

IV. NOTICE TO THE STATE

26. On April 19, 2007, prior to issuing this Order, EPA notified the State of Texas Commission on Environmental Quality (TCEQ), that EPA would be issuing this Order.

V. ORDER

27. Based on the foregoing, Respondents are hereby ordered, jointly and severally, to comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order.

VI. DEFINITIONS

28. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

b. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.

c. "EPA" shall mean the United States Environmental Protection Agency.

d. "TCEQ" shall mean the Texas Department on Environmental Quality.

e. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

f. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

g. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the Record of Decision and Statement of Work, that the Remedial Action and Work required by this Order must attain and maintain.

h. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, signed on September 30, 2005, by the Regional Administrator, EPA Region 6, and all attachments thereto.

i. "Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondent(s) to implement the final plans and specifications submitted by Respondent(s) pursuant to the Remedial Design Work Plan approved by EPA, including any additional activities required under Sections X, XI, XII, XIII, and XIV of this Order.

j. "Remedial Design" or "RD" shall mean those activities to be undertaken by Respondent(s) to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

k. "Response Costs" shall mean all costs, including direct costs, indirect costs, and accrued interest incurred by the United States and the State of Texas to perform or support response actions at the Site. Response costs include but are not limited to the costs of overseeing the Work, such as the costs of reviewing or developing plans, reports and other items pursuant to this Order and costs associated with verifying the Work.

l. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance (as needed) at the Site, as set forth in Attachment 2 to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.

m. "Section" shall mean a portion of this Order identified by a roman numeral and includes one or more paragraphs.

n. "Site" shall mean the Palmer Barge Superfund Site, encompassing approximately 17 acres, located on Old Yacht Club Road on the South Industrial Islet, in Port Arthur, Jefferson County, Texas, as described in the Record of Decision.

o. "State" shall mean the State of Texas.

p. "United States" shall mean the United States of America.

q. "Work" shall mean all activities Respondents are required to perform under this Order, including Remedial Design, Remedial Action, Operation and Maintenance (as needed), and any activities required to be undertaken pursuant to Sections VII through XXIV, and XXVII of this Order.

VII. NOTICE OF INTENT TO COMPLY

29. Respondents shall provide, not later than five (5) days after the effective date of this Order, written notice to EPA's Remedial Project Manager (RPM) stating whether it (they) will comply with the terms of this Order. If Respondents do not unequivocally commit to perform the RI and RA as provided by this Order, they shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondents' written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents under sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of Respondents' assertions.

VIII. PARTIES BOUND

30. This Order shall apply to and be binding upon each Respondent identified in paragraph 3, their directors, officers, employees, agents, successors, and assigns. Respondents are jointly and severally responsible for carrying out all activities required by this Order. No change in the ownership, corporate status, or other control of any Respondents shall alter any of the Respondents' responsibilities under this Order.

31. Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, within five days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing any Respondents with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. 9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

32. Within five (5) days after the effective date of this Order each Respondent that owns real property comprising all or part of the Site shall record a copy or copies of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded. Respondents shall, within 15 days after the effective date of this Order, send notice of such recording and indexing to EPA.

33. Not later than thirty (30) days prior to any transfer of any real property interest in any property included within the Site, Respondents shall submit a true and correct copy of the transfer document(s) to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

IX. WORK TO BE PERFORMED

34. Respondents shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

35. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a qualified project manager the selection of which shall be subject to disapproval by EPA. Within ten (10) days after the effective date of this Order, Respondents shall notify EPA in writing of the name and qualifications of the project manager, including primary support entities and staff, proposed to be used in carrying out work under this Order. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Respondents propose to change a project manager, Respondents shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new project manager performs, directs, or supervises any Work under this Order. With respect to any proposed project manager, Respondents shall demonstrate that the proposed project manager has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed project manager's Quality Management Plan (QMP). The QMP should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

36. EPA will review Respondent's selection of a project manager according to the terms of this paragraph and Section XIV of this Order. If EPA disapproves of the selection of the project manager, Respondents shall submit to EPA within ten (10) days after receipt of EPA's disapproval of the project manager previously selected, a list of project managers, including primary support entities and staff, that would be acceptable to Respondents. EPA will thereafter provide written notice to Respondents of the names of the project managers that are acceptable to EPA. Respondents may then select any approved project manager from that list and shall notify EPA of the name of the project manager selected within ten (10) days of EPA's designation of approved project managers.

