

## SUMMARY and FISCAL NOTE\*

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*\* Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

### **1. BILL SUMMARY**

- 1. Legislation Title:** AN ORDINANCE relating to the remediation of the South Park Landfill; authorizing the recording of environmental covenants or the equivalent on certain City-owned or controlled property; and authorizing the General Manager of Seattle Public Utilities to execute a legal agreement with other Potentially Liable Persons.
- 2. Summary and background of the Legislation:** This legislation would authorize the City to record an environmental covenant against City-owned property within the South Park landfill and landfill-impacted rights of way. It would also authorize the SPU General Manager/CEO to execute an agreement with two other landfill Potentially Liable Persons (PLPs). Those two PLPs are South Park Property Development (SPPD) and King County. SPPD owns part of the landfill and King County previously owned part of the landfill. The PLP agreement would partially settle the City’s potential liability for the landfill. Future litigation is possible with other former and current landfill owners regarding cleanup costs.

The historic South Park Landfill is in South Park between State Routes 99 and 509. It consists of three properties primarily: SPU’s South Recycling and Disposal Station property, a parcel owned by South Park Property Development, LLC and the Kenyon Industrial Park. The Consent Decree covers only the portion of property owned by SPU and SPPD, along with SDOT rights-of-way along 5<sup>th</sup> Avenue South and South Sullivan Street where there is refuse underneath the pavement. (See “Settlement Area” on attached Exhibit 1- Map).

In 2007, the City Council authorized appropriations for the cleanup project. SPU in 2009 executed an Agreed Order requiring the City and SPPD to investigate site contamination and cleanup alternatives, and create a draft Cleanup Action Plan for the landfill. Since then, SPU and SPPD completed the Agreed Order work. The Department of Ecology is finalizing the Cleanup Action Plan, associated environmental covenants, and a Consent Decree for the landfill.

The Cleanup Action Plan requires landfill caps, landfill gas control systems, surface water controls, long-term environmental monitoring and reporting, and environmental covenants or the equivalent. The environmental covenants/equivalents require procedures that protect remedial cleanup systems and employees performing work on the properties.

The Consent Decree requires implementation of the Cleanup Action Plan and requires environmental covenants or equivalent instruments on rights-of-way along 5<sup>th</sup> Avenue South and South Sullivan Street because parts of the streets overlie refuse. Covenants are required for rights-of-way SDOT owns. Equivalent instruments are required for rights-of-way SDOT controls, but does not own.

The Consent Decree protects the City from third party lawsuits related to landfill contamination from the SPPD and SPU parcels. It does not protect the City from liability related to any groundwater contamination that might have traveled down-gradient from the site

The PLP agreement:

- Allocates costs among the PLPs to hire a site coordinator to conduct site environmental monitoring and reporting over the long-term and joint progress reporting if required by the Washington Department of Ecology. SPU would pay 60 percent of the costs, and SPPD would pay 40 percent.
- Addresses regulatory oversight costs, including Ecology staff time. Under the agreement, SPU would cover these costs, estimated at about \$50,000 over 20 years.
- Requires each property owner to conduct specific cleanup actions on its property.

## 2. CAPITAL IMPROVEMENT PROGRAM

- a. **Does this legislation create, fund, or amend a CIP Project?** \_\_\_ Yes \_\_\_ **X** No  
Cleanup costs for the remedial cleanup elements on the City's property are included in the South Park CIP.

## 3. SUMMARY OF FINANCIAL IMPLICATIONS

- a. **Does this legislation amend the Adopted Budget?** \_\_\_ Yes \_\_\_ **X** No
- b. **Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?**  
SPU will fund long-term monitoring and reporting, estimated at \$120,000 per year. <sup>1</sup> SPPD's settlement payments will be credited to the Solid Waste Fund. The \$120,000 per year represents total costs for both SPU's and SPPD's share of long-term monitoring and reporting. These costs would be covered in future Solid Waste Fund operations and maintenance budgets and are accounted for in SPU's Strategic Business Plan. The utility receives a grant from Ecology that covers up to 50 percent of eligible cleanup costs and is funded biennially. SPU will continue to be potentially liable for cleanup costs for the landfill site, which includes contamination within the entire landfill footprint, and any areas where landfill contamination has migrated.

