

HARLESS R. BENTHUL
ATTORNEY
LYRIC CENTRE
440 LOUISIANA, SUITE 600
HOUSTON, TEXAS 77002

PHONE: 713-223-0030

FAX: 713-223-0026

January 16, 2008

Via Overnight Mail and email @ www.hq.foia@epa.gov

National Freedom of Information Officer
U.S. E.P.A.
Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Ref: Appeal of Denial of Freedom of Information Act
("FOIA") Request

Dear National Freedom of Information Officer:

I represent Higman Barge Lines, Inc. of Houston, Texas ("Higman"). In connection with that representation, I submitted a request for records pursuant to the Freedom of Information Act on July 25, 2007 ("request"), substantively as follows:

Opinions of the General Counsel, programmatic interpretations or any other EPA statement of interpretation or position regarding the applicability of §§101(14) and 104(a)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 62 U.S.C. §§0601(14) and 9604(a)(2), ("the petroleum exclusion") issued contemporaneously with or subsequent to a Memorandum dated July 31, 1987, entitled Scope of the CERCLA Petroleum Exclusion Under Sections 101(14) and 104(a)(2) from Francis S. Blake, General Counsel to J. Winston Porter, Assistant Administrator.

My request is intended to include opinions, memoranda, interpretations, guidance, or any other such communication whether written, electronic or in any other form and whether originated in EPA Headquarters or a Regional Office or other EPA facility.

A copy of my request is enclosed as Exhibit 1.

My request was denied by letter dated December 18, 2007 signed by Mr. Dana Ott, Senior Counsel, Office of General Counsel, U.S.E.P.A ("denial"). A copy of the denial is enclosed as Exhibit 2.

EXHIBIT 5

I request that the denial be reversed for the reasons set forth below. The effect of the denial is to utterly frustrate the purpose of the FOIA by invoking exemption 5 in aid of perpetuating U.S. Environmental Protection Agency Region 6 ("EPA Region 6") efforts to incorrectly assert liability on the part of Higman for response costs associated with the Palmer Barge Line Superfund Site, Port Arthur, Texas ("Palmer Barge Site"). The basis of this appeal is best understood in the context of a brief history of the events that lead to this point.

1. Background

Region 6 sent Higman a Special Notice Letter ("NL") on August 18, 2000 for a removal action conducted at the site and subsequently sent a NL for a Remedial Investigation/Feasibility Study. Higman defended against liability on the basis that any transactions with the Palmer Barge Site fell within the petroleum exclusion of CERCLA (42 U.S.C. 9601(14)). See Exhibit 3. Region 6 agreed with Higman by letter of July 25, 2002 (exhibit 4).

After the passage of almost five years Region 6 sent Higman a Unilateral Administrative Order ("UAO") on May 7, 2007, again asserting liability on the part of Higman for response costs at the Palmer Barge Site (see Exhibit 5). Higman again defended against liability on the basis of the petroleum exclusion (Exhibit 6). As set forth in the Affidavit of David James enclosed as Exhibit 7, Region 6 through its attorney, Mr. Joseph Compton, III, asserted that Higman's liability and EPA's change in position was based on the holding of a federal court case (the so-called *Voda* case) that turned out to be non-existent¹ as a "petroleum exclusion" case. Mr. Compton later acknowledged that he was in error in the assertion about the *Voda* case (see Exhibit 8) and stated that the basis of EPA's change was "EPA policy supported by the Office of General Counsel...". In his letter of July 12, 2007 (Exhibit 9), Mr. Compton wrote in reply to Exhibit 6, in part:

As we discussed, the Agency believes that vacuum gas oil (VGO) was commingled or otherwise intermixed with other known CERCLA hazardous substances at the Palmer Barge site. Under CERCLA and case law interpreting its cost recovery and contribution provisions, the commingled VGO *may* give rise to liability for response costs incurred. To the extent your client brought VGO to the Palmer Barge site that was commingled with CERCLA hazardous substances *at the site*, CERCLA's joint and several liability provisions *may* be applicable. (Emphasis supplied).²

The basis of EPA's change in position on the applicability of the petroleum exclusion to Higman remains a mystery. Assuming there is a basis in Agency records as Mr. Compton asserts,

¹ There is a "*Voda*" case that involves a criminal prosecution for violation of the Clean Water Act initiated by Region 6 criminal investigators, but it has nothing to do with CERCLA or the petroleum exclusion. See *United States v. Voda*, 994 F.2d 149 (5th Cir. 1993).

² Mr. Compton's use of the word "may" twice in connection with Higman's alleged liability is telling in connection with that potential liability as is his assertion that commingling of VGO at the site may lead to liability. Liability will be the subject of a petition for reimbursement of amounts paid by Higman to comply with the UAO. However, we note in passing that the site operator recovered VGO from Higman's barges for sale. See *Affidavit of Randy Laughlin*, Exhibit 3. If the operator subsequently commingled the VGO with other material onsite (although EPA has not provided Higman with evidence to that effect), that mishandling by the operator does not create CERCLA liability on the part of Higman.

Higman did and does not now have the benefit of knowing what those records contain, if they exist.

Under the threat of the punitive sanctions available to EPA under CERCLA, Higman complied with the UAO understanding that a right to petition for reimbursement existed if EPA were wrong as to Higman's liability. Through the various changes in its explanation of its change in position and now, the use of Exemption 5, the EPA has denied Higman the benefit of those records. This a clear abuse of Exemption 5 because it forces parties in Higman's situation to litigate the liability issue in order to find out why EPA believes that Higman is liable and , in this case, why EPA changed its position. A more dramatic example of abuse of the FOIA is difficult to imagine and EPA's conduct is certainly contrary to the purpose and spirit of the FOIA.