37. Remedial Design/Remedial Action

a. Within thirty (30) days after Respondents obtain an authorization to proceed from EPA, Respondents shall submit a work plan for the Remedial Design and Remedial Action at the

Site ("Remedial Design/Remedial Work Plan" or "RD/RA Work Plan") to EPA for review and approval and to TCEQ for review and comments. The RD/RA Work Plan shall include a step-by-step plan for completing the remedial design and implementing the remedy described in the ROD and for attaining and maintaining all requirements, including Performance Standards, identified in the ROD. The RD/RA Work Plan shall be developed in accordance with the ROD, and the attached Statement of Work. The RD/RA Work Plan must describe in detail the tasks and deliverables Respondents will complete during the remedial design and remedial action phases, and a schedule for completing the tasks and deliverables in the RD/RA Work Plan. The major tasks and deliverables described in the RD/RA Work Plan shall include, but not be limited to, the following: (1) a pre-final/final design; (2) the Field Sampling Plan (directed at measuring progress towards meeting performance standards) (3) a Contingency Plan; (4) a Construction Quality Assurance Plan (CQAP); and (5) a construction schedule. The CQAP shall describe the approach to quality assurance during construction activities at the Site and shall specify a quality assurance official (QA Official), to conduct a quality assurance program during the construction phase of the project. Respondents shall also, within thirty (30) days after Respondents select an approved project manager, prepare and submit to EPA for review, a Site Health and Safety Plan for field activities. The Site Health and Safety Plan shall conform to the applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to 54 Fed. Reg. 9294.

b. Upon approval of the RD/RA Work Plan by EPA, Respondents shall implement the RD/RA Work Plan according to the schedule in the approved RD/RA Work Plan. Any violation of the approved RD/RA Workplan shall be a violation of this Order. Unless otherwise directed by EPA, Respondents shall not perform further Work at the Site prior to EPA's written approval of the RD/RA Work Plan.

c. Upon EPA approval, the RD/RA is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order.

38. If Respondents seeks to retain a construction contractor to assist in the performance of the Remedial Action, then Respondents shall submit a copy of the contractor solicitation documents to EPA not later than five (5) days after publishing the solicitation documents.

39. Within five (5) days after EPA approves the RD/RA Work Plan Respondents shall notify EPA in writing of the name, title, and qualifications of any construction contractor proposed to be used in carrying out work under this Order. With respect to any proposed construction contractor, Respondents shall demonstrate that the proposed construction contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs." (American National Standard, January 5, 1995), by submitting a copy of the proposed project manager's QMP. The QMP should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA shall thereafter provide written

notice of the name(s) of the contractor(s) it disapproves, if any, or an authorization to proceed. Respondents may select any contractor from that list which has not been disapproved and shall notify EPA of the name of the contractor selected within five (5) days of EPA's written notice of disapproval or authorization to proceed. If at any time Respondents proposes to change the construction contractor, Respondents shall notify EPA which retains the same rights to disapprove of the contractor as provided in this paragraph, before the new construction contractor performs any work under this Order. If EPA disapproves of the selection of any contractor as the construction contractor, Respondents shall submit a list of contractors that would be acceptable to them to EPA within ten (10) days after receipt of EPA's disapproval of the contractor previously selected.

40. The Work performed by Respondents pursuant to this Order shall, at a minimum, achieve the Performance Standards specified in the Record of Decision.

41. Notwithstanding any action by EPA, Respondents remain fully responsible for achievement of the Performance Standards in the Record of Decision. Nothing in this Order, or in EPA's approval of the Remedial Design/ Remedial Action Work Plan, or approval of any other submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or Remedial Action will achieve the Performance Standards set forth in the ROD. Respondents' compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable performance standards.

42. Respondents shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's RPM of such shipment of hazardous substances. However, the notification of shipments shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the State will not exceed ten (10) cubic yards.

a. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for Remedial Action construction. Respondents shall provide all relevant information, including information under the categories noted in paragraph 42.a above, on the off-Site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

43. Within five (5) days after Respondents conclude that the Remedial Action has been fully performed. Respondents shall so notify EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondents, EPA and TCEQ. The pre-certification inspection shall be followed by a written report submitted within ten (10) days of the inspection by a registered professional engineer and Respondents' Project Coordinator certifying that the Remedial Action has been completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Order, EPA shall notify Respondents in writing of the activities that must be undertaken to complete the Remedial Action and shall set forth in the notice a schedule for performance of such activities. Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent certification of completion by Respondents that the Remedial Action has been fully performed in accordance with this Order, EPA may notify Respondents that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondents' certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. 9604, 9606, or 9607.

44. Within thirty (30) days after Respondents concludes that all phases of the Work have been fully performed, and that the Performance Standards have been attained, Respondents shall submit to EPA a written report by a registered professional engineer certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the Work or EPA may, based upon present knowledge and Respondents' certification to EPA, issue written notification to Respondents that the Work has been completed, as appropriate, in accordance with the procedures set forth in Paragraph 43 for Respondents' certification of completion of the Remedial Action. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. 9604, 9606, or 9607.

X. FAILURE TO ATTAIN PERFORMANCE STANDARDS

45. In the event that EPA determines that additional response activities are necessary to meet applicable Performance Standards, EPA may notify Respondents that additional response actions are necessary.

46. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response activities are necessary to meet any applicable Performance Standards, Respondents shall submit for approval by EPA a work plan for the additional response activities. The plan shall conform to the applicable requirements of sections IX, XVI, and XVII of this Order. Upon EPA's approval of the plan pursuant to Section XIV, Respondents shall implement

the plan for additional response activities in accordance with the provisions and schedule contained therein.

XI. EPA PERIODIC REVIEW

47. Under section 121(c) of CERCLA, 42 U.S.C. 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondents may be required to perform additional work or to modify work previously performed.

XII. ADDITIONAL RESPONSE ACTIONS

48. EPA may determine that in addition to the work identified in this Order and attachments to this Order, additional response activities may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondents to submit a work plan for additional response activities. EPA may also require Respondent(s) to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

49. Not later than thirty (30) days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondents shall submit a work plan for the response activities to EPA for review and approval. Upon approval by EPA, the work plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondents shall implement the work plan according to the standards, specifications, and schedule in the approved work plan. Respondents shall notify EPA of their intent to perform such additional response activities within seven(7) days after receipt of EPA's request for additional response activities.

XIII. ENDANGERMENT AND EMERGENCY RESPONSE

50. In the event of any action or occurrence during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's Remedial Project Manager (RPM) or, if the RPM is unavailable, EPA's Alternate RPM. If neither of these persons is available Respondents shall notify the EPA Region 6 Prevention and Response Branch. Respondents shall take such action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan and the Contingency Plan. In the event that Respondents fail to take appropriate

response action as required by this Section, and EPA takes that action instead, Respondents shall reimburse EPA for all costs of the response action not inconsistent with the NCP. Respondents shall pay the response costs in the manner described in Section XXIV of this Order, within thirty (30) days of Respondents' receipt of demand for payment and the Regionally-prepared cost summary, which includes all direct and indirect costs incurred by EPA and the State and their contractors.

51. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substance on, at, or from the Site.

XIV. EPA REVIEW OF SUBMISSIONS

52. The State of Texas, through the Texas Commission on Environmental Quality (TCEQ) will be provided an opportunity to review and comment on deliverables submitted under this Order. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's and TCEQ's comments; or (d) disapprove the submission and assume responsibility for performing all of any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in paragraph (a) or (b) of this paragraph.

53. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

54. Upon receipt of a notice of disapproval or a request for a modification, Respondents shall, within fourteen (14) days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

55. If any submission is not approved by EPA, Respondents shall be deemed to be in violation of this Order.

XV. PROGRESS REPORTS

56. In addition to the other deliverables set forth in this Order, Respondents shall provide monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the tenth (10th) day of each month following the effective date of this Order. Respondents' obligation to submit progress reports

continues until EPA gives Respondents written notice under paragraph 44. At a minimum these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondents and not previously submitted to EPA; (3) describe all work planned for the next month with schedules relating such work to the overall project schedule for RD/RA completion; and (4) describe all problems encountered and any anticipated problems, and actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XVI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

57. Respondents shall use the quality assurance, quality control, and chain of custody procedures described in the EPA Requirements for Quality Assurance Project Plans (QA/R-5) (EPA/240/B-01/003, March 2001) and "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA 600/R-98/018, February 1998), and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondents shall:

- a. Use only laboratories which have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs." (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Laboratory Accreditation Program (NELAP) to meet the quality system requirements.
- b. Ensure that the laboratory used by the Respondents for analyses, performs according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at least five (5) days before beginning analysis.
- c. Ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondents for analyses.

58. Respondents shall notify EPA not less than three (3) days in advance of any sample collection activity. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA or its authorized representatives, of any samples collected by Respondents with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

XVII. COMPLIANCE WITH APPLICABLE LAWS

59. All activities by Respondents pursuant to this Order shall be performed in accordance with the requirements of all Federal and state laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan (NCP).

60. Except as provided in section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a Federal or state permit or approval, Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

61. This Order is not, and shall not be construed to be, a permit issued pursuant to any Federal or state statute or regulation.

62. All materials removed from the Site shall be disposed of or treated at a facility approved by EPA's RPM and in accordance with section 121(d)(3) of CERCLA, 42 U.S.C. 9621(d)(3); with the U.S. EPA "Revised Off-Site policy," OSWER Directive 9834.11, November 13, 1987; and with all other applicable Federal, state, and local requirements.

XVIII. REMEDIAL PROJECT MANAGER

63. All communications, whether written or oral, from Respondents to EPA shall be directed to EPA's Remedial Project Manager or Alternate Remedial Project Manager. Respondents shall submit to EPA and TCEQ one hard copy and one electronic copy of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by overnight mail.

