Framework for Determining Phase II Costs to Participating Parties

The following information is being provided to help Portland Harbor potentially liable parties estimate the cost of participating in Phase II of the Portland Harbor Natural Resource Trustee Council's collaborative Natural Resource Damage Assessment process.

Background:

In Phase I of the Portland Harbor Natural Resource Damage Assessment (NRDA), the Portland Harbor Natural Resource Trustee Council (Trustee Council) determined that the total amount of funding required was approximately $2.1 million to implement all actions in Phase I, including case management and studies.[1]

Nineteen participating parties signed a Funding and Participation Agreement (FPA) to support the Phase I actions. Fifteen of the participating parties had received a general notice letter (GNL) from EPA, but the other four had not. Pursuant to Trustee Council resolution, each GNL-participating party provided a total of $100,000 to the Trustees for Phase I activities; non-GNL-participating parties provided $40,000.[2]

The Trustee Council is preparing to enter Phase II of the NRDA – negotiations for Phase II participation will begin in early spring 2010. Under the terms of the FPA, any new participating parties (those who desire to participate in Phase II but who did not participate in Phase I) will be required to pay the Phase I costs – either $100,000 or $40,000 depending on GNL/non-GNL status – plus a premium, in addition to paying Phase II costs. The FPA called for this funding scenario out of fairness to early participants, who have been bearing additional transactional associated with the collaborative process. Still, the Trustee Council and the Phase I participating parties desire to set the premium at a level that is attractive to new participants. Thus, based on input from Phase I participating parties, the Trustee Council currently is proposing a premium of 25% of Phase I costs.

After the Trustees develop a final Phase II budget, the specific amount each participating party will be asked to pay in Phase II will depend on whether the party participated in Phase I activities. This is because of: (1) the funding scenario described above, which requires new participating parties to cover a share of Phase I costs; and (2) the FPA requirement that the share of Phase I costs paid by new participating parties "be applied as a credit against the Phase I Participants' share of Phase II costs." FPA ¶ 11.

In summary, Phase I included 15 GNL-participating parties who provided $100,000 each, or $1.5 million total. Phase I also included four non-GNL-participating parties who

---

[1] Due to insufficient funding from the participating parties, the budget subsequently had to be adjusted downward to about $1.6 million.

[2] This $100,000/$40,000 ratio equates to GNL-participating parties having paid 2.5 times more than non-GNL participating parties.

provided $40,000 each, or $160,000 total. This equates to 90.36% of Phase I monies paid by participating parties having come from GNL-participating parties, and 9.64% of Phase I monies paid by participating parties having come from non-GNL-participating parties. These percentages provide the foundation on which the Phase I-associated monies from new participating parties – again, those parties who did not participate in Phase I but who desire to participate in Phase II and therefore have to pay Phase I costs plus a premium to join in Phase II – would be applied as a credit against the Phase I participants' share of Phase II costs as required by the FPA. Specifically, the Trustee Council envisions that 9.64% of any Phase I-associated monies from new participants in Phase II would be credited on a pro rata basis to any of the non-GNL-participating parties who continue their participation during Phase II. Similarly, 90.36% of any Phase I-associated monies from new participants in Phase II would be credited on a pro rata basis to any of the GNL-participating parties who continue their participation during Phase II.[3]

Two scenarios are presented below to demonstrate how potentially liable parties might estimate their costs of participating in Phase II of the cooperative NRDA process. The scenarios also illustrate how participating parties might be credited in Phase II for their past participation in Phase I. These examples differ only in the size of the Phase II budget used for each scenario, which for current purposes is depicted as either $9.0 million or $7.5 million. These figures approximate the Trustee Council's initial effort at developing a three-year Phase II budget that either includes a Trustee Council-conducted NRD allocation process (about $9.0 million) or that instead relies on an allocation process that piggybacks on the allocation being conducted for the Portland Harbor remedial process (about $7.5 million).[4]

Scenario 1:

Assumptions: ♦ Phase II costs are estimated at $7.5 million. ♦ All 19 participating parties from Phase I opt to participate in Phase II.[5] ♦ Five new participating parties join the process in Phase II, two of whom are GNL recipients, the other three of whom are non-GNL parties. ♦ The Trustee Council continues the monetary distinction between GNL- and non-GNL-participating parties (2.5X multiplier). ♦ The Trustees apply a 25% premium for new participating parties, i.e. those who desire to join the process for the first time in Phase II.