2. Discussion and Argument

- A. The denial is inadequate because, *as to every single document withheld*, it fails to include even a brief description of the contents of the documents, let alone an indication of the issues addressed which render the document(s) exempt from disclosure. Examination of the denial (Exhibit 2) removes any doubt as to the pervasive existence of this deficiency. This results in EPA serving as sole arbiter of not only responsive documents but also applicability of exemptions and in this case, further obscures the reasons for the EPA's change in position.
- B. The denial of access to records said to be the basis of agency action frustrates minimal evaluation of the basis of EPA's change in position. The purpose of the FOIA is disclosure of government records, unless specifically exempted. *Vaughn v. Rosen*, 484 F. 2d 820, U.S.App. D.C.(1973). When the government denies access to records the burden is on the agency to prove *de novo* in trial court that the information sought fits under one of the exemptions. *Id.* The denial of access to records that might explain a basis for the change in EPA's position on applicability of the petroleum exclusion to Higman combined with the coercive powers of CERCLA over a PRP under §106 of CERCLA subject an otherwise innocent party to double litigation just to establish fairness. Such cannot be acceptable conduct on the part of an agency of the United States.
- C. The records denied must be part of the administrative process leading to the agency decision, here to subject Higman to CERCLA liability. *Inderjit Badhwar v. United States Department of the Air Force*, 622 F. Supp. 1364, (D.C. Dist. 1985)³. That decision was the issuance of the UAO on May 7, 2007 which reversed the July 25, 2002 decision agreeing with Higman. The decision-making in this case therefore took place in that time interval. The dates of the withheld records range from November 24, 1987 to May 6, 1997. The gap between May 6, 1997 and July 25, 2002 (or realistically some later date closer to May 7, 2007) begs the question, how are the withheld documents part of the decision to subject

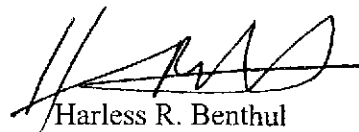
³ Quoting *Mead Data Central v. United States Department of the Air Force*, 184 U.S. App. D.C. 350, 566 F.2d 242 (D.C. Cir. 1977). "Predecisional materials are not exempt merely because they are predecisional; they must also be part of the deliberative process within a government agency..."

Higman to CERCLA liability that was made at least five years (and more likely nearly ten years) later? There is no indication of record that the withheld documents were part of the decision-making process that led to the UAO.

For all the foregoing reasons, I respectfully request that the denial be reversed and that the EPA respond to my FOIA request in a manner consistent with the arguments made herein and in accordance with the spirit of the FOIA.

For your information, the email version of this request is being submitted without enclosures pursuant to a telephone conversation with Mr. Kevin Miller on January 14, 2008. The enclosures are being transmitted by overnight mail this date.

Sincerely,



Harless R. Benthul

Enclosures

cc: Mr. Kevin Miller via email @ www.miller.kevin@epa.gov
Mr. David James

Harless Benthul

From: Harless Benthul [harless.benthul@bwfirm.com]
Sent: Wednesday, July 25, 2007 3:43 PM
To: 'hq.foia@epa.gov'
Cc: 'David James'
Subject: FOIA Request
Attachments: FOIAJul2507.pdf

Mr. Gottesman: Please refer to the attached request for records pursuant to the Freedom of Information Act.

Thank you.

Harless R. Benthul

HARLESS R. BENTHUL
ATTORNEY
440 Louisiana St., Suite 600
Houston, TX 77002

713-223-0030

713-223-0026(fax)

July 25, 2007

Via email @ hq.foia@epa.gov

Mr. Larry F. Gottesman
National FOIA Officer
U. S. E.P.A.
1200 Pennsylvania Ave. N.W.
Mail Code 2822T
Washington, DC 20460

Dear Mr. Gottesman:

I request copies of the following records pursuant to the Freedom of Information Act:

Opinions of the General Counsel, programmatic interpretations or any other EPA statement of interpretation or position regarding the applicability of §§101(14) and 104(a)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 62 U.S.C. §§0601(14) and 9604(a)(2), ("the petroleum exclusion") issued contemporaneously with or subsequent to a Memorandum dated July 31, 1987, entitled Scope of the CERCLA Petroleum Exclusion Under Sections 101(14) and 104(a)(2) from Francis S. Blake, General Counsel to J. Winston Porter, Assistant Administrator.

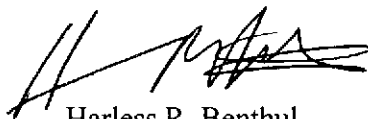
My request is intended to include opinions, memoranda, interpretations, guidance, or any other such communication whether written, electronic or in any other form and whether originated in EPA Headquarters or a Regional Office or other EPA facility.

I am willing to pay the reasonable cost of retrieval and reproduction of the requested records. I would appreciate an advance call if it appears the cost will exceed \$1000.00.

Please call me if you have any questions about my request. Alternatively, you may contact me by email at harless.benthul@bwfirm.com.

Thank you for your cooperation.

Sincerely,

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

Harless R. Benthul

cc: David James



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

December 18, 2007

OFFICE OF
GENERAL COUNSEL

Harless R. Benthul, Esq.
Suite 600
440 Louisiana Street
Houston, TX 77002

RE: Freedom of Information Act Request HQ-RIN-01729-07

Dear Mr. Benthul:

This is in response to your Freedom of Information Act request of July 25, 2007,
seeking:

Opinions of the General Counsel, programmatic interpretations or any other EPA statement of interpretation or position regarding the applicability of §§ 101(14) and 104(a)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 62 U.S.C. §§0606(14) and 9604(a)(2), ("the petroleum exclusion") issued contemporaneously with or subsequent to a Memorandum dated July 31, 1987, entitled Scope of the CERCLA Petroleum Exclusion Under Sections 101(14) and 104(a)(2) from Francis S. Blake, General Counsel to J. Winston Porter, Assistant Administrator.

We have identified a number of documents that may be responsive to your request. The documents are itemized on the attached list. We have determined that each of these documents is exempt from mandatory disclosure under 5 U.S.C. 552(b), exemption 5. That exemption applies to "Interagency or intraagency memorandums or letters which would not be available by law to a party other than a party in litigation with the agency." The documents are privileged under the deliberative process privilege, the attorney-client privilege, and the attorney work product privilege.

Harless Benthul
Page Two

You may appeal this denial to the National Freedom of Information Officer, U.S. EPA, Records, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, NW (2822T), Washington, DC 20460; FAX 202-566-2147; E-mail "hq.foia@epa.gov". The appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the RIN listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

If you have any questions, please feel free to call me on 312-353-5732.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana B. Ott", written in a cursive style.

Dana B. Ott
Senior Counsel

Attachment

AGENCY MEMOS ADDRESSING CERCLA PETROLEUM EXCLUSION

CERCLA Enforcement Actions Involving Used Oil Contaminated with Lead, From Charles de Saillan, OECM, to Carrie Wehling, OGC (November 24, 1987).

Scope of the CERCLA Petroleum Exclusion From: Henry L. Longest, II, Director, Office of Emergency and Remedial Response To: Frederick F. Stiehl, Enforcement Counsel, Water Enforcement (DRAFT) (date unknown).

