

Appendix J

Allocation of Interim Natural Resource Damage Assessment Costs Incurred in Connection with the Hylebos Waterway

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December 3, 2001

The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* (CERCLA), provides that parties responsible for releases of hazardous substances into the environment are liable for “damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.” 42 U.S.C. § 9607(a)(4)(C). As a consequence of their efforts to assess natural resource damages in the Commencement Bay environment, the Trustees have incurred significant assessment costs that they intend to collect from responsible parties. This memorandum identifies those costs compiled to date and explains how the data were developed.

Each Trustee agency or tribe is responsible for tracking and accounting for its costs associated with the Commencement Bay Natural Resource Damage Assessment. The National Oceanic and Atmospheric Administration (NOAA), serving as lead administrative trustee, receives periodic assessment cost reports from the Trustees and compiles the data. The following analysis is based upon those data reports.

For purposes of the Hylebos Waterway Natural Resource Damage Settlement Proposal Report (Report), the Trustees have determined the total sum of natural resource damage assessment costs for which all Hylebos Waterway potentially responsible parties (PRPs) are liable, and proposed an allocation of those costs. As the Settlement Proposal Report explains, the Trustees have proposed an allocation of their damages claim among Hylebos Waterway sites. Where more than one PRP may be responsible for a single site, the Trustees are leaving it to the involved PRPs to resolve among themselves how the liability for that site should be divided. The Trustees are taking the same approach in allocating liability for assessment costs, making the allocation by site and leaving it to the parties involved to determine how the assessment cost liability for the site should be divided.

Determining the total sum of Hylebos Waterway-related assessment costs is complicated by several factors:

- Trustees have at times tracked under a single account number assessment costs that are appropriately attributable to multiple problem areas or subparts of the Commencement Bay environment. For example, in the early stages of the damage assessment, although specific tasks or work efforts may have focused on a specific area or waterway, many Trustees used a single accounting number to track all Commencement Bay-related assessment costs.
- Trustees have incurred some assessment costs that are attributable to a single operation or

party while other costs are attributable to the Hylebos Waterway as a whole or to the entire Commencement Bay site.

- Some PRPs have at different times entered into agreements with the Trustees under which the PRPs reimbursed a portion of the Trustees' assessment costs in return for participating more directly in planning and carrying out parts of the assessment process (referred to as funding and participation agreements, or FPAs). In addition, in connection with one round of settlement negotiations the PRPs involved reimbursed a portion of the Trustees' assessment costs.
- In prior settlements of natural resource damage claims with several parties the Trustees have recovered a portion of their assessment costs.

The attached worksheet (Attachment 1) identifies the Trustees' current assessment cost and reimbursement data and proposes an allocation of the unreimbursed costs among Hylebos Waterway facilities. The amounts shown in the worksheet are provisional and will increase as the Trustees complete work on this settlement proposal and negotiated individual settlements. The specific amount of past assessment costs for which the parties associated with each facility are liable will be identified later in the settlement negotiation process. Following are the steps in the past cost allocation analysis. A note on terminology: "Costs Incurred" refers to gross costs, or costs incurred before crediting reimbursements.

Allocate a Portion of Commencement Bay-wide Costs to the Hylebos Waterway

This process is necessary to distribute among unresolved waterways the costs tracked by the Trustees under a Commencement Bay-wide accounting category. The Trustees assume that assessment costs incurred regarding the Commencement Bay site as a whole should be borne by each unresolved waterway in proportion to each waterway's share of the total assessment costs incurred for all waterways. Because the Trustees have already had a portion of their assessment costs reimbursed by parties involved in specific waterways, the Trustees use the gross costs incurred, rather than net unreimbursed costs, in developing the waterway allocation percentage.

Step 1: Compile *Costs Incurred* for unresolved waterways/problem areas. Prior settlements with the Port of Tacoma, Simpson Tacoma Kraft Co. and Champion International Corp. resolved claims for past natural resource damages with respect to the St. Paul Waterway, the Milwaukee Waterway, the Sitcum Waterway and the Blair Waterway. Remaining unresolved are claims regarding the Hylebos Waterway, Middle Waterway, Thea Foss Waterway (partial), and the ASARCO smelter sediments. For simplicity in this analysis, the ASARCO smelter sediments operable unit is treated as a "waterway." Adding the *Costs Incurred* for the unresolved waterways generates an *Adjusted Costs Incurred* figure.