---

[3] Note that under this scenario, if some Phase I participating parties opt not to continue their participation in Phase II, and some new participating parties join in Phase II, the Phase I participating parties who continue into Phase II would receive a larger credit than they would if all Phase I participating parties carried over into Phase II.

[4] The Trustee Council has developed an initial version of its proposed three-year Phase II budget but is looking for ways to economize and reduce the budget estimate.

[5] For simplicity's sake, this hypothetical does not reflect any changes in participating parties' GNL status, i.e. a Phase 1 non-GNL party who subsequently has become a GNL-party by the time of Phase II.

<u>Calculations</u>: Using the above assumptions, we first must calculate the past Phase I costs to be paid by new participating parties (those who did not participate in Phase I but who desire to participate in Phase II) and then credited to participating parties who continue on into Phase II from Phase I:

<u>Past Phase I costs to be paid by the two new GNL participating parties in this scenario</u>:

$100,000 (Phase I costs) plus $25,000 (premium) = $125,000 for each new GNL participating party

Two new GNL parties in this scenario = $250,000 total coming from new GNL participating parties

<u>Past Phase I costs to be paid by the three non-GNL parties in this scenario</u>:

$40,000 (Phase I costs) plus $10,000 (premium) = $50,000 for each new non-GNL participating party

Three new non-GNL participating parties = $150,000 total coming from new non-GNL participating parties

► Total Phase I-associated monies coming from new participating parties = $400,000

<u>Allocating this $400,000 credit to the Phase I GNL participating parties continuing on into Phase II would be calculated as follows</u>:

90.36% of $400,000 = $361,440;
$361,440 divided by 15 (for the15 Phase I GNL participating parties) = $24,096

► $24,096 credit for each Phase I GNL participating party continuing into Phase II

<u>Allocating the $400,000 credit to the Phase I non-GNL participating parties continuing on into Phase II would be calculated as follows</u>:

9.64% of $400,000 = $38,560;
$38,560 divided by 4 (for the four Phase I non-GNL participating parties) = $9,640

► $9,640 in credit for each Phase I non-GNL participating party continuing into Phase II

Because only the parties who participated in Phase I and are carrying over into Phase II are entitled to the benefit of the credit, responsibility for this scenario's $7.5 million Phase II budget would be calculated as follows:

The $7.5 million budget first must be divided among all 24 participating parties in Phase II (including the 19 Phase I participating parties and the five new participating parties in this scenario). The 17 GNL participating parties in Phase II (15 carryovers from Phase I plus two new participants) will pay 2.5X more than the seven non-GNL parties (four carryovers from Phase I plus three new participating parties), with X calculated as follows:

$$17(2.5X) + 7X = \$7.5 \text{ million}$$
$$X = \$151{,}515.15$$

► This means that **before applying the credit to those who participated in Phase I and are continuing into Phase II**, each GNL participating party would be responsible in this scenario for $378,787.87 (2.5 X $151,515.15), and each non-GNL participating party would be responsible for $151,515.15.

► **Now taking into account the credit** called for under the FPA, the "old" GNL participating parties (those who participated in Phase I) would pay $354,691.87 (calculated as $378,787.87-$24,096.00), and each "old" non-GNL participating party (again those who participated in Phase I) would pay $141,875.15 (calculated as $151,515.15-$9,640.00).

Summary of Scenario 1:

In summary, taking into account the Phase I premiums and credits in this $7.5 million budget scenario, and assuming a static GNL/non-GNL status, the parties participating in Phase II would pay the following new money:

Each of the 15 GNL parties who participated in Phase I = $354,691.87

Each of the four non-GNL parties who participated in Phase I = $141,875.15

Each of the two new GNL participating parties = $503,787.87 ($378,787.87 + $125,000)

Each of the three new non-GNL participating parties = $201,515.15 ($151,515.15 + $50,000)

Please not that these figures would change depending upon such variables as the number of Phase I participating parties continuing into Phase II, the number of new participating parties joining the process in Phase II, the size of the premium assigned to new participating parties, and the size of the Trustee Council's final budget.