Applicability of the CERCLA Petroleum Exclusion to Waste Tank Bottoms from Bulk Storage Terminal and Pumping Stations, From J. Scott Pemberton, Assistant Regional Counsel to Carrie Wehling, OGC (March 4, 1988).

Application of Petroleum Exclusion to the Sand Creek, Colorado NPL Site, From Carrie Wehling, Solid Waste and Emergency Response Division, OGC, to Jane Gardner, Office of Regional Counsel, Region VIII (March 28, 1988).

Complying with Federal Requirements for Reporting Releases of Hazardous Substances Emergency Response Division, U.S. EPA (October 16, 1990).

Memorandum Regarding Actions That May Affect the Petroleum Exclusion, From Steve Luftig, Chief, Emergency Response Division, To Henry L. Longest, Director, Office of Solid Waste and Emergency Response (November 14, 1990).

CERCLA Petroleum Exclusion, NOTE TO: Henry Longest, FROM: Steve Luftig (Nov. 14, 1990).

CERCLA Petroleum Exclusion, From Don R. Clay, Assistant Administrator, OSWER, To E. Donald Elliott, General Counsel (November 27, 1990).

Impact on the CERCLA Petroleum Exclusion of Listing Benzene from Gasoline under Section 112 of the New CAA, From Don R. Clay, Assistant Administrator, OSWER, To William G. Rosenberg, Assistant Administrator, Office of Air and Radiation, (date partially obscured - 1990).

Note to Don, Re Designation of CAA hazardous air pollutants as CERCLA hazardous substances, From Earl Salo/ Carrie Wehling (April 25, 1991).

Authorities to Address Oil Distillate Plume in the GEI (Northwest Indiana), From Lynn Peterson, Through Bertram Frey, Acting Regional Counsel, Region V, to Ralph R. Bauer, Deputy Regional Administrator, Region V (April 26, 1991).

Petroleum Exclusion - Legal Background and Options, Briefing for the Assistant Administrator (May 7, 1991).

Interpretation of the Petroleum Exclusion Under Section 101 (14) of CERCLA , From: Charlie de Saillan, Staff Attorney, Thru: William A. White, Associate Enforcement Counsel for Superfund, To: Ray B. Ludwiszewski, Acting Assistant Administrator; Edward E. Reich, Deputy Assistant Administrator; Scott C. Fulton, Director of Civil Enforcement (July 1, 1991).

Impact of the 1990 CAA Amendments and the RCRA Toxicity Characteristics Rule on the CERCLA Petroleum Exclusion, From E. Donald Elliott, General Counsel, To Don R. Clay, Assistant Administrator, OSWER (August 15, 1991).

Recommended Participation as Amicus Curiae on the Issue of the Scope of the Petroleum Exclusion in Cose v. Getty Oil Co. (9th Cir.), From William White, Enforcement Counsel for Superfund, To Lisa Friedman, Associate General Counsel for Solid Waste and Emergency Response (November 4, 1991).

Court Ruling on Scope of CERCLA Petroleum Exclusion, From Lisa K. Friedman, Assistant General Counsel, To Don R. Clay Assistant Administrator for Solid Waste and Emergency Response (January 3, 1992).

Interpretation of the Petroleum Exclusion Under Section 101 (14) of CERCLA , From: Charlie de Saillan, Senior Attorney To: Hazardous Waste Branch Chiefs, Office of Regional Counsel Regions I-X - transmittal of draft memorandum (February 12, 1992).

"NOTE TO": Bowdy Train, from: Steve Luftig regarding Directive on Scope of CERCLA petroleum Exclusion (Feb. 14, 1992).

Comments on Draft Directive on the Scope of the Petroleum Exclusion under CERCLA From: Lynn Peterson, Chief, Solid Waste and Emergency Response Branch, Office of Regional Counsel, Region V, To: Deborah Y. Dietrich, Acting Director, Emergency Response Division (March 11, 1992).

Proposed OERR Interpretation of the Petroleum Exclusion Under Section 101(14) of CERCLA , From: Charlie de Saillan, Senior Attorney, To: Gerain Perry, Office of Emergency and Remedial Response (March 20, 1992).

The Applicability of the Toxicity Characteristic Rule to Petroleum-Contaminated Media and Debris, From: Henry L. Longest II, to Sylvia K. Lowrance, Office of Solid Waste (Apr. 27, 1992).

Coverage of Petroleum Storage Tank Bottoms Under CERCLA, From: Don R. Clay To: Regional Waste Division Directors, Regional Counsels (DRAFT - no date).

Interpretation of CERCLA Petroleum Exclusion, From: Earl Salo, OGC, To: ORC CERCLA Branch Chiefs - transmitting draft preamble (May 18, 1992).

Review of CERCLA Petroleum Exclusion Language, FROM: Deborah Y. Dietrich, Emergency Response Division, TO: Regional Counsels, Superfund Branch Chiefs, et al. (date partially obscured, approximately May 1990).

Superfund Response Actions to Petroleum-Related Contamination and Petroleum Tank Bottoms, NOTE TO: William White, FROM: Deborah Y. Dietrich, Acting Director, Emergency Response Division (June 24, 1992).

Scope of the Petroleum Exclusion under CERCLA, From: Don R. Clay, To: Directors Waste Mgmt. Div.'s, Directors Emergency and Remedial Response Div's, Directors Hazardous Waste Management Div's, ESD's (DRAFT - no date).

Scope of the Petroleum Exclusion Under CERCLA, FROM: Henry L. Longest II, TO: : Directors Waste Mgmt. Div.'s, Directors Emergency and Remedial Response Div's, Directors Hazardous Waste Management Div's, ESD's (DRAFT - no date).

Impact of the Toxicity Characteristic Leaching Procedure Rule on the CERCLA Petroleum Exclusion, (3-page background paper, no other identification).

Justification for OERR Position on Impacts of the CAA Amendments and the TC Rule on the CERCLA Petroleum Exclusion, (1-page draft background paper, no date).

Application of Petroleum Exclusion to the Sand Creek, Colorado, NPL Site, From: Carrie Wehling, Attorney, Solid Waste and Emergency Response Division, To: Jane Gardner, Assistant Regional Counsel, Office of Regional Counsel, Region VIII (Date Unknown).

Petroleum Exclusion Notice of Interpretation and Proposed Rule - Steering Committee Briefing (undated).

Superfund Response Actions for Petroleum Tank Bottoms, FROM: William A White, Enforcement Counsel for Superfund, TO: Deborah Dietrich, Emergency Response Division (Aug. 6, 1992).

Review and Comment on Draft Directive on Scope of the Petroleum Exclusion under CERCLA, FROM: Deborah Y.