Step 2: Determine Hylebos pro rata share of the *Adjusted Costs Incurred*. Divide *Hylebos Costs Incurred* by *Adjusted Costs Incurred* (the results of step 1). This generates a *Pro Rata Percentage for the Hylebos*.

Step 3: Adjust *Bay-wide Costs Incurred* to reflect reimbursements received from parties not subject to the Hylebos allocation. The Trustees have had portions of their assessment costs reimbursed in connection with prior settlements, under FPAs, and in connection with settlement negotiations. To avoid recovering costs already reimbursed, this step accounts for the reimbursements made by non-Hylebos parties and parties who have previously settled. This generates a *Bay-wide Adjusted Net Costs* figure for purposes of applying the *Hylebos Pro Rata Percentage*. Reimbursements of Bay-wide costs by Hylebos Waterway parties who are subject to the allocation will be deducted in a later step.

Step 4: Calculate the *Hylebos Share of Bay-wide Adjusted Net Costs*. Multiply the results of step 2 (the *Hylebos Pro Rata Percentage*) times the results of step 3 (the *Bay-wide Adjusted Net Costs*).

Determine Hylebos-Specific Costs Subject to Allocation

Step 5: Adjust Hylebos-specific costs to account for reimbursements made by parties not subject to the Hylebos allocation. In connection with a prior settlement, the Port of Tacoma made funds available to the Trustees to conduct the damage assessment process. Pursuant to that settlement, the Trustees used a portion of the funds received from the Port to cover the costs of damage assessment efforts relating to the Hylebos Waterway. The Trustees also have determined that a portion of the past assessment costs recovered in the City of Tacoma Bay-wide settlement should be attributed to the Hylebos Waterway. This step subtracts those amounts from the *Hylebos Costs Incurred* to reflect sums paid from those settlements. This step generates a *Hylebos-Specific Adjusted Net Costs* figure. Reimbursements of Hylebos-specific costs by Hylebos Waterway parties who have not previously settled will be deducted in a later step.

Determine Total Hylebos-Related Costs Subject to Allocation

Step 6: Calculate the *Combined Hylebos Adjusted Net Costs* figure for allocation among the Hylebos allocation parties. Add the results of step 4 (*Hylebos Share of Bay-wide Adjusted Net Costs*) to the results of step 5 (*Hylebos-Specific Adjusted Net Costs*).

Allocate Hylebos-Related Costs Among Hylebos Waterway Sites

Page 3 of the worksheet demonstrates how Hylebos-related assessment costs are allocated to specific facilities, how site-specific costs are included and how prior assessment cost contributions by parties subject to the allocation are credited. The examples used presume there is only one party liable for each site. Where there are multiple parties involved, the Trustees presume that the parties will resolve among themselves how to apportion the costs attributable to the site.

For purposes of this settlement proposal, the Trustees have calculated the scale of natural resource injuries resulting from contamination by determining the associated losses of ecological services provided by affected habitats. The Trustees have quantified their natural resource damages

claim in terms of lost discounted service acre-years, or DSAYs, as described in the Settlement Proposal Report and the other appendices. As part of this effort, the Trustees have proposed an allocation of the total lost DSAYs among Hylebos Waterway sites or facilities as explained in Appendix H.

The DSAY allocation report and tables note that a portion of the total lost DSAYs are not allocated to specific sites, either because of issues regarding the injury data or because the Trustees have not yet identified sites responsible for releasing associated contaminants. In addition, the allocation report assigns a portion of the lost DSAYs to three sites for which the City of Tacoma appears to be responsible. Since the Trustees have already reached a Bay-wide natural resource damages settlement with the City, the Trustees will not be asserting further natural resource damage or damage assessment cost claims against the City. Consequently, the unallocated DSAYs and the DSAYs allocated to the City of Tacoma sites do not figure into the assessment cost allocation. The assessment cost allocation percentages and the resulting site share of waterway costs are reflected on Attachment 2.

Step 7: Multiply site DSAY allocation percentage times the results of step 6 (*Combined Hylebos Adjusted Net Costs*). This generates a *Site Share of Combined Hylebos Adjusted Net Costs* figure. Add to this any *Site-Specific Costs Incurred* to get the subtotal figure of *Site Combined Cost Liability Base*.