<u>Scenario 2</u>:

<u>Assumptions</u>: ♦ Phase II costs are estimated at $9.0 million. ♦ All 19 participating parties from Phase I opt to participate in Phase II.[6] ♦ Five new participating parties join the process in Phase II, two of whom are GNL recipients, the other three of whom are non-GNL parties. ♦ The Trustee Council continues the monetary distinction between GNL- and non-GNL-participating parties (2.5X multiplier). ♦ The Trustees apply a 25% premium for new participating parties, i.e. those who desire to join the process for the first time in Phase II.

<u>Calculations</u>: Using the above assumptions, we first must calculate the past Phase I costs to be paid by new participating parties (those who did not participate in Phase I but who desire to participate in Phase II) and then credited to participating parties who continue on into Phase II from Phase I. This does not differ from Scenario 1 above:

<u>Past Phase I costs to be paid by the two new GNL participating parties in this scenario</u>:

$100,000 (Phase I costs) plus $25,000 (premium) = $125,000 for each new GNL participating party

Two new GNL parties in this scenario = $250,000 total coming from new GNL participating parties

<u>Past Phase I costs to be paid by the three non-GNL parties in this scenario</u>:

$40,000 (Phase I costs) plus $10,000 (premium) = $50,000 for each new non-GNL participating party

Three new non-GNL participating parties = $150,000 total coming from new non-GNL participating parties

► Total Phase I-associated monies coming from new participating parties = $400,000

<u>Allocating this $400,000 credit to the Phase I GNL participating parties continuing on into Phase II would be calculated as follows</u>:

90.36% of $400,000 = $361,440;
$361,440 divided by 15 (for the15 Phase I GNL participating parties) = $24,096

► $24,096 credit for each Phase I GNL participating party continuing into Phase II

---

[6] For simplicity's sake, this hypothetical does not reflect any changes in participating parties' GNL status, i.e. a Phase 1 non-GNL party who subsequently has become a GNL-party by the time of Phase II.

Allocating the $400,000 credit to the Phase I non-GNL participating parties continuing on into Phase II would be calculated as follows:

9.64% of $400,000 = $38,560;
$38,560 divided by 4 (for the four Phase I non-GNL participating parties) = $9,640

► $9,640 in credit for each Phase I non-GNL participating party continuing into Phase II

Because only the parties who participated in Phase I and are carrying over into Phase II are entitled to the benefit of the credit, responsibility for this scenario's $9.0 million Phase II budget would be calculated as follows:

The $9.0 million budget first must be divided among all 24 participating parties in Phase II (including the 19 Phase I participating parties and the five new participating parties in this scenario). The 17 GNL participating parties in Phase II (15 carryovers from Phase I plus two new participants) will pay 2.5X more than the seven non-GNL parties (four carryovers from Phase I plus three new participating parties), with X calculated as follows:

> 17(2.5X) + 7X = $9.0 million
> X = $181,818.18

► This means that **before applying the credit to those who participated in Phase I and are continuing into Phase II**, each GNL participating party would be responsible in this scenario for $454,545.45 (2.5 X $181,818.18), and each non-GNL participating party would be responsible for $181,818.18.

► **Now taking into account the credit** called for under the FPA, the "old" GNL participating parties (those who participated in Phase I) would pay $430,449.45 (calculated as $454,545.45-$24,096.00), and each "old" non-GNL participating party (again those who participated in Phase I) would pay $172,178.18 (calculated as $181,818.18-$9,640.00).

Summary of Scenario 1:

In summary, taking into account the Phase I premiums and credits in this $9.0 million budget scenario, and assuming a static GNL/non-GNL status, the parties participating in Phase II would pay the following new money:

Each of the 15 GNL parties who participated in Phase I = $430,449.45

Each of the four non-GNL parties who participated in Phase I = $172,178.18

Each of the two new GNL participating parties = $579,545.45 ($454,545.45 + $125,000)

Each of the three new non-GNL participating parties = \$231,818.18 (\$181,818.18 + \$50,000)

Please not that these figures would change depending upon such variables as the number of Phase I participating parties continuing into Phase II, the number of new participating parties joining the process in Phase II, the size of the premium assigned to new participating parties, and the size of the Trustee Council's final budget.