EPA's Remedial Project Manager is:

Carlos Sanchez (6SF-R)
Remedial Project Manager
US EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
214-665-8507

EPA's Alternate Remedial Project Manager is:

Philip Allen (6SF-RA)
Remedial Project Manager
US EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
214-665-8516

TCEQ's Project Manager is:
Luda Voskov, P.G.
Project Manager (MC-221)
Texas Commission on Environmental Quality
Remediation Division
12100 Park 35 Circle, Bldg D
Austin, Texas 78753
512/239-6368

64. EPA has the unreviewable right to change its Remedial Project Manager or Alternate Remedial Project Manager. If EPA changes its Remedial Project Manager or Alternate Remedial Project Manager, EPA will inform Respondents in writing of the name, address, and telephone number of the new Remedial Project Manager or Alternate Remedial Project Manager.

65. EPA's RPM and Alternate RPM shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. EPA's RPM or Alternate RPM shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order, and to take any necessary response action.

66. Within ten (10) days after the effective date of this Order, Respondents shall designate a Project Coordinator and shall submit the name, address, and telephone number of the Project Coordinator to EPA for review and approval. Respondents' Project Coordinator shall be responsible for overseeing Respondents' implementation of this Order. If Respondents wishes to change his/her Project Coordinator, Respondents shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator. Respondents selection of a Project Coordinator shall be subject to EPA approval.

XIX. ACCESS TO SITE NOT OWNED BY RESPONDENTS

67. If the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by the clean up, is owned in whole or in part by parties other than those bound by this Order, Respondents will obtain, or use their best efforts to obtain, site access agreements from the present owner within ten (10) days of the effective date of this Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and Respondents or Respondents authorized representatives and contractors, and such agreements shall specify that Respondents is not EPA's representative with respect to liability associated with Site activities. Respondents shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondents, their officers, directors, employees, agents, contractors,

subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondents as EPA's authorized representatives under section 104(e) of CERCLA. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of its failure to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for the Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property, and shall reimburse EPA, pursuant to Section XXIV of this Order, for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Respondents shall reimburse EPA, pursuant to Section XXIV of this Order, for all response costs (including attorney fees) incurred by the United States to obtain access for Respondents.

XX. DATA/DOCUMENT AVAILABILITY

68. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. 9604(c)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondents. Respondents shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

69. Respondents shall maintain for the period during which this Order is in effect, an index of documents that Respondents claims contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondents shall submit a copy of the index to EPA.

XXI. RECORD PRESERVATION

70. Respondents shall provide to EPA upon request, copies of all documents and information within their possession and/or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also

make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

71. Until ten (10) years after EPA provides notice pursuant to paragraph 44, each Respondent shall preserve and retain all records and documents in its possession or control, including the documents in the possession or control of their contractors and agents on and after the effective date of this Order that relate in any manner to the Site. At the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and upon request by the United States, Respondents shall deliver any such records or documents to EPA.

72. Until ten (10) years after EPA provides notice pursuant to paragraph 44 of this Order, Respondents shall preserve, and shall instruct their contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance of the Work. Upon the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, Respondents shall deliver all such documents, records, and information to EPA.

73. Within ten (10) days after the effective date of this Order, Respondents shall submit a written certification to EPA's RPM that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site. Respondents shall not dispose of any such documents without prior approval by EPA. Respondents shall, upon EPA's request and at no cost to EPA, deliver the documents or copies of the documents to EPA.

XXII. DELAY IN PERFORMANCE

74. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this paragraph shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents obligations to fully perform all obligations under the terms and conditions of this Order.

75. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM or Alternate RPM within twenty four (24) hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) business days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the

delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK

76. Respondents shall demonstrate their ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within ten (10) days after approval of the RD/RA Work Plan, one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondents have sufficient assets available to perform the Work. Respondents shall demonstrate financial assurance in an amount no less than the estimate of cost for the remedial design and remedial action contained in the Record of Decision for the Site. If Respondents seek to demonstrate ability to complete the remedial action by means of internal financial information, or by guarantee of a third party, they shall re-submit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondent shall, within ten (10) days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above.

77. At least five (5) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

XXIV. REIMBURSEMENT OF RESPONSE COSTS

78. Respondents shall reimburse EPA and TCEQ, upon written demand, for all response costs incurred by the United States and TCEQ in overseeing Respondents' implementation of the requirements of this Order or in performing any response action which Respondents fail to perform in compliance with this Order. EPA may submit to Respondents on a periodic basis an accounting of all response costs incurred by the United States and TCEQ with respect to this Order. EPA's certified Agency Financial Management System summary data (SPUR Reports), or such other summary as certified by EPA, shall serve as basis for payment demands.

79. Respondents shall, within thirty (30) days of receipt of each EPA accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of the date that payment of a specified amount is demanded in writing or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. 3717 and 4 C.F.R. 102.13.

