

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

7/25/2007

EXHIBIT 1

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", with a stylized flourish at the end.

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. Ludwyszewski, 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

ATTORNEYS AT LAW
550 FANNIN, SUITE 400
BEAUMONT, TEXAS 77701

POST OFFICE BOX 4950
BEAUMONT, TEXAS 77704

TELEPHONE: (409) 835-5200
FACSIMILE: (409) 838-5638
e-mail: www.sbf-law.com

HOUSTON OFFICE:
1980 POST OAK BLVD., SUITE 1550
HOUSTON, TEXAS 77056
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

COUNTY OF HARRIS

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§
§

KNOW ALL MEN BY THESE
PRESENTS

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.

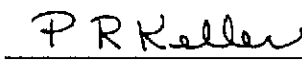
19. On July 25, 1996, the tank barge S 2018 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty with its previous cargo being crude oil.
20. On August 3, 1995, the tank barge HTCO 2201 was taken to the Palmer Barge Facility in Port Arthur, Texas. The barge was empty at the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

COUNTY OF HARRIS

§
§
§
§

KNOW ALL MEN BY THESE
PRESENTS

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.:

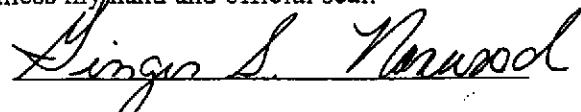
1. On March 14, 1993, the tank barge HTCO 2302 was taken to the Palmer Barge Facility in Port Arthur, Texas to be steamed. The barge was loaded with VGO. Steaming of this barge would not result in cargo being removed from the barge into the Palmer facility.
2. On March 14, 1993, the tