

TEXAS CITY Y OIL SPILL

NATURAL RESOURCE TRUSTEE COUNCIL

Resolution # TCY-2021-01

Resolution of the Texas City Y Oil Spill Natural Resource Trustee Council for the Use of Advanced Funding Provided by Kirby Inland Marine, LP to Reimburse the Trustees for Unpaid Past Assessment and Restoration Planning Costs

1. In accordance with the Oil Pollution Act of 1990 (OPA), the Advanced Funding Letter from Molly Cagle, on behalf of Kirby Inland Marine, LP (Kirby), dated April 10, 2014 (Appendix A), and the executed Memorandum of Agreement to conduct a cooperative Natural Resources Damage Assessment between the Natural Resource Trustees and Kirby Inland Marine, LP (September 2014 Cooperative Agreement), the undersigned representatives of the Texas City Y Oil Spill Natural Resource Trustee Council hereby approve the funding described below for the reimbursement of unpaid past damage assessment and restoration planning costs incurred by the Trustees in association with the Texas City Y Oil Spill natural resource damage assessment (NRDA).
2. The Trustees for this NRDA are the United States Department of the Interior (DOI) through the United States Fish and Wildlife Service (FWS) and the National Park Service (NPS), the United States Department of Commerce through the National Oceanic and Atmospheric Administration (NOAA), and the Texas General Land Office (TGLO), the Texas Commission on Environmental Quality (TCEQ), and the Texas Parks and Wildlife Department (TPWD) on behalf of the State of Texas.
3. The Responsible Party, Kirby, and the Trustees reached agreement to resolve natural resource damages arising from the Texas City Y Oil Spill in July 2021. As part of the settlement, Kirby agreed to reimburse the Trustees for all past assessment and restoration planning costs incurred through July 31, 2021. As a result of Kirby's payment of Advanced Funding to the DOI Restoration Fund pursuant to the executed September 2014 Cooperative Agreement, there is currently sufficient funding in the Texas City Y Oil Spill Account (TCY Oil Spill Account) to reimburse most of the outstanding past assessment costs for all Trustees.
4. By letter on October 22, 2021, Kirby agreed that the Trustees can use the balance of the Advanced Funding currently held in the TCY Oil Spill Account to reimburse the Trustees for all unpaid past assessment and restoration planning costs, to the extent feasible (*see* Appendix B). Kirby further agreed that all remaining unreimbursed past Trustee costs would be paid pursuant to the consent decree resolving the Trustees' natural resource damages claims arising from the Texas City Y Oil Spill (Consent Decree).

5. Through this Resolution, the Trustees agree to withdraw the balance of the Advanced Funding and pay each of the Trustees' unreimbursed past assessment costs through July 31, 2021, as follows:

- DOI shall receive \$97,051.90 to fully reimburse unpaid past costs;
- NOAA shall receive \$134,515.40 toward partial reimbursement of unpaid past costs;
- TGLO shall receive \$8,578.65 to fully reimburse unpaid past costs;
- TCEQ shall receive \$2,334.37 to fully reimburse unpaid past costs; and
- TPWD shall receive \$7,501 to fully reimburse unpaid past costs.

6. Following the partial reimbursement of its unpaid past costs authorized by this Resolution, NOAA will have a balance of unpaid past costs for this NRDA, through July 31, 2021, in the amount of \$34,768.83. By letter on October 22, 2021, Kirby has agreed to pay NOAA for this amount in unreimbursed past costs through the Consent Decree.

7. Funds transferred from the TCY Oil Spill-Account to the Trustees as authorized by this Resolution may be used only to pay for unpaid past assessment and restoration planning costs. Any non-authorized use of disbursed funds must be reported to the Texas City Y Oil Spill Natural Resource Trustee Council immediately upon discovery of unauthorized use.

8. It is resolved that after a review of this Resolution, the duly authorized officials for the Texas City Y Oil Spill Natural Resource Trustee Council authorize the release of the Advanced Funding for the reimbursement of unpaid past Trustee costs. This Resolution may be executed in counterparts. The effective date of this Resolution is the date of the last signature below.

Resolution # TCY-2021-01

TEXAS CITY Y OIL SPILL NATURAL RESOURCE TRUSTEE COUNCIL



Digitally signed by

KIRSCH.KEVIN.DAVID.1365865260

Date: 2021.11.03 19:43:12 -04'00'

KEVIN KIRSCH

Southeast Branch Chief

Assessment and Restoration Division

National Oceanic and Atmospheric Administration

AMY LUEDERS Digitally signed by AMY LUEDERS
Date: 2021.11.10 15:46:15 -05'00'

AMY LUEDERS
Regional Director
U.S. Fish and Wildlife Service
Department of the Interior

A handwritten signature in black ink, appearing to read 'Toby Baker', with a long horizontal flourish extending to the right.

TOBY BAKER
Executive Director
Texas Commission on Environmental Quality

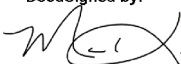
A handwritten signature in blue ink, appearing to read "Carter Smith", is written over a horizontal line.