**c. Is there financial cost or other impacts of *not* implementing the legislation?**

If the City does not sign the Consent Decree, it would likely be subject to a state Enforcement Order to force compliance. Under an Enforcement Order, the City would not have the legal protections against third-party lawsuits provided under the Consent Decree. In addition, SPU’s grant from Ecology and SPU’s redevelopment of its parcel would be at risk, since cleanup actions are required to be implemented as part of the redevelopment.

If SPU does not sign the settlement agreement, it would be impact SPU’s ability to follow conditions of the approved Cleanup Action Plan requiring site coordination for long term monitoring and reporting.

**3.e. Revenues/Reimbursements**

**X** This legislation adds, changes, or deletes revenues or reimbursements.

**Anticipated Revenue/Reimbursement Resulting from this Legislation:**

<b>Fund Name and Number</b>	<b>Dept</b>	<b>Revenue Source</b>	<b>2018 Revenue</b>	<b>2019 Estimated Revenue</b>
Solid Waste 45010	SPU	Settlement Payment	\$354,938	
<b>TOTAL</b>			<b>\$354,938</b>	

Revenue/Reimbursement Notes: The Potentially Liable Persons agreement allows full settlement payment to SPU in 2018, or three Net Present Value payments in 2018 (\$118,313), 2019 (\$121,682), and 2020 (\$125,517). The agreement also requires a single payment of \$24,048 to SPU, likely in 2018, if Ecology requires joint, monthly progress reporting.

**4. OTHER IMPLICATIONS**

**a. Does this legislation affect any departments besides the originating department?**

The Consent Decree covers a portion of the landfill under SDOT rights-of-way. The Consent Decree requires SDOT to place protective environmental covenants or the equivalent on portions of 5<sup>th</sup> Avenue South and South Sullivan Street, which include areas where the roadway overlies refuse. The protective covenants or equivalents would place restrictions on future uses of the property, and require maintenance, repairs, monitoring and reporting to follow requirements in the landfill Cleanup Action Plan and Operations, Maintenance and Monitoring Plan (attachments to the Consent Decree). SPU and SDOT have a Memorandum of Agreement (MOA) that SPU will cover landfill-related costs in the rights of way (see attached Exhibit 2 – SPU SDOT MOA). In addition, SPU will work with SDOT to institutionalize requirements within both departments’ O&M activities.

**b. Is a public hearing required for this legislation?**

No.

**c. Does this legislation require landlords or sellers of real property to provide information regarding the property to a buyer or tenant?**

Yes. The Consent Decree requires the City to place an environmental covenant on SPU's portion of landfill property and to place environmental covenants on affected rights of way that SDOT owns, as well as an alternative to an environmental covenant on affected rights-of-way that SDOT controls but does not own in fee. These documents place restrictions on future property uses (restricted to industrial uses only, unless Ecology approves otherwise), and places requirements for repairs, maintenance and redevelopment of the properties in accordance with the Cleanup Action Plan and Operations, Monitoring and Maintenance Plan attached to the Consent Decree. These covenants/equivalents run with the land.

**d. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No.

**c. Does this legislation affect a piece of property?**

Yes, this legislation affects portions of the South Park Landfill, as depicted in the attached map.

**d. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities?**

This legislation impacts the South Park neighborhood, an economically disadvantaged and highly diverse community. The legislation allows for permanent remediation of significant portions of the landfill to protect human health and the environment. It also paves the way for SPU's portion of the landfill to be redeveloped into more modern utility facilities that include a pedestrian path (public benefit) associated with an earlier street vacation.

**e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s).**

N/A

**List attachments/exhibits below:**

Summary Exhibit 1 - Map

Summary Exhibit 2 - SDOT and SPU Agreement