



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

RECEIVED  
U.S. EPA  
2009 APR 10 AM 11:02  
ENVIRONMENTAL APPEALS BOARD

April 9, 2009

Via FedEx

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board  
Colorado Building  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005

In Re: Higman Barge Lines, Inc., Petition No. CERCLA 106(b) 08-02; Consent Agreement

Dear Madam Clerk:

Enclosed for filing are an original and five copies of an *Unopposed Motion for Approval and Entry of Consent Agreement*, along with an attached original and five copies of the Consent Agreement to which it pertains between the Petitioner Higman Barge Lines, Inc., and the Respondent U.S. Environmental Protection Agency. The Consent Agreement has been signed by the Regional Administrator with the concurrence of the Acting General Counsel, as well as the Acting Assistant Administrators for Enforcement and Compliance Assurance and for Solid Waste and Emergency Response. When executed by a Judge of the Environmental Appeals Board, this Consent Agreement will settle the referenced claim before the Board.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to call me at (214) 665-3159. My telefax number is (214) 665-6460, and my email address is [Turner.James@epa.gov](mailto:Turner.James@epa.gov), or "James Turner" within the EPA Lotus Notes system.

Sincerely yours,

A handwritten signature in black ink that reads "James L. Turner". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

James L. Turner  
Senior Attorney  
Office of Regional Counsel

Enclosures

cc: Harless Benthul, Esq (via First Class U.S. Mail)

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

RECEIVED  
U.S. E.P.A.

APR 10 AM 11:02

ENV. APPEALS BOARD

<b>IN RE:</b>	)	
	)	
<b>HIGMAN BARGE LINES, INC.,</b>	)	<b>PETITION NO.</b>
	)	
<b>PETITIONER.</b>	)	<b>CERCLA 106(b) 08-02</b>
	)	
	)	
	)	

---

**UNOPPOSED MOTION FOR APPROVAL AND ENTRY OF CONSENT AGREEMENT**

Now comes the Director of the Superfund Division (“the Director”), Region 6, United States Environmental Protection Agency (“EPA”), which hereby moves the Environmental Appeals Board (“the Board”) and for approval and entry of a Consent Agreement to settle the above captioned matter. The EPA was served by the Board with the instant petition by Higman Barge Lines, Inc. (“Petitioner”) that was filed by the Petitioner on or about August 27, 2008. Subsequently, EPA filed an unopposed motion for a stay of the proceedings and three unopposed motions for extensions of the stay of these proceedings, to provide for further settlement negotiations. The Board granted these motions, thus granting and extending the stay to April 13, 2009, through the issuance of several orders.

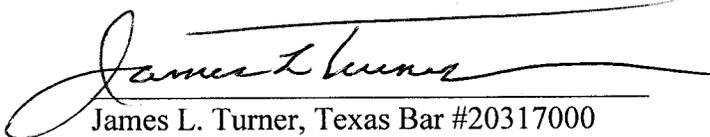
The EPA and the Petitioner (“the parties”) have now successfully concluded their good faith settlement negotiations, and have executed a Consent Agreement, which would settle the instant matter pending before this Board, and which is attached to this motion unmarked. The Consent Agreement between the parties constitutes a fair and equitable resolution of the claims contained in Higman’s petition in this matter. Therefore, in the interest of justice and judicial economy, the EPA through the Director respectfully requests that the Board approve this Consent

Agreement and indicate such approval by signing and dating the same, thus effectuating its Order of approval and entry of this Consent Agreement upon its docket. *Inter Alia*, the Consent Agreement provides that within ten (10) days of receipt of the payment by EPA required under this Consent Agreement, the Petitioner shall file a motion to withdraw and dismiss its petition with prejudice.

Counsel for the EPA has consulted with counsel for Petitioner and the Petitioner does not oppose and agrees to the filing of this Unopposed Motion for Approval and Entry of Consent Agreement.

Respectfully submitted,

Samuel Coleman, P.E.  
Director, Superfund Division  
U.S. EPA, Region 6



James L. Turner, Texas Bar #20317000  
Senior Attorney  
Office of Regional Counsel  
U.S. EPA Region 6  
1445 Ross Avenue  
Dallas, Texas 75202

**CERTIFICATE OF CONFERENCE**

This is to certify that Counsel for the EPA has conferred with Harless Benthul., Esq., counsel for the Petitioner Higman Barge Lines, Inc., who advised Counsel that Higman does not oppose the foregoing Unopposed Motion for Approval and Entry of Consent Agreement.

