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June 7, 2007

Via U.S. Mail and Facsimile at 214-665-7330

Mr. Samuel Coleman, P.E.
Director, Superfund Program
U.S. Environmental Protection Agency
1445 Ross Ave.
Dallas, TX 75202-2733

Re: Palmer Barge Line Superfund Site, Port Arthur, Jefferson, Texas ('Palmer site')

Dear Sam:

I represent Higman Barge Lines, Inc. ('Higman') which was recently served with a Unilateral Administrative Order ('UAO') regarding the referenced site. The UAO requires respondents, including Higman, to commit to implementing the RD and RA by June 11, 2007. The UAO should be withdrawn, as applied to Higman, for the reasons discussed below.

The Palmer site was, as you know, a barge cleaning operation. All Higman barges serviced at the Palmer site were used to transport petroleum or fractions thereof, meaning that the cargos always fell within the petroleum exclusion from the definition of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act ('CERCLA'). No claim has been presented to Higman that any release of cargo ever occurred from a Higman Barge, nor has any claim been made (and certainly no demonstration) that any non-petroleum substance was released from a Higman barge (or other vessel) at the Palmer site. On the contrary, the Chemicals of Potential Concern ('COPCs') at the site and which drive the remediation are aldrin, benzo(a)pyrene, benzo(a)anthracene, dieldren, heptachlor epoxide, naphthalene, pentachlorophenol, lead, butyl, benzyl phthalate, 4,4-DDD, 4,4-DDT and methoxychlor (some of which were commingled). Each of these hazardous substances other than (naphthalene and lead) is a chemically synthesized product, not a material that naturally occurs in petroleum. Naphthalene is produced in the fractional distillation of coal tar and would not be expected in a barge used to haul petroleum. Lead is clearly not a component of petroleum.

The EPA has previously recognized that Higman was not a Palmer site PRP because of the petroleum exclusion per letter from Region 6 dated July 21, 2002. The reason given for EPA's change of position is that a court cases referred to by the Office of Regional Counsel as 'the Voda case' has determined that VGO and heavy fuel oil are outside the petroleum exclusion. No citation for the 'Voda case' has been provided and it has not been located after considerable legal research. This holding is a radical departure from the statutory language, EPA interpretation of the exclusion and long understanding of the petroleum exclusion. I urgently

EXHIBIT 7

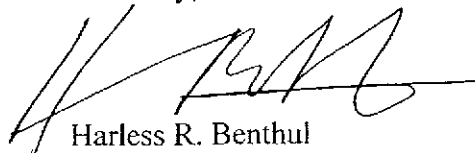
request that an authoritative reference to the "Voda case" be promptly furnished so that it may be analyzed. Absent that, we must question whether it exists and if not, EPA should immediately abandon its claim that VGO and heavy oils are outside the petroleum exclusion and adopt its prior position.

Additionally, given that Higman's only commerce with the Palmer site involved petroleum barges and that the COPCs are intimately, if not totally associated with chemical barges, EPA should immediately release Higman from the terms of the UAO. Assuming, *arguendo*, that Higman could in any way be shown to have arranger or other Section 107(a) liability, Higman nonetheless is entitled to demonstrate that any residual or other material associated with Higman that may have come to rest at the Palmer site could not have caused or contributed to environmental harm at the site based on the COPCs as evidence of the harm. See *U.S. v. Alcan Aluminum*, 990 F. 2d 711 (2nd Cir. 1993) and *U.S. v. Alcan Aluminum*, 964 F2d 252 (3rd Cir. 1992) holding that a PRP is entitled to demonstrate, in the context of divisibility of harm, that material attributable to him could not have caused harm. See also, *Amoco Oil Co. v. Borden*, 889 F2d 664 (5th Cir. 1989) holding that a plaintiff may not recover response costs unless the release posed a threat to the public or the environment.

I respectfully request that EPA release Higman from the UAO for the reasons stated herein, because it is the legally correct resolution of this matter as it applies to Higman and because it is reasonable and fair in the interest of not visiting Superfund's unfairness on a party that does not deserve it. In the alternative, I request that you defer the response date applicable to Higman for at least sixty (60) days so the "Voda case" can be produced and analysed by Higman and the demonstration posed by the Alcan cases may be made, if necessary.

I and other representatives of Higman are available to discuss the matters contained herein, at your early convenience.

Sincerely,



Harless R. Benthul

HB

cc: Kyle Shaw via facsimile
David James " "
Joseph Compton III via facsimile