Deitrich, Emergency Response Division, TO: Superfund Branch Chiefs, Regions I - X, et al (no date).

(Proposed) OSWER Directive on the Scope of the CERCLA Petroleum Exclusion Directive, From: Henry L. Longest II
To: Don R. Clay (October 8, 1992).

Favorable Court of Appeals Decision on Scope of the CERCLA Petroleum Exclusion in Cose v. Getty Oil Company From: William A. White, Enforcement Counsel for Superfund,
To: Regional Counsels, Regions I-X; Hazardous Waste Division Directors, Regions I-X; Bruce M. Diamond, Director, Office of Waste Programs Enforcement; Lisa K. Friedman, Associate General Counsel for Solid Waste and Emergency Response (August 26, 1993).

Decision Concerning the Scope of the CERCLA Petroleum Exclusion in Cose v. Getty Oil Co., FROM: Thomas H. Beisswenger, OGC, TO: Richard J Guimond, Acting Assistant Administrator for Solid Waste and Emergency Response (Sept. 17, 1993).

Applicability of the Petroleum Exclusion to Releases at the Shell Oil Wood River Complex. From Tom Beisswenger, OGC,
To Fred Zimmerman, et al., OECA (December 13, 1993).

Opinion Interpreting the Petroleum Exclusion under CERCLA: Licciardi v. Murphy Oil USA, Inc. From: Sandra L. Connors, Director, Regional Support Division,
To: Regional Counsels, Regions I-X (November 25, 1994).

Request for Agency Review and Opinion Regarding Arizona Portland Cement Company, FROM: Katherine Shine, Region IX, TO: Charles Openchowski, Office of General Counsel (May 1, 1997).

Request for Agency Review and Opinion Regarding Arizona Portland Cement Company, FROM: Gail Cooper and Katherine Shine, Region IX, TO: Lisa K. Friedman, Office of General Counsel (May 2, 1997).

Request for Agency Review and Opinion Regarding Arizona Portland Cement Company, FROM: Lisa K. Friedman, Associate General Counsel, TO: Gail Cooper, Deputy Regional Counsel, Region IX (May 6, 1997).

STEVENS, BALDO & FREEMAN

A REGISTERED LIMITED LIABILITY PARTNERSHIP

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TELEPHONE: (713) 961-1520
FACSIMILE: (713) 961-1556

November 12, 2001

Joseph Compton
United States Environmental Protection Agency, Region 6
Superfund Division (6SF-DL)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: United States Environmental Protection Agency; Palmer Barge Line Superfund Site

Dear Mr. Compton:

Enclosed you will find two affidavits that were executed by Higman Barge Line, Inc. employees in response to your request. The first affidavit was executed by Mr. John T. McMahan, Secretary for Higman Barge Line, Inc. The affidavit describes the transactions Higman Barge Line, Inc. had with the Palmer Barge Line Terminal and the cargoes aboard Higman vessels when they entered that facility. The second affidavit was executed by Mr. Randy Laughlin, Maintenance Superintendent for Higman Barge Line, Inc. During the times relevant to this action, Mr. Laughlin was responsible for overseeing the day to day maintenance that was performed by various contractors for Higman Barge Line, Inc., including work done by Palmer.

These affidavits and the materials submitted in response to the EPA's Information Request reveal that Higman Barge Line, Inc. placed Crude Oil and No. 6 Oil into the Palmer Barge Line Facility on twelve separate occasions. The remaining transaction involved small volume mixture of water, motor oil, and diesel taken from the bilge of a towboat owned by Higman Barge Line, Inc. Since these transactions clearly fall within the petroleum exclusion of 46 U.S.C. § 9601(14), Higman requests to be released from this action. I would appreciate a response in the coming days so that my client is spared the expense of traveling to Dallas on November 15 for the Potentially Responsible Party meeting.

Very truly yours,



David James

DJ/tfv
Enclosures

EXHIBIT 3

THE STATE OF TEXAS

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§

KNOW ALL MEN BY THESE
PRESENTS

COUNTY OF HARRIS

AFFIDAVIT OF JOHN T. MCMAHAN

BEFORE ME, the undersigned notary public, on this day personally appeared JOHN T. MCMAHAN, who, being first duly sworn by me according to law, on his oath, deposed and stated the following:

"My name is John T. McMahan, and I am above the age of eighteen (18) years and have never been convicted of a felony or crime involving moral turpitude. I am the Secretary of Higman Barge Lines, Inc. I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein and they are all true and correct. I have been Secretary of Higman Barge Lines, Inc. since December 1986.

As Secretary of Higman Barge Lines, Inc., I am responsible for the records of the corporation. The records of Higman Barge Line show the following:

1. On March 14, 1993, the tank barge HTCO 2302 was taken to the Palmer Barge Facility in Port Arthur, Texas to be steamed. The barge was loaded with VGO.
2. On March 14, 1993, the tank barge HTCO 2301 was taken to the Palmer Barge Facility in Port Arthur, Texas to be steamed. The barge was loaded with VGO.
3. On March 26, 1993, the tank barge GDM 264 was taken to the Palmer Barge Facility in Port Arthur, Texas to be steamed. The barge was loaded with No. 6 Fuel Oil.
4. On March 26, 1993, the tank barge S 2512 was taken to the Palmer Barge Facility in Port Arthur, Texas to be steamed. The barge was loaded with No. 6 Fuel Oil.
5. On October 7, 1993, the tank barge S 2022 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being Crude Oil.
6. On October 23, 1993, the tank barge HTCO 2517 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being Crude Oil.

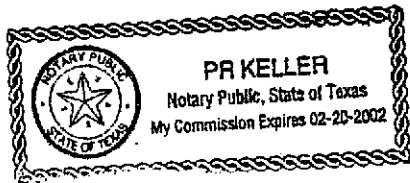
7. On November 30, 1993, the tank barge S 2018 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being Crude Oil.
8. On December 1, 1993, the M/V JOE M. POWELL was taken to the Palmer Barge Facility in Port Arthur, Texas.
9. On December 27, 1993, the tank barge HTCO 3006 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being Crude Oil.
10. On December 27, 1993, the tank barge HTCO 3007 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being Crude Oil.
11. On February 14, 1994, the tank barge HTCO 2201 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being Crude Oil.
12. On March 1, 1994, the tank barge HTCO 2010 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being Crude Oil.
13. On March 6, 1994, the tank barge HTCO 2302 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being No. 6 Fuel Oil.
14. On March 25, 1994, the tank barge S 2018 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time.
15. On March 25, 1994, the tank barge S 2017 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time.
16. On March 6, 1994, the tank barge HTCO 2516 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being Crude Oil.
17. On May 5, 1994, the tank barge HTCO 3007 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being Crude Oil.
18. On July 15, 1996, the M/V MARRIANNE was taken to the Palmer Barge Facility in Port Arthur, Texas to have a steering arm welded.

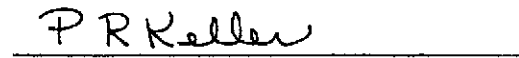
19. On July 25, 1996, the tank barge S 2018 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty with its previous cargo being crude oil.
20. On August 3, 1995, the tank barge HTCO 2201 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the time with its previous cargo being Crude Oil.

Further, the affiant saith not."


JOHN T. MCMAHAN

SUBSCRIBED AND SWORN to by the said JOHN T. MCMAHAN on this the 31ST day
of OCTOBER, 2001, to certify which witness my hand and official seal.




NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS

§
§
§
§

KNOW ALL MEN BY THESE
PRESENTS

COUNTY OF HARRIS

AFFIDAVIT OF RANDY LAUGHLIN

BEFORE ME, the undersigned notary public, on this day personally appeared RANDY LAUGHLIN, who, being first duly sworn by me according to law, on his oath, deposed and stated the following:

"My name is Randy Laughlin, and I am above the age of eighteen (18) years and have never been convicted of a felony or crime involving moral turpitude. I am a Maintenance Superintendent with Higman Barge Lines, Inc. I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein and they are all true and correct. I have been employed with Higman Barge Lines, Inc. since January 1, 1982.

In my capacity as a Maintenance Superintendent with Higman Barge Lines, Inc., I liased with representatives of the Palmer Barge Terminal concerning work being done for my employer.

At all times relevant hereto, the Palmer Barge Terminal engaged in a recycling operation where crude oil and petroleum taken from Higman Barge Lines, Inc. tank barges were placed into storage tanks to be resold.

On several occasions, I spoke with representatives of the Palmer Barge Terminal regarding their disposal and recycling methodology. Representatives of the Palmer Barge Terminal informed me that all materials not recycled were properly disposed of at offsite disposal facilities.

To my knowledge, all materials taken from Higman Barge Lines, Inc. tank barges were either recycled or properly disposed of at offsite disposal facilities. I have no knowledge of materials being disposed of at the Palmer Barge Terminal Site.

I periodically supervised the following jobs on barges owned and/or operated by my employer:

1. On December 1, 1993, I visited the Palmer Facility when the No. 1 Starboard cargo tank of the tank barge S 2018 was stripped, mucked, butterworthed, washed, and dried by Palmer. I supervised the work being performed by Palmer Barge Terminal for my employer, including the removal of materials from the S 2018. I witnessed crude oil being stripped from this barge and being placed in storage for recycling. I witnessed Palmer Barge Terminal Personnel placing the remaining materials from this barge in fifty-five gallon drums for offsite disposal.

2. On February 14, 1994, I visited the Palmer Facility when the No. 6 Port and Starboard cargo tanks of the tank barge HTCO 2201 were stripped, butterworthed, washed, and dried. I supervised the work being performed by Palmer Barge Terminal for my employer, including the removal of No. 6 Oil from the HTCO 2201. I witnessed No. 6 Oil being stripped from this barge and being placed in storage for recycling.
3. On March 1, 1994, I visited the Palmer Facility when the No. 2 Port cargo tank of the tank barge GDM 264 was stripped, mucked, butterworthed, washed, and dried by Palmer. I supervised the work being performed by Palmer Barge Terminal for my employer, including the removal of materials from the GDM 264. I witnessed crude oil being stripped from this barge and being placed in storage for recycling. I witnessed Palmer Barge Terminal Personnel placing the remaining materials from this barge in fifty-five gallon drums for offsite disposal.
4. On March 1, 1994, I visited the Palmer Facility when the No. 1 Starboard cargo tank and No. 2 Port cargo tank and pipeline of the tank barge HTCO 2010 were stripped by Palmer. I supervised the work being performed by Palmer Barge Terminal for my employer, including the removal of Crude Oil from the HTCO 2010. I witnessed Crude Oil being stripped from this barge and being placed in storage for recycling.
5. On March 4, 1994, I visited the Palmer Facility when the No. 1 Starboard cargo tank of the tank barge HTCO 2302 was stripped, butterworthed, mucked, washed, and dried by Palmer. I supervised the work being performed by Palmer Barge Terminal for my employer, including the removal of No. 6 Oil from the HTCO 2302. I witnessed No. 6 Oil being stripped from this barge and being placed in storage for recycling. I witnessed Palmer Barge Terminal Personnel placing the remaining materials from this barge in fifty-five gallon drums for offsite disposal.
6. On May 13, 1994, I visited the Palmer Facility when the No. 1 Starboard cargo tank of the tank barge HTCO 3007 was stripped, butterworthed, mucked, washed, and dried by Palmer. I supervised the work being performed by Palmer Barge Terminal for my employer, including the removal of Crude Oil from the HTCO 2302. I witnessed Crude Oil being stripped from this barge and being placed in storage for recycling. I witnessed Palmer Barge Terminal Personnel placing the remaining materials from this barge in fifty-five gallon drums for offsite disposal.
7. On August 3, 1995, I visited the Palmer Facility when the No. 3 and No. 4 cargo tanks of the tank barge HTCO 2201 were stripped and washed by Palmer. I supervised the work being performed by Palmer Barge Terminal for my employer, including the removal of Crude Oil from the HTCO 2201. I witnessed Crude Oil being stripped from this barge and being placed in storage for recycling.

I am familiar with the work that was performed on the following vessels owned and/or operated by Higman Barge Lines, Inc.:

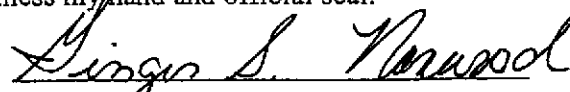
1. On March 14, 1993, the tank barge HTCO 2302 was taken to the Palmer Barge Facility in Port Arthur, Texas to be steamed. The barge was loaded with VGO. Steaming of this barge would not result in cargo being removed from the barge into the Palmer facility.
2. On March 14, 1993, the tank barge HTCO 2301 was taken to the Palmer Barge Facility in Port Arthur, Texas to be steamed. The barge was loaded with VGO. Steaming of this barge would not result in cargo being removed from the barge into the Palmer facility.
3. On March 26, 1993, the tank barge GDM 264 was taken to the Palmer Barge Facility in Port Arthur, Texas to be steamed. The barge was loaded with No. 6 Fuel Oil. Steaming of this barge would not result in cargo being removed from the barge into the Palmer facility.
4. On March 26, 1993, the tank barge S 2512 was taken to the Palmer Barge Facility in Port Arthur, Texas to be steamed. The barge was loaded with No. 6 Fuel Oil. Steaming of this barge would not result in cargo being removed from the barge into the Palmer facility.
5. On October 7, 1993, the tank barge S 2022 was taken to the Palmer Barge Facility in Port Arthur, Texas to have the No. 2 Starboard cargo tank stripped, butterworthed, washed, and dried. The barge was empty at the time with its previous cargo being Crude Oil. This operation would only result in Crude Oil being removed from the barge.
6. On October 23, 1993, the tank barge HTCO 2517 was taken to the Palmer Barge Facility in Port Arthur, Texas to have the No. 2 Starboard cargo tank stripped, butterworthed, washed, and dried. This operation would only result in Crude Oil being removed from the barge.
7. On December 1, 1993, the M/V JOE M. POWELL was taken to the Palmer Barge Facility in Port Arthur, Texas to have the bilges on the boat pressure washed and stripped. The bilge contained approximately 95% water with less than 5% being motor oil and diesel oil.
8. On December 27, 1993, the tank barge HTCO 3006 was taken to the Palmer Barge Facility in Port Arthur, Texas to have the steam coils tested for leaks and flushed. The barge was empty at the time with its previous cargo being Crude Oil. No cargo was removed from the barge into the Palmer facility. Testing and flushing of the steam coils on this barge would not result in cargo being removed from the barge into the Palmer facility.

9. On December 27, 1993, the tank barge HTCO 3007 was taken to the Palmer Barge Facility in Port Arthur, Texas to have the steam coils tested for leaks and flushed. The barge was empty at the time with its previous cargo being Crude Oil. No cargo was removed from the barge into the Palmer facility. Testing and flushing of the steam coils on this barge would not result in cargo being removed from the barge into the Palmer facility.
10. On March 25, 1994, the tank barge S 2017 was taken to the Palmer Barge Facility in Port Arthur, Texas to have the pipeline and cargo pump well stripped. The barge was empty at the time. This operation would only result in Crude Oil being removed from the barge.
11. On July 15, 1996, the M/V MARRIANNE was taken to the Palmer Barge Facility in Port Arthur, Texas to have a steering arm welded. This repair would not result in cargo being removed from the barge into the Palmer facility.
12. On July 25, 1996, the tank barge S 2018 was taken to the Palmer Barge Facility in Port Arthur, Texas to have a check valve repaired and replaced. This repair would not result in cargo being removed from the barge into the Palmer facility.
13. On August 3, 1995, the tank barge HTCO 2201 was taken to the Palmer Barge Facility in Port Arthur, Texas to have the No. 3 and No. 4 cargo tanks stripped and washed. The barge was empty at the time with its previous cargo being Crude Oil. This operation would only result in Crude Oil being removed from the barge.

Further, the affiant saith not."


RANDY LAUGHLIN

SUBSCRIBED AND SWORN to by the said RANDY LAUGHLIN on this the 8th day
of November, 2001, to certify which witness my hand and official seal.


NOTARY PUBLIC, STATE OF TEXAS





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JUL 25 2002

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Higman Barge Line, Inc.
c/o Mr. David James
Stevens, Baldo & Freeman
550 Fannin, Suite 400
Beaumont, TX 77701

Re: Palmer Barge Line Superfund Site

Dear Sir or Madam:

On August 18, 2000, the U.S. Environmental Protection Agency ("EPA") sent your company a Notice Letter ("NL") for the removal action conducted at the Palmer Barge Line Superfund Site ("Site") located in Port Arthur, Jefferson County, Texas. In addition, on September 10, 2001, EPA sent your company a Special Notice Letter for the Remedial Investigation/Feasibility Study at the Site. Based on its subsequent investigation, EPA has determined that it does not consider your company to be a Potentially Responsible Party ("PRP") for the site.

This determination is based on the information currently available to EPA. If EPA develops additional evidence which indicates that your company is a PRP, it will notify you and provide you with additional information regarding your possible involvement in the activities at the site. We apologize for any inconvenience this may have caused.

If you have questions regarding this matter, please do not hesitate to contact EPA Enforcement Officer, Mr. Kenneth Talton, at (214) 665-7475. You or your attorney may also contact EPA Assistant Regional Counsel, Mr. Joseph Compton, at (214) 665-8506. Thank you for your attention to this matter.

Sincerely yours,

Amelia Phillips, Acting

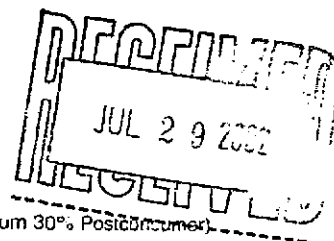
Myron O. Knudson, P.E.

Director

Superfund Division

cc: Texas Natural Resource
Conservation Commission

Mr. Carl B. Everett, Attorney (I. E. Dupont)
RI/FS Steering Committee, Lead



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EXHIBIT 4



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

CERTIFIED MAIL -

RETURN RECEIPT REQUESTED 7003050000038701730

May 7, 2007

Higman Barge Line Inc.
c/o Stevens, Baldo & Freeman
Attorneys At Law
550 Fannin, Suite 400
Beaumont, TX 77701

RE: Palmer Barge Superfund Site, Port Arthur, Jefferson County, Texas

Dear Sir/Madam:

The United States Environmental Protection Agency ("EPA") appreciates the efforts of the cooperating potentially responsible parties ("PRP") for the Palmer Barge Superfund Site ("Site"). Past negotiations between EPA and several Respondents in connection with the Palmer Barge Superfund Site have been productive. An Administrative Order on Consent for a Remedial Investigation/Feasibility Study ("AOC") was negotiated and voluntarily executed by several named Respondents. A Record of Decision (ROD) was subsequently produced that outlined the remedial action for the Site. The date of this ROD was September 25, 2005.