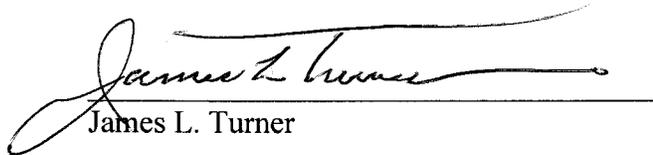


James L. Turner

**CERTIFICATE OF SERVICE**

I certify that I served the foregoing Unopposed Motion for Approval and Entry of Consent Agreement on the Petitioner Higman Barge Lines, Inc., by mailing a copy of the same to counsel for Petitioner Higman at the address listed below via First Class U.S. Mail, postage prepaid, on this the 9<sup>th</sup> of April 2009.

Harless Benthul, Esq.  
Attorney at Law  
440 Louisiana, Suite 600  
Houston, Texas 77002

  
James L. Turner

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

<b>IN RE:</b>	)	
	)	
<b>HIGMAN BARGE LINES, INC.,</b>	)	<b>PETITION NO.</b>
	)	
<b>PETITIONER.</b>	)	<b>CERCLA 106(b) 08-02</b>
	)	
	)	
	)	

---

**CONSENT AGREEMENT**

**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Consent Agreement (“Agreement”) is entered into by the United States Environmental Protection Agency (“EPA” or “Respondent”), and Higman Barge Lines, Inc. (“Higman” or “Petitioner”), collectively referred to as the “parties” hereinafter, for the above captioned and numbered matter relating to the Petition for Reimbursement (“Petition”) filed by Higman before the EPA Environmental Appeals Board (“EAB”) pursuant to Section 106(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, 42 U.S.C. Section 9606(b)(2).

2. EPA and Petitioner agree that the EAB shall retain jurisdiction over the matter until such time as the parties fulfill all obligations under this Agreement.

3. In entering into this Agreement, EPA neither admits nor denies the allegations of fact and law contained in the Petition filed by Higman in this matter on or about August 27, 2008. EPA and the Petitioner desire to resolve the Petition without further litigation and without the adjudication or submission of any issue of fact or law currently pending before the EAB.

## **II. PARTIES BOUND**

4. This Agreement is entered into by EPA and Higman. Higman is the Petitioner in this matter and EPA is the Respondent. Higman consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

5. This Agreement shall be binding only upon EPA and the Petitioner. Except as to counsel, each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

## **III. BACKGROUND**

6. This Agreement concerns the Palmer Barge Superfund Site ("Site") located approximately 4.5 miles east-northeast of the City of Port Arthur on Old Yacht Club Road on the South Industrial Islet in Jefferson County, Texas.

7. On September 30, 2005, the Superfund Division Director for EPA Region 6 signed a Record of Decision ("ROD") for remedial action requiring excavation and off-site disposal of contaminants at the Site.

8. Effective May 7, 2007, EPA Region 6 issued a Unilateral Administrative Order ("UAO") Docket No. 06-12-07, pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), directing Higman and other Site potentially responsible parties ("PRPs") to conduct the remedial action as set forth in the ROD.

9. Petitioner complied with the UAO and participated in the remedial action by making payment for approximately \$75,000.00 for response costs to the Site PRP group implementing the remedial action.

f. "Site" shall mean the Palmer Barge Superfund Site located approximately 4.5 miles east-northeast of the City of Port Arthur on Old Yacht Club Road on the South Industrial Islet in Jefferson County, Texas.

#### V. REIMBURSEMENT

13. Within 45 days after the Effective Date of this Agreement as set forth in paragraph 20 below herein, as approved by the EAB and authorizing payment, EPA shall disburse funds to the Petitioner in the amount of \$110,000.00 in full settlement of all claims in the Petition. If not timely paid, interest shall begin to accrue thereafter at the rate provided by 42 U.S.C. §9606(b)(2)(A).

14. Payment to Higman by EPA shall be made from the Hazardous Substance Superfund through an electronic fund transfer, based upon information which shall be promptly and timely provided to EPA by Higman. The Parties recognize and acknowledge that the payment obligations of EPA under this Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Agreement shall be interpreted or construed as a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

15. Not later than 10 days after receipt of payment under the terms of this Agreement, Higman shall file a motion before the EAB to withdraw and dismiss its Petition with prejudice.

16. Within 30 days after the effective date of this Agreement, the EPA shall issue a letter to the Petitioner withdrawing its *Demand for Payment, and Offer of Opportunity to Meet with EPA* dated July 14, 2008, as to Higman, and its *Special Notice Letter* dated December 29, 2006,

as to Higman. Copies of this letter of withdrawal shall be provided by the EPA to the U.S. Department of Justice and the chair of the Site steering group for potentially responsible parties.

#### **VI. FREEDOM OF INFORMATION ACT CLAIMS**

17. Within 10 days of receipt of payment from the EPA in accordance with paragraphs 13 and 14 of this Agreement, the Petitioner shall withdraw its request of the EPA under the Freedom of Information Act (HQ-RIN-01729-07) and its appeal of the denial thereof now pending at the EPA Office of General Counsel.

#### **VII. EFFECT OF CONSENT AGREEMENT**

18. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. EPA and Petitioner each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

#### **VIII. ENTIRE AGREEMENT**

19. This Agreement constitutes the final, complete and exclusive agreement and understanding between the parties with respect to the settlement embodied in this Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

#### **IX. EFFECTIVE DATE**

20. The effective date of this Agreement shall be the date upon which the EAB executes its approval of this Agreement by its signature below, which shall be deemed its authorization of payment from the Hazardous Substance Superfund within the terms of this Agreement.

**IT IS SO AGREED AND ORDERED.**

**ENVIRONMENTAL APPEALS BOARD**

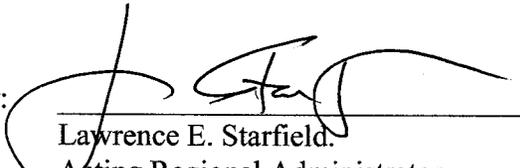
By: \_\_\_\_\_  
Judge, Environmental Appeals Board  
U.S. Environmental Protection Agency

Date: \_\_\_\_\_

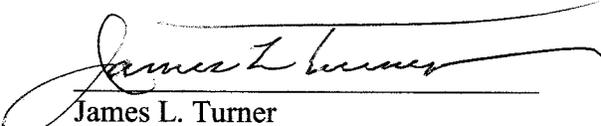
The UNDERSIGNED RESPONDENT enters into this Consent Agreement in the matter of the Higman Barge Lines, Inc., CERCLA 106(b) Petition No. 08-02.

**IT IS SO AGREED:**

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

By:  \_\_\_\_\_  
Lawrence E. Starfield  
Acting Regional Administrator  
Region 6  
U.S. Environmental Protection Agency

Date: 4/8/09

 \_\_\_\_\_  
James L. Turner  
Senior Attorney  
Office of Regional Counsel (6RC-S)  
U.S. Environmental Protection Agency  
1445 Ross Ave., Ste. 1200  
Dallas, Texas 75202-2733  
Tel: (214) 665-3159

Date: April 8, 2009

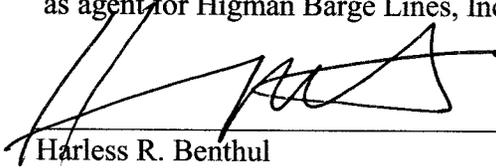
The UNDERSIGNED PETITIONER enters into this Consent Agreement in the matter of the Higman Barge Lines, Inc., CERCLA 106(b) Petition No. 08-02.

**IT IS SO AGREED:**

**FOR HIGMAN BARGE LINES, INC.**

By:   
Kyle Shaw  
Vice President, Higman Marine Services, Inc.  
as agent for Higman Barge Lines, Inc.

Date: 6 April 2009

  
Harless R. Benthul  
Attorney at Law  
4400 Louisiana, Suite 600  
Houston, Texas 77002  
Tel: (713) 223-0030

Date: April 6, 2009