80. Checks shall be made payable to the "Hazardous Substances Superfund" and shall reference the "Palmer Barge Superfund Site (06 KB) CERCLIS #: TXD068104561," and shall note that it pertains to the Unilateral Administrative Order specified by the docket number. Checks shall be forwarded to:

EPA Superfund-Palmer Barge Superfund Site (06 KB)
CERCLIS #: TXD068104561
Superfund Accounting
P.O. Box 360582M
Pittsburgh, Pennsylvania 15251
ATTN: COLLECTION OFFICER FOR SUPERFUND

81. Respondents shall send copies of each transmittal letter and check to the EPA's RPM.

XXV. UNITED STATES NOT LIABLE

82. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA or TCEQ nor the United States or the State of Texas may be deemed to be a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXVI. ENFORCEMENT AND RESERVATIONS

83. EPA reserves the right to bring an action against Respondents under section 107 of CERCLA, 42 U.S.C. 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA.

84. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

85. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. 9606(a), et seq., or any other

applicable law. Respondents shall be liable under CERCLA section 107(a), 42 U.S.C. 9607(a), for the costs of any such additional actions.

86. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

87. Respondents shall 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 Respondents willfully violate, or fail or refuse to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof, 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 Fund as a result of such failure to take proper action.

88. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

89. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXVII. ADMINISTRATIVE RECORD

90. Upon request by EPA, Respondents must submit to EPA all documents related to the selection of the response action for possible inclusion in the administrative record file.

XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME

91. This Order shall be effective thirty (30) days after the Order is signed by the Superfund Division Director or delegatee. All times for performance of ordered activities shall be calculated from this effective date.

XXIX. OPPORTUNITY TO CONFER

92. Respondents may, within five (5) days after the date this Order is signed, request a conference with EPA's RPM and/or site attorney to discuss this Order. The conference shall occur at EPA's Region 6 office.

93. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which

Respondents intend to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative.

94. Requests for a conference must be by telephone followed by written confirmation mailed that day to: Carlos Sanchez (6SF-R), Remedial Project Manager, US EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number 214-665-8507.

So Ordered, this 7 day of May, 2007

By: Pamela Phillips, Acting
Samuel Coleman, P.E., Director
Superfund Division
U.S. Environmental Protection Agency
Region 6

**STEVENS
BALDO
FREEMAN
LIGHTY**
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW

DAVID JAMES
Admitted in Texas and Louisiana

550 Fannin Street, Suite 700
Beaumont, Texas 77701
office (409) 835-5200
fax (409) 835-5201
mobile (409) 658-7204
djames@sbf-law.com

May 22, 2007

Via Electronic Mail and Certified Mail, Return Receipt Requested

Joseph Compton, Esq. Email: Compton.Joseph@epamail.epa.gov
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:

Subject to and without prejudice to any of its rights, remedies, claims and defenses, Higman Barge Lines, Inc. ("Higman") acknowledges receipt of the Unilateral Order for Remedial Design and Remedial Action.

I would like to thank you for discussing the basis of EPA's contention that Higman is a PRP for this site in our May 16, 2007 telephone conversations. As you are aware, we have not yet received a response to our FOIA request for the information. I now understand from our telephone call that no new evidence has been developed against Higman and the sole basis for considering Higman a PRP arises out of barges containing vacuum gas oil ("VGO") and No. 6 oil. The EPA now contends that VGO and No. 6 oil do not qualify for the petroleum exclusion. I have spent the past day looking for such authority to no avail and I would appreciate a case site or other authority forming the basis of this contention.

My client and I assert and renew our contention that, regarding all barge transactions, both VGO and No. 6 oil are within the exclusion. Both VGO and No. 6 crude are distillation fractions of petroleum as recognized by the authoritative treatise, Kirk-Othmer Concise Encyclopedia of Chemical Technology. I enclose a copy of page 1494 of Volume Two of the Fourth Edition. Table 1, Distillate Fractions of Petroleum explicitly lists VGO. No. 6 oil is a component of the heavy oil. I respectfully but strenuously insist that the EPA is wrong in reversing its earlier position on this point.

EXHIBIT 6

Moreover, four of the five VGO and No. 6 Fuel Oil transactions Higman had with Palmer Barge *did not* result in any materials being transferred to the facility. Those transactions occurred on March 14, 1993 and March 26, 1993 and involved the barges HTCO 2302 (VGO), HTCO 2301(VGO), GDM 264 (No. 5 Fuel Oil) and S 2512 (No. 6 Fuel Oil). On those days, Palmer steamed the heating coils of the barges to heat the cargo and make it less viscous. "Steaming" is simply the process of circulating steam through coils to improve the fluidity of the cargo. The purpose of this practice is to make the cargo more easily discharged using the barge's cargo pump and facilitate a quicker unloading to the refinery consignee. This unloading did not occur at the Palmer site. If required, I can provide documentation showing how this process works and conclusively prove that none of the cargo leaves the barge during this process.