Step 8: Credit the party's prior assessment cost reimbursements. Subtract party's previous contributions (both Bay-wide and Hylebos-specific) from results of step 7. This gives the allocation party's *Net Assessment Costs Liability*.

Attachment 2 identifies the Trustees' interim allocation of assessment costs among Hylebos Waterway facilities. The allocation is done on an interim basis in part because the costs identified herein only reflect data reported by the Trustees as of the date of this memorandum. Each of the Trustees has incurred further costs that are not reflected in this memorandum, and will continue to incur costs during the process of negotiating settlements. The Trustees will seek to recover those costs as well, and will provide information on those additional costs as the settlement process progresses. In addition, as the incomplete columns on Attachment 2 indicate, the Trustees are also seeking to recover assessment costs incurred specific to certain facilities, and will credit previous cost reimbursements by Hylebos parties. These data will be reflected in the final assessment costs figures once it is determined which parties are responsible for which facilities.

Finally, the allocation in Attachment 2 assigns a share of the Trustees' assessment costs only among sites with a demonstrated basis for allocated liability. Costs are not allocated to contaminant footprints for which the Trustees have insufficient information to assign liability (designated as Type I or Type II Non-Allocated). To the extent that the Trustees receive information as part of the public review process for this proposal that leads them to adjust the liability allocation, they will also adjust the past cost allocation accordingly.

Attachment 1: Provisional Allocation of Past Natural Resource Damage Assessment Costs
Worksheet

Attachment 2: Interim Allocation of Hylebos Waterway Assessment Costs

Attachment J-1
Provisional Allocation of Past Natural Resource Damage Assessment Costs Worksheet

Allocation Worksheet			
Area	Costs Incurred	Combined Reimbursements	Unreimbursed Costs
BAYWIDE	\$ 3,270,625.50	\$ 1,114,241.61	\$ 2,156,383.89
HYLEBOS	\$ 2,748,371.16	\$ 1,481,136.56	\$ 1,267,234.60
THEA-FOSS	\$ 307,866.29	\$ 226,999.99	\$ 80,866.30
MIDDLE	\$ 20,396.86	\$ -	\$ 20,396.86
ASARCO SMELTER	\$ 146,564.61	\$ 50,000.00	\$ 96,564.61
Total	\$ 6,493,824.42	\$ 2,872,378.16	\$ 3,621,446.26
	Step 1	Step 2	
Pro Rata Base	Costs Incurred	Pro Rata Percentage	
HYLEBOS	\$ 2,748,371.16	85.27%	
THEA-FOSS	\$ 307,866.29	9.55%	
MIDDLE	\$ 20,396.86	0.63%	
ASARCO SMELTER	\$ 146,564.61	4.55%	
Adjusted Costs Incurred	\$ 3,223,198.92	100.00%	
Non-Consent Decree Reimbursements	Interim FPA	Phase I FPA	HCC-5 Negotiations Agreement
ELF/ATOFINA	\$ (21,428.57)	\$ (35,888.08)	\$ (16,000.00)
OXY	\$ (21,428.57)	\$ (35,888.08)	\$ (16,000.00)
GENERAL METALS			\$ (16,000.00)
WEYERHAUSER		\$ (35,888.08)	
MOBIL	\$ (21,428.57)	\$ (35,888.08)	
KAISER	\$ (21,428.57)	\$ (35,888.08)	\$ (16,000.00)
ASARCO	\$ (21,428.57)	\$ (35,888.08)	\$ (16,000.00)
CITY OF TACOMA	\$ (21,428.57)	\$ (35,888.08)	
PORT OF TACOMA	\$ (21,428.57)	\$ (35,888.08)	
CHAMPION		\$ (35,888.08)	
TOTALS	\$ (149,999.99)	\$ (322,992.72)	\$ (80,000.00)

Attachment J-1
Provisional Allocation of Past Natural Resource Damage Assessment Costs Worksheet