The EPA subsequently issued Special Notice for the Remedial Design and Remedial Action ("RD/RA"). At the time of Special Notice, EPA identified and notified a larger group of PRPs than had participated in the RI/FS. EPA hoped that all of those PRPs would participate in consent decree negotiations for the Site. Unfortunately, not all parties have chosen to make a good faith offer to perform the RD/RA. In fact, the primary response has come from the same parties which performed the earlier activities. EPA has concluded that, given the fact that both EPA and the cooperating PRPs have been unsuccessful in efforts to persuade the parties to participate in a good faith offer, significant delays can be expected in pursuing those parties. In light of this conclusion, and because the EPA has determined that the remaining hazardous substances pose a continued threat to human health, EPA has issued the enclosed Unilateral Administrative Order for Remedial Design and Remedial Action ("Order"). The EPA appreciates the cooperation exhibited by the cooperating PRPs and hopes that the RD/RA can be accomplished in a timely and cooperative manner.

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MAY 11 2007

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EXHIBIT 5

Please find enclosed an Unilateral Administrative Order for Remedial Design and Remedial Action ("Order") related to the Palmer Barge Superfund Site issued pursuant to 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). The Order requires that Higman Barge Line Inc., and the other named Respondents conduct the Remedial Design and Remedial Action for the Palmer Barge Superfund Site.

As a separate matter, the EPA intends to conduct concurrent negotiations for the resolution of past EPA costs incurred. You will be contacted in the near future regarding those activities.

EFFECTIVE DATE OF ORDER

Please note that pursuant to Section XXVI (Effective Date and Computation of Time) of the Order, the Order is effective on May 7, 2007.

OPPORTUNITY TO CONFER PRIOR TO EFFECTIVE DATE

As provided in Section XXVII (Opportunity to Confer) of the Order, Respondents have the opportunity to meet with EPA. If a Respondent desires such a conference with EPA, please note that it must make its request within five (5) days from the date that the Order was signed. If a Respondent requests a conference with the RPM and/or the Site's attorney, it is to take place at the offices of EPA Region 6. The request for a conference date must be made by telephone followed by written confirmation mailed that day to:

Joseph E. Compton, III
Association Regional Counsel
Office of Regional Counsel (6RC-S)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 665-8506
FAX: (214) 665-6460
Email: compton.joseph@epa.gov

NOTICE OF INTENT TO COMPLY

Pursuant to Section X (Notice of Intent to Comply) of the Order, not later than fourteen (14) days after the effective date of the Order, Respondents are required to provide written notice to EPA's Project Coordinator stating whether they will comply with the terms of the Order.

Failure to provide such notice constitutes a violation of the Order. The notice must be addressed to:

Carlos Sanchez
Remedial Project Manager
Superfund Division (6SF-AP)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 665-8507
FAX: (214) 665-6660
Email: sanchez.carlos@epa.gov

Please note that Respondents will be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$32,500 for each day in which it willfully violates or fails or refuses to comply with the Order, without sufficient cause. In addition, failure to properly provide response action under the Order, or any portion thereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Hazardous Substance Superfund as a result of such failure to take proper action.

Please direct any questions concerning legal matters or responses to this letter to Joseph E. Compton, III, at the telephone or address above. Any questions concerning the response work to be undertaken at the Site should be addressed to Carlos Sanchez at the telephone or address provided above.

Sincerely yours,



Samuel Coleman, P.E.
Director
Superfund Division

Enclosure

cc: Texas Commission on Environmental Quality

UNILATERAL ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:) CERCLA DOCKET NO. 06-12-07
)
Palmer Barge Superfund Site) UNILATERAL ADMINISTRATIVE
Port Arthur, Jefferson County, Texas) ORDER FOR REMEDIAL DESIGN
) REMEDIAL ACTION
)
DuPont Industries, Inc., et al.) Proceeding Under Section 106(a) of the
) Comprehensive Environmental Response,
) Compensation, and Liability Act of 1980,
) as amended (42 U.S.C. 9606(a))
)
Respondent)
_____)

**UNILATERAL ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION**

I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondent(s) to perform a remedial design for the remedy described in the Record of Decision for the Palmer Barge Superfund Site, dated September 25, 2006, and to implement the design by performing a remedial action. This Order is issued to Respondent(s) by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B; and re-delegated by the Regional Administrator to the Director, Superfund Division, by EPA Delegation No. 14-14-B (August 4, 1995).

II. FINDINGS OF FACT

2. The Palmer Barge Superfund Site is located in the City of Port Arthur, Jefferson County, Texas. The site encompasses approximately 17 acres and is located on the Southeast Industrial Islet, approximately 4.5 miles east-northeast of the City of Port Arthur, Jefferson County, Texas, and 0.5 miles southwest of the confluence of the Neches River and the Sabine-Neches Canal. It is bordered to the south by the State Marine Superfund Site and to the east by Lake Sabine.

a. The property at the Site was used as a municipal landfill from 1956 until 1982, when Palmer Barge Line, Inc., purchased it for use as a marine vessel service and maintenance facility. Primary operations at the Palmer Barge Line facility included cleaning, de-gassing, maintenance, and inspection of barges and other marine equipment.

b. Typical cleaning operations at the Site included the removal of sludge and other residual material by pressure steaming the vessel holds, engines and boilers. Engines were de-greased and thick accumulations were cut from the holds, making removal of residual material easier. De-gassing activities involved the removal of explosive vapors from the barge hold. A flare was used to burn excess gasses and liquids produced during facility operations.

c. Structures previously located on the Site included dozens of various-sized steel above-ground storage tanks (AST's), an oil-water separator, two mixed fuel boilers, two wastewater treatment tanks, and several open-top slop tanks, roll-off boxes and 55-gallon drums.

d. The site was added to the National Priorities List (NPL) on July 27, 2000.

e. In August of 2000, EPA Region 6 conducted a Removal Action to remove source materials stored on-site. Activities included waste removal, water treatment, oil/water separation, and sludge stabilization. Approximately 250,000 gallons of water were treated on-site; 500 cubic yards of sludge stabilized; and 100,000 gallons of oil/styrene were separated and removed from the Site. All of the AST's were removed except for a 25,000 gallon AST on the northern portion of the Site that contains sludge. Several of the concrete AST foundations remain along with gravel throughout the Site.

f. On September 30, 2002, EPA Region 6 issued an Administrative Order on Consent to conduct the remedial investigation and feasibility study (RI/FS) for the Palmer Barge Superfund Site. Respondents to the Order were: E.I. du Pont de Nemours and Company; Chevron/Texaco Inc.; Kirby Inland Marine, LP; Kirby Inland Marine, Inc. of Louisiana; and Ashland Inc.

g. On September 30, 2005, EPA Region 6 accepted and certified the Record of Decision (ROD) for the Palmer Barge Superfund Site.

