of community resources and the environment.
- (4) Could potentially identify other responsible parties to share in the cleanup costs.

Cons:

- (1) Costs of approximately \$1.9M by the Port to complete the Order amendment's Scope of Work

This is the recommended alternative.

FINANCIAL IMPLICATIONS

No funding is requested. Funding for this work was included in the 2023 – 2027 Environmental Remediation Liability (ERL) Program. Certain costs may also be eligible for the State remedial action grant or insurance reimbursement.

Annual Budget Status and Source of Funds

Environmental cleanup projects have multiple funding sources: (1) Maritime and Economic Development non-operating projects are funded by the Port's Tax Levy; (2) Maritime and Economic Development operating projects are funded by the General Fund. In addition, there are supplementary outside sources of funding, including the following:

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- Contributions from third parties (payment from cost-sharing or contribution agreements with other liable parties, where the Port functions as a funding conduit for the other liable parties and the Port holds contracts on behalf of these other liable parties).
- Settlements with other liable parties.
- Insurance recoveries from both the Port's insurers and other liable parties' insurers; and
- Department of Ecology grants.

ATTACHMENTS TO THIS REQUEST

- (1) Washington State Department of Ecology Agreed Order Amendment including Exhibit A –Scope of Work and Schedule

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

December 10, 2019 – The Commission authorized the Executive Director to sign an Agreed Order with Ecology to complete a sediment RI at the Port's Terminal 91 property; and procure and execute a project-specific contract to complete the scope of work required by the Ecology Agreed Order and future amendments.

November 29, 2022 – The Commission authorized spending environmental remediation funds for 2023 in the amount of \$11,000,000 and (2) approve a five-year spending plan for \$103,000,000 for the environmental remediation liability program for 2023-2027, of which an estimated not-to-exceed amount of \$30,000,000 will be obligated during 2023 to be spent in future years.

December 8, 2015 - Commission authorized the Chief Executive Officer to execute Agreed the Amendment to Order No. DE 8938 with the Washington State Department of Ecology to perform a historical review and preliminary investigation sampling of the T-91 sediment and to perform the sediment regrading project.

September 10, 2013 – Commission authorized maintenance dredging at Terminal 5 and Terminal 91 for the combined total of \$4,800,000.

March 27, 2012 – Commission authorized the Chief Executive Officer to execute Agreed Order No. DE 8938 with the Washington State Department of Ecology on the implementation of a Cleanup Action Plan and to address contamination in the Upland area of Terminal 91.