Adjustments for Baywide Cost Reimbursements by Non-Allocation Parties - Step 3			
Baywide Costs Incurred	\$	3,270,625.50	<i>Notes</i>
Interim FPA - Contributions by Non-Hylebos Parties and Settled Parties	\$	(64,285.71)	<i>Credits contributions by Mobil, the City of Tacoma and the Port of Tacoma</i>
Phase I FPA - Contributions by Non-Hylebos Parties and Settled Parties	\$	(143,552.32)	<i>Credits contributions by Mobil, the City of Tacoma, the Port of Tacoma and Champion</i>
Bay-wide costs recovered under prior settlements	\$	(560,291.06)	<i>Credits amounts received from settling parties that were applied to Bay-wide costs (Simpson/Champion - \$177,941.06; Port of Tacoma - \$382,350.00)</i>
Baywide Adjusted Net Costs	\$	2,502,496.41	
Allocation Of Baywide Adjusted Net Costs Among Waterways - Step 4			
Waterway	Hylebos Pro Rata Percentage	Baywide Adjusted Net Costs	Hylebos Share of Baywide Adjusted Net Costs
HYLEBOS	85.27%	\$ 2,502,496.41	\$ 2,133,839.43
Adjustments for Non-Allocation Party Hylebos Reimbursements			
Hylebos Costs Incurred	\$	2,748,371.16	<i>Notes</i>
Hylebos-Specific Costs Covered With Funds from Port of Tacoma Settlement	\$	(1,401,136.56)	<i>Credits amounts received from the Port of Tacoma that were applied to Hylebos-specific costs</i>
Hylebos Share of Past Costs Reimbursed Through City of Tacoma Settlement	\$	(43,910.68)	<i>Credits a portion of the past costs paid in City of Tacoma Bay-wide settlement</i>
Hylebos-Specific Adjusted Net Costs - Step 5	\$	1,303,323.92	
Hylebos Share of Baywide Adjusted Net Costs	\$	2,133,839.43	
Combined Hylebos Adjusted Net Costs - Step 6	\$	3,437,163.35	

Attachment J-1
Provisional Allocation of Past Natural Resource Damage Assessment Costs Worksheet

Hypothetical Allocation Of Hylebos Costs Among Example Sites			
Site A		Site B	
DSAY allocation for past cost analysis	4.35%	DSAY allocation for past cost analysis	21.74%
Site Share of Combined Hylebos Adjusted Net Costs	\$ 149,516.61	Site Share of Combined Hylebos Adjusted Net Costs	\$ 747,239.31
<i>Site-Specific Costs Incurred</i>	\$ -	<i>Site-Specific Costs Incurred</i>	\$ 155,000.00
Subtotal - Site Combined Cost Liability Base - Step 7	\$ 149,516.61	Subtotal - Site Combined Cost Liability Base - Step 7	\$ 902,239.31
Interim FPA contribution	\$ -	Interim FPA contribution	\$ (21,428.57)
Phase 1 FPA contribution	\$ -	Phase 1 FPA contribution	\$ (35,888.08)
HCC-5 negotiations contribution	\$ -	HCC-5 negotiations contribution	\$ (16,000.00)
Subtotal prior contributions	\$ -	Subtotal prior contributions	\$ (73,316.65)
Net Assessment Costs Liability - Step 8	\$ 149,516.61	Net Assessment Costs Liability - Step 8	\$ 828,922.66