Higman has cooperated with the EPA by providing a complete disclosure of documents in its possession concerning transactions it had with the site. Higman also provided affidavits of two of its employees demonstrating that all but six of the transactions involved crude oil. Higman's candor resulted in the EPA's July 25, 2002 letter confirming that it was no longer considered a PRP. The matter remained dormant for more than four years while the PRPs conducted the Remedial Investigation and Feasibility Study. A ROD was produced on September 25, 2005. On December 29, 2006, the EPA issued a Special Notice for the Remedial Design and Remedial Action, seeking good faith offers for the site, the first time that Higman learned that it was somehow again considered a PRP. Higman made a \$1,000 offer, a fair offer given its limited involvement at the site and qualification for the petroleum exclusion. It was not until May 16, 2007 that Higman learned the basis upon which the EPA relied to administratively order Higman to clean up the site.

Using EPA's own contention that VGO and No. 6 oil are not within the petroleum exclusion, there are only two transactions upon which the EPA and the PRPs can rely to possibly implicate Higman. The first is the cleaning of the barge HTCO 2302 on March 6, 1994 when the cargo tanks were stripped of their No. 6 Fuel Oil cargo. The other transaction involved the stripping of the bilges of the towboat M/V JOE M. POWELL on December 1, 1993. My client and I believe that it is unjust for the EPA to order Higman to perform the RD/RA when there are numerous other potential PRPs not named in the order who have not cooperated to the same degree as Higman, have contributed more materials to the site, and contributed materials that are actually listed in 40 C.F.R. § 302.4.

Higman does not concede that it ever transferred any hazardous substance to the Palmer facility on either occasion referred to in the preceding paragraph. However, reference to the list of chemicals of concern in the Record of Decision (e.g., Table 9, page 27) strongly suggests that Higman could never have contributed any material to the Palmer site that cause the incurrence of response cost. On the contrary, presupposing Higman-related material was transferred to the Palmer facility through the cleaning process, Higman is entitled to demonstrate that it did not contribute to harm at the site and is entitled to an apportionment of zero response costs. *U.S. v. Alcan Aluminum Corp.*, 964 F.2d 252 (3rd Cir. 1992).

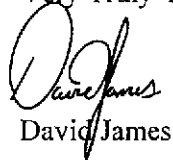
Additionally, Higman can produce affidavit evidence that it was Palmer's practice to separate oil recovered by it in the cleaning process and sell that oil. To that extent, oil recovered

Joseph Compton
May 22, 2007
Page 3

by Palmer from Higman vessels was not only unavailable to need remediation, but also was a useful product

In light of the circumstances, I believe the EPA should reconsider Higman's inclusion in the Administrative Order to prevent this obvious injustice being worked by the EPA. I respectfully request a private session with you to discuss Higman's liability with you at the May 31, 2007 meeting. Please advise whether you are open to such a meeting.

Very Truly Yours,



David James

DJ:tl
Enclosure

KIRK-OTHMER

**CONCISE ENCYCLOPEDIA
OF CHEMICAL TECHNOLOGY**

4th EDITION
Volume 2

 **WILEY-INTERSCIENCE**
A John Wiley & Sons, Inc., Publication

Steam flooding can greatly increase the recovery of high viscosity crude oils by heat thinning. This increases oil mobility in the reservoir. The addition of urea and iron sulfate or nickel compounds is said to further lower the viscosity of the crude oil. Surfactant foaming agents can be used to reduce the mobility of the high temperature steam. Because some heavy crude oils have relatively high acid numbers, it is not surprising that addition of alkaline agents to high temperature steam can increase recovery of these oils.

Other Technologies

Microbial-enhanced oil recovery involves injection of carefully chosen microbes. Subsequent injection of a nutrient is sometimes employed to promote bacterial growth. Molasses is the nutrient of choice owing to its low (ca \$100/t) cost. The main nutrient source for the microbes is often the crude oil in the reservoir. A rapidly growing microbe population can reduce the permeability of thief zones improving volumetric sweep efficiency. Microbes, particularly species of *Clostridium* and *Bacillus*, have also been used to produce surfactants, alcohols, solvents, and gases *in situ*. These chemicals improve waterflood oil displacement efficiency (see also BIOREMEDIATION).

The *in situ* combustion method of enhanced oil recovery through air injection is a chemically complex process. There are three types of *in situ* combustion: dry, reverse, and wet. In the first, air injection results in ignition of crude oil and continued air injection moves the combustion front toward production wells. Temperatures can reach 300–650°C. Ahead of the combustion front is a 90–180°C steam zone, the temperature of which depends on pressure in the oil reservoir. Zones of hot water, hydrocarbon gases, and finally oil propagate ahead of the steam zone to the production well.

The oil zone is fairly cool, and in a viscous oil reservoir this can result in little oil movement (liquid blocking). Reverse combustion, in which oil ignition occurs near the production well, can avoid this problem. The combustion zone moves countercurrent to the flow of air from the injection well. Oil flows through heated rock and remains mobile. Reverse combustion requires more air and consumes more oil than forward combustion.