CARTER SMITH

Executive Director

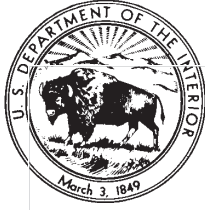
Texas Parks and Wildlife Department

Resolution # TCY-2021-01

DocuSigned by:

7C299F4374E7497...
Chief Clerk
Texas General Land Office

11/12/2021

DATE OF LAST SIGNATURE: ____December 22, 2021



United States Department of the Interior

OFFICE OF THE SOLICITOR

WASHINGTON, D.C. 20240

April 10, 2014

Via E-Mail

Ms. Molly Cagle
Partner,
Baker Botts, LLP
98 San Jacinto Blvd. #1500
Austin, TX 78701

RE: TEXAS CITY Y OIL SPILL: Oil Pollution Act: Advanced Funding for Natural
Resource Damage Preassessment and Assessment Activities

Dear Ms. Cagle:

On behalf of the Texas Natural Resource Trustee Council, the U.S. Department of the Interior hereby confirms that Kirby Inland Marine, LP (Kirby) has agreed to provide advanced funding in the amount of five hundred thousand dollars (\$500,000) to fund the Natural Resource Trustees' (Trustees) preassessment and assessment activities related to the natural resource damages assessment (NRDA) for the Texas City Y oil spill (the Incident). As we discussed, the Trustees intend to use the funds to pay for the Trustees' statutorily authorized and recoverable preassessment and assessment costs associated with the Incident. Examples of such costs include, but are not limited to, employees working on the NRDA (including reasonable salary, travel and indirect costs) and contractor support for the NRDA. The contractor support will be coordinated with all Trustees and employed to benefit all Trustees. At this time, the State of Texas does not anticipate the need to seek access to the Advanced Funding however it has specifically reserved its right to pursue and use the Advanced Funding in the future if it becomes necessary.

Cost documentation and accounting for how the Advanced Funding is expended will be provided. Both the Federal and State Trustees intend to seek ongoing reimbursement from Kirby of their reasonable costs of preassessment and assessment via an invoice and cost documentation process which will be described in a formal memorandum of agreement which is currently being negotiated.

The five hundred thousand dollars (\$500,000) Advanced Funding will be placed in a site-specific account within the Department of the Interior's Natural Resource Damage Assessment and Restoration (NRDAR) Fund. Enclosed please find instructions for how to deposit the five hundred thousand dollars (\$500,000) into the NRDAR Fund. In acknowledgement of this agreement for Advanced Funding, please sign and return to me the attached signature page.

The Advanced Funding fully satisfies only those claims for costs that are paid by the Advanced Funding; it does not constitute satisfaction of any other potential claims that the Trustees' may have with respect to the Incident.

The Advanced Funding by Kirby and the accounting associated with withdrawal of monies from the NRDAR Fund shall not be treated as an election by any Federal or State Trustee to participate in any given statutory scheme.

The Federal and State Trustees recognize that Kirby's agreement to provide Advanced Funding is without prejudice to any party's position with respect to liability, injury or damages arising out of the Incident. The Federal and State Trustees also recognize that Kirby has reserved its right to assert in the future that any charges against or studies or invoices paid for with the Advanced Funding do not constitute reasonable costs of preassessment or assessment activities.

In the event that Kirby does not provide Advanced Funding to the Trustees by close of business Friday, April 11, 2014 the Federal and State Trustees may seek initiate funding from the National Pollution Funds Center consistent with Section 2712 of OPA.

The Federal and State Trustees appreciate Kirby's commitment to a cooperative NRDA. We believe that a cooperative process will benefit the natural resources and their services by facilitating a faster assessment, and ultimately, restoration.

Please let me know if you have any questions.

Sincerely,

/s/ Amy L. Horner

Amy L. Horner
Attorney-Advisor

Encl.

cc:

James Murphy, Attorney, Texas Parks and Wildlife Department

Sheila O'Brien, Office of General Counsel, NOAA

Cullen McMorrow, Attorney, Texas Commission of Environmental Quality

David Green, Attorney, Texas General Land Office

John Carlucci, Solicitor's Office, U.S. Department of the Interior

TEXAS CITY Y OIL SPILL: Kirby Inland Marine, LP Agreement to provide Advanced Funding for Natural Resource Damage Preassessment and Assessment Activities in the amount of \$500,000.



Molly Cagle, Baker Botts, LLP

April 10, 2014

Date

Appendix B

BAKER BOTTS LLP

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October 22, 2021

Molly Cagle
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molly.cagle@bakerbotts.com

VIA E-MAIL (JASON.BARBEAU@USDOJ.GOV)

Mr. Jason Barbeau
United States Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611

Re: Distribution of Remaining Balance from
Kirby Inland Marine L.P. Advance
Payment Fund

Dear Jason:

The purpose of this letter is to authorize the Department of Interior to distribute the remaining balance from the advance payment fund deposited by Kirby Inland Marine L.P. ("Kirby") to provide funding to the Department of Interior ("DOI") for the Natural Resource Damage Assessment efforts in response to the Texas City Y incident.


Specifically, the current balance of the fund (after paying a pending \$12,662.29 commitment) is \$380,905.13. DOI may of course reimburse itself first for \$130,923.81 to cover cost packages #11 and #13, the two wire transfers Kirby sent, but that were rejected or returned. DOI may also cover its 2021 costs in the amount of \$97,051.90. Kirby asks that the remaining monies in the account be distributed as follows:

- **State of Texas:** \$18,414.02:
 - 2021 costs for TPWD: \$7,501.00 (\$6,313.43 + \$1,187.57);
 - 2021 costs for TCEQ: \$2,334.37; and
 - 2021 costs for TGLO: \$8,578.65)
- **NOAA:** \$134,515.40

We understand these payments will zero out the balance of the Kirby advance payment fund for the Texas City Y Incident. We also understand that these payments leave a shortfall on NOAA's 2021 costs of \$34,768.83. That shortfall will be addressed in the Consent Decree.

Please let us know if you need anything further on this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Molly Cagle", with a stylized flourish at the end.

Molly Cagle

cc: Amy Husted (*Amy.Husted@kirbycorp.com*)
Kim Darnell (*Kim.Darnell@kirbycorp.com*)
Shamus O'Brien (*Shamus.Obrien@kirbycorp.com*)
Patrick Leahy (*Patrick.Leahy@bakerbotts.com*)