Attachment J-2
Interim Allocation of Hylebos Waterway Assessment Costs

Site	DSAY Allocations		Assessment Cost Allocation Percent	Share of Waterway Costs	Pending Modifications		
	All Sites	Sites Liable for Assessment Costs			Site Specific Costs	Previous Cost Reimbursements	Assessment Cost Liability
1670 MARINE VIEW DR (II)	11.684						
3138 MARINE VIEW DR	8.780	8.780	0.50%	\$17,254.95			
3138 MARINE VIEW DR (II)	1.396						
AIRO SERVICES	23.121	23.121	1.32%	\$45,436.42			
AK-WA SHIPBUILDING	441.675	441.675	25.25%	\$867,969.24			
AK-WA SHIPBUILDING (II)	3.326						
AOL EXPRESS	3.442	3.442	0.20%	\$6,765.10			
B&L WOODWASTE LANDFILL	4.623	4.623	0.26%	\$9,085.27			
BONNEVILLE POWER	6.859	6.859	0.39%	\$13,479.71			
BUFFELEN	18.463	18.463	1.06%	\$36,283.22			
CASCADE TIMBER (YARD #1)	1.863	1.863	0.11%	\$3,660.94			
CENEX AG	6.895	6.895	0.39%	\$13,549.72			
CITY OF TACOMA (#1)	3.442						
CITY OF TACOMA (STEAM PLANT)	127.721						
CITY OF TACOMA (STEAM PLANT) (II)	2.268						
DON OLINE AUTOFLUFF SITE	24.915	24.915	1.42%	\$48,962.59			
DON OLINE AUTOFLUFF SITE (II)	0.637						
DUNLAP TOWING	7.575	7.575	0.43%	\$14,885.68			
DUNLAP TOWING (II)	2.103						
ELF ATOCHEM	85.461	85.461	4.89%	\$167,946.23			
ELF ATOCHEM (II)	11.353						
GENERAL METALS OF TACOMA	141.479	141.479	8.09%	\$278,031.03			
GENERAL METALS OF TACOMA (II)	0.247						
HYLEBOS MARINA	2.290	2.290	0.13%	\$4,499.86			
HYLEBOS MARINA (II)	0.144						
JONES & GOODELL BOATBUILDING	9.636	9.636	0.55%	\$18,936.56			
JONES & GOODELL BOATBUILDING (II)	5.100						
JONES CHEMICAL	2.763	2.763	0.16%	\$5,429.67			
JOSEPH SIMON & SONS	14.607	14.607	0.84%	\$28,705.39			
JOSEPH SIMON & SONS (II)	8.151						
KAISER ALUMINUM & CHEMICAL	135.076	135.076	7.72%	\$265,448.10			
LEVY, ROBERT E. (II)	0.639						
LONE STAR NORTHWEST	4.623	4.623	0.26%	\$9,085.27			
LOUISIANA PACIFIC	4.623	4.623	0.26%	\$9,085.27			
LOUISIANA PACIFIC (II)	1.463						
MANKE LUMBER	9.776	9.776	0.56%	\$19,212.49			
MANKE LUMBER (II)	2.987						
MODUTECH MARINE	26.913	26.913	1.54%	\$52,888.55			
MODUTECH MARINE (II)	1.813						
MURRAY PACIFIC	7.272	7.272	0.42%	\$14,290.99			
MURRAY PACIFIC (II)	0.163						
NO ALLOCATION	207.562						
NORDLUND PROPERTIES	4.623	4.623	0.26%	\$9,085.27			
OCCIDENTAL	355.640	355.640	20.33%	\$698,894.66			
OCCIDENTAL (II)	14.008						
OLE & CHARLIE'S MARINA	2.803	2.803	0.16%	\$5,508.18			
PETROLEUM RECLAIMING SERVICES	38.460	38.460	2.20%	\$75,580.51			
PORT OF TACOMA (3002 TAYLOR WAY)	22.389	22.389	1.28%	\$43,998.95			
PORT OF TACOMA (9533 E. 11TH ST) (II)	8.195						
SOUND REFINING	83.292	83.292	4.76%	\$163,683.13			
SOUND REFINING (II)	55.937						
SPECIALTY MACHINE SHOP	2.360	2.360	0.13%	\$4,638.52			
STONE INVESTMENTS	1.286	1.286	0.07%	\$2,527.94			
STONE INVESTMENTS (II)	1.483						
STREICH BROTHERS	4.623	4.623	0.26%	\$9,085.27			
TACOMA BOATBUILDING	48.776	48.776	2.79%	\$95,853.11			
TAYLOR WAY PROPERTIES	101.649	101.649	5.81%	\$199,758.88			
TAYLOR WAY PROPERTIES (II)	0.095						
TOPE TRACTOR	1.721	1.721	0.10%	\$3,382.55			
UNRESOLVED TYPE I	206.684						
U.S. GYPSUM	23.760	23.760	1.36%	\$46,692.16			
U.S. GYPSUM (II)	0.434						
U.S. NAVAL RESERVE	47.482	47.482	2.71%	\$93,310.45			
U.S. NAVAL RESERVE (II)	6.473						
WASSER WINTERS	5.873	5.873	0.34%	\$11,541.35			

Attachment J-2
Interim Allocation of Hylebos Waterway Assessment Costs

Site	All Sites	Sites Liable for Assessment Costs	Cost Allocation Percent	Share of Waterway Costs	Site Specific Costs	Previous Cost Reimbursements	Assessment Cost Liability
WASSER WINTERS (II)	1.014						
WEYERHAEUSER	11.566	11.566	0.66%	\$22,730.19			
WEYERHAEUSER (II)	3.122						
Total	2438.681	1,749.036	100.00%	\$3,437,163.35			