In wet combustion, water is injected concurrently and alternately with air, extending the steam zone and aiding heat transfer to the crude oil reducing oil viscosity. This can decrease injected air:produced oil ratio and improve project economics.

JOHN K. BORCHARDT
Shell Chemical Company

J. Moritz, *Oil Gas J.*, 51 (Sept. 26, 1994).

H. Smith, *Surfactant-Based Mobility Control—Progress in Miscible-Flood Enhanced Oil Recovery*, ACS Symposium Series No. 373, American Chemical Society, Washington, D.C., 1988.

S. Sorbia, *Polymer-Improved Oil Recovery*, Blackie and Son, Ltd., London, 1991.

L. Schramm, ed., *Foams: Fundamentals and Applications in the Oil Industry*, American Chemical Society, Washington, D.C., 1994.

REFINERY PROCESSES, SURVEY

Petroleum refining, also called petroleum processing, is the recovery and/or generation of usable or salable fractions and products from crude oil, either by distillation or by chemical reaction of the crude oil constituents under the effects of heat and pressure. Crude petroleum is a mixture of compounds boiling at different temperatures that can be separated into a variety of different generic but often overlapping fractions (Table 1). The amounts of these fractions produced by distillation depend on the origin and properties of crude petroleum.

When petroleum occurs in a reservoir that allows the crude material to be recovered by pumping operations as a free-flowing dark-to-ght colored liquid, it is often referred to as conventional petroleum.

Table 1. Distillation Fractions of Petroleum

Fraction	Boiling, °C
light naphtha	-1 to 150
gasoline	-1 to 180
heavy naphtha	150–205
kerosene	205–260
stove oil	205–290
light gas oil	260–315
heavy gas oil	315–425
lubricating oil	> 400
vacuum gas oil	425–600
residuum	> 600

Heavy oil differs from conventional petroleum in that its flow properties are reduced and it is much more difficult to recover from the subsurface reservoir. These materials have a much higher viscosity and lower API (American Petroleum Institute) gravity than conventional petroleum.

Heavy oil generally has an API gravity of less than 20 degrees and usually, but not always, a sulfur content of >2% by weight. Extra heavy oil occurs in the near-solid state and is virtually incapable of free flow under ambient conditions. Bitumen, often referred to as native asphalt, is a subclass of extra heavy oil and is frequently found as the organic filling in pores and crevices of sandstones, limestones, or argillaceous sediments.

A residuum, often shortened to resid, is the residue obtained from petroleum after nondestructive distillation has removed all the volatile materials. The temperature of the distillation is usually below 345°C because the rate of thermal decomposition of petroleum constituents is substantial above 360°C. Temperatures as high as 425°C can be employed in vacuum distillation. When such temperatures are employed and thermal decomposition occurs, the residuum is usually referred to as pitch.

Asphalt, prepared from petroleum, often resembles bitumen. When asphalt is produced by distillation, the product is called residual, or straight-run, asphalt. However, if the asphalt is prepared by solvent extraction of residua or by light hydrocarbon (propane) precipitation, or if it is blown or otherwise treated, the name should be modified accordingly to qualify the product, eg, propane asphalt.

Sour and sweet are terms referring to a crude oil's approximate sulfur content, which relates to odor. A crude oil that has a high sulfur content usually contains hydrogen sulfide, H₂S, and/or mercaptans, RSH; it is called sour. Without this disagreeable odor, the crude oil is judged sweet.

General refinery steps are given in Figure 1.

Desalting and Dewatering

Crude oil is recovered from the reservoir mixed with a variety of substances; gases, water, and dirt (minerals). Refining actually commences with the production of fluids from the well or reservoir and is followed by pretreatment operations that are applied to the crude oil either at the refinery or prior to transportation.

Field separation, which occurs at a field site near the recovery operation, is the first attempt to remove the gases, water, and dirt that accompany crude oil coming from the ground.

Desalting is a water-washing operation performed at the production field and at the refinery site for additional crude oil cleanup.

The usual practice is to blend crude oils of similar characteristics, although fluctuations in the properties of the individual crude oils may cause significant variations in the properties of the blend over a period of time. Blending several crude oils prior to refining can eliminate the frequent need to change the processing conditions that may be required to process each of the crude oils individually.