3. The following parties have been identified as responsible parties and are characterized as the following:

a. Chester Slay is now, and has been since on or about September 2, 1997, the owner and operator of the facility.

b. Former owner/operator(s) John Palmer and the company Wrangler Capital were, from on August 1976 or about April, 1982, until September 2, 1997, the owner/operators respectively of the facility. During that time hazardous substances, including some or all of those described in this section, were disposed of at the Site.

c. Respondents American Commercial Barge Line Company, Apex Towing, Ashland, BTC, Inc., Cenac Towing Company, Inc., Chevron/Texaco, Conoco, DuPont, ExxonMobil, Higman Barge Line, Inc., Kirby, K-Sea Transportation Corporation/Eklof Marine, Martin Gas Marine, Ocean Transport Corporation and Trinity Industries, Inc., arranged, by contract or agreement, or otherwise, for the disposal or treatment of or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by Respondents. Hazardous substances of the same kind as those owned or possessed by Respondents American Commercial Barge Line Company, Apex Towing, Ashland, BTC, Inc., Cenac Towing Company, Inc., Chevron/Texaco, Conoco, DuPont, ExxonMobil, Higman Barge Line, Inc., Kirby, K-Sea Transportation Corporation/Eklof Marine, Martin Gas Marine, Ocean Transport Corporation and Trinity Industries, Inc. were present at the Site.

4. The respondents identified in paragraph 3 are collectively referred to as "Respondents."

5. On July 27, 2000, (Federal Register Listing (FRL-6841-3), Volume 65, Number 145, Pages 46096-46104), pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, the EPA placed the Palmer Barge Superfund Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

7. From about September 30, 2002 to about September 30, 2005, a number of potentially responsible parties ("PRPs") undertook a Remedial Investigation and Feasibility Study ("RI/FS") for the Site, pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

8. Pursuant to section 117 of CERCLA, 42 U.S.C. 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 27, 2005, and provided opportunity for public comment on the proposed remedial action.

9. The decision by EPA on the remedial action to be implemented at the Palmer Barge Superfund Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 2005. The Record of Decision is attached to this Order as Attachment 1 and is incorporated by reference. The Record of Decision is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

10. Aldrin, benzo(a)pyrene, benzo(a)anthracene, dieldrin, heptachlor epoxide, naphthalene, pentachlorophenol, lead, butyl benzyl phthalate, 4,4-DDD, 4,4-DDE, 4,4-DDT and methoxychlor are hazardous substances, found at the Site. Some of these substances were co-mingled.

11. The hazardous substances discovered on Site were identified as chemicals of potential concern (COPC's) from the remedial investigation (RI) which exceeded commercial/industrial medium specific screening level (MSSL) values to the prepared site specific Human Health Risk Assessment (HHRA). Although there was a previous removal, the presence of these remaining substances in "hot spots" yet pose a threat as an actual release into the environment.

12. The topography of the Site is such that surface water run-off drains in an easterly direction, across the facility to the barge landing where it enters into Sabine Lake. Groundwater present in the sandy portions of the dredge spoil unit, flows towards and discharges to Sabine Lake, but does not pose a problem as a migratory source for hazardous contaminants at this time.

13. Currently, aside from the occasional small animal or local wild grasses known to inhabit the vicinity, the chief risks remain to human health of the on-site worker through accidental ingestion of contaminated soils or dermal contact with said soils or inhalation of soil dust from the Site.

14. In August of 2000, EPA Region 6 conducted a Removal Action to remove source materials stored on-site. Activities included hazardous waste removal, water treatment, oil/water separation, and sledge stabilization. On September 30, 2002, EPA Region 6 issued an Administrative Order on Consent to conduct the remedial investigation and feasibility study (RI/FS) for the Palmer Barge Site.

15. After analyzing four proposed remedies for the Site, the EPA, the State of Texas and the local community decided on Alternative 4/Excavation/Off-Site Disposal. This remedy will achieve the remedial action objectives of: 1) preventing human exposure, based on industrial/commercial worker scenarios, through dermal contact, ingestion, or inhalation, to contaminated soil above risk-based standards; 2) preventing off-site migration of contaminated soils to Sabine Lake; and, 3) preventing exposure to site soils that may pose a risk to ecological receptors. The Selected Remedy consists of the following:

- Excavation of approximately 1,204 cubic yards of the upper two feet of soil that exceed human health and ecological risk based levels at each of the response areas;
- Confirmation sampling at each of the response areas (remaining identified "hot spots"). Confirmation samples would be collected from each response area and analyzed for COPCs.
- Backfilling of excavated areas with clean soil;
- Off-site disposal of the excavated soils at a permitted disposal facility;
- Implementation of Institutional Controls to restrict future land use to industrial purposes only. The Institutional Control shall be a restrictive covenant by the property owner, to the benefit of the State of Texas and the United States Government, recorded in the real property records of Jefferson County, Texas;
- Abandonment of existing monitoring wells-five (5) existing monitoring wells at the Site will be abandoned; and
- Wastewater Aboveground Storage Tank (AST) sludge removal and decontamination-Sludge contained within the remaining wastewater AST will be removed and disposed of off-site. The tank will be de-contaminated and re-used as scrap metal by the property owner.

16. The selected remedy should assure that the contaminated soils will no longer present an unacceptable risk to future industrial and construction workers via ingestion, inhalation, or dermal exposure and that the property will be suitable for re-development as an industrial or commercial property. The remedial action is expected to achieve the remedial objectives and goals within approximately 6 months. The Site will be available for socio-economic or community revitalization projects following implementation of the selected remedy.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

17. The Palmer Barge Superfund Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. 9601(9).

18. Respondents are "persons" as defined in section 101(21) of CERCLA, 42 U.S.C. 9601(2).

19. Respondents are individually a "liable party" as defined in section 107(a) of CERCLA, 42 U.S.C. 9607(a), and are subject to this Order under section 106(a) of CERCLA, 42 U.S.C. 9606(a).

20. The substances listed in paragraph 10 are found at the Site and are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. 9601(14).

21. These hazardous substances have been released from the Site into the soil.

22. The past disposal and migration of hazardous substances from the Site are a "release" as defined in section 101(22) of CERCLA, 42 U.S.C. 9601(22).

23. The potential for future migration of hazardous substances from the Site poses a threat of a "release" as defined in section 101(22) of CERCLA, 42 U.S.C. 9601(22).

24. The release of one or more hazardous substances from the facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

25. The contamination and endangerment at this Site constitute an indivisible injury. The actions required by this Order are necessary to protect the public health, welfare, and the environment.