HARLESS R. BENTHUL

ATTORNEY
LYRIC CENTRE
440 LOUISIANA, SUITE 600
HOUSTON, TEXAS 77002

PHONE: 713-223-0030

FAX: 713-223-0026

June 18, 2007

Via Facsimile @ 214-665-6460 and Certified Mail Return Receipt Requested Number
7006 2150 0003 4196 3980

Mr. Joseph Compton III
Associate Regional Counsel
Office of Regional Counsel (6RC-S)
U.S.E.P.A. Region 6
1445 Ross Ave.
Dallas, TX 75202-2733

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

Dear Mr. Compton:

This will confirm our telephone discussion of Thursday, June 14, 2007, regarding the referenced Superfund site about the EPA's change of position (reversing its prior determination that Higman Barge Lines, Inc. was not a Potentially Responsible Party *vis a vis* the Palmer site because of the applicability of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") petroleum exclusion). Our discussion was as follows:

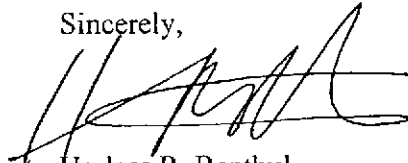
1. You acknowledged that, you were wrong in stating that the legal basis for the EPA's change of position was the "Voda case" and further acknowledged that the Voda case is not a judicial decision but a Region 6 administrative order on consent.
2. You stated the basis for the agency's change of position was an EPA policy supported by the Office of General Counsel ("OGC") and when I asked you to provide a copy of the policy and/or OGC opinion, you told me to contact the OGC. After I suggested that the policy and/or opinion was, under the circumstances, a part of the agency's demonstration of Higman's liability, you agreed to provide a copy of the policy and/or opinion.

EXHIBIT 8

Please advise me if I have mischaracterized our conversation in any material way.

I look forward to receiving the written policy and/or opinion. By copy of this letter to the Remedial Program Manager, I request that it become part of the site file and administrative record.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harless R. Benthul', written over a horizontal line.

Harless R. Benthul

cc: Carlos Sanchez via facsimile @ 214-665-6660 and certified mail, return receipt requested, number 7006 2150 0003 4196 3973

cc: Kyle Shaw
David James



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JUL 12 2007

Harless R. Benthul
Attorney
Lyric Centre
440 Louisiana, Suite 600
Houston, Texas 77002

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


Dear Mr. Benthul:

Thank you for your letter of June 18, 2007, addressing our June 14th telephone conversation.

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.

I am happy to discuss these matters further with you if you have additional questions.

Sincerely,

for 
Joseph E. Compton, III
Asst. Regional Counsel

STATE OF TEXAS

§
§
§
§

KNOW ALL MEN BY THESE
PRESENTS

COUNTY OF JEFFERSON

AFFIDAVIT OF DAVID JAMES

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

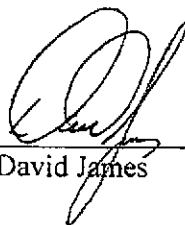
"My name is DAVID JAMES, and I am above the age of eighteen (18) years and have never been convicted of a felony or crime involving moral turpitude. I am an attorney with the firm of STEVENS BALDO FREEMAN & LIGHTY, LLP, ("the firm") of Beaumont, Texas. In the course of my representation of Higman Barge Lines, Inc. ("Higman"), a client of the firm in the spring of 2007 before the United States Environmental Protection Agency ("USEPA"), I had numerous phone calls and one in person meeting with Mr. Joseph Compton, III, an attorney with the USEPA. All of my communications with Mr. Compton concerned the issue of whether Higman was liable for response costs incurred in the remediation of the Palmer Barge Superfund Site at Port Arthur, Texas. The USEPA had agreed in 2002, that Higman was not liable for response costs pursuant to the so-called petroleum exclusion from liability pursuant to §101(14) of CERCLA, 42 USC §9601(14).

However, the EPA subsequently forwarded a Special Notice of Potential Liability and Draft Consent Decree ("Special Notice") dated December 29, 2006. Page 2 of the Special Notice stated, "Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, EPA identified Higman Barge Line, Inc. as one of approximately 39 PRPs that either owned, operated or contributed hazardous substances to the Site." On January 10, 2007, I spoke with Joseph Compton of EPA Region 6 to determine the basis of the December 29, 2006 Special Notice. In that January 10, 2007 conversation, Joseph Compton informed me that the EPA had discovered new evidence concerning my client Higman. I subsequently made a FOIA request to the EPA for the new evidence and there was no new evidence in the EPA's response.

On May 11, 2007 I received a Unilateral Administrative Order dated May 7, 2007 ("UAO") again asserting liability against Higman. In several telephonic discussions with Mr. Compton following issuance of the UAO to Higman and in answer to inquiries as to why the USEPA had reversed its position regarding Higman's liability, Mr. Compton stated that the change of position was based on a recent federal court case that he referred to as the "Voda case". Mr. Compton repeated this asserted basis for EPA's change of position in a meeting with him at the USEPA office in Dallas, Texas on May 31, 2007, in the presence of Mr. Harless R.

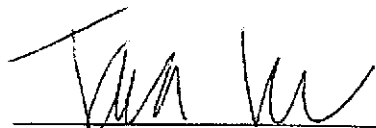
Benthul, attorney, of Houston, Texas who had been retained to assist in the representation of Higman.

Further, the affiant saith not.”



David James

SUBSCRIBED and SWORN TO before me on this 16th day of January, 2008, to certify which witness my hand and seal of office.



NOTARY PUBLIC FOR THE STATE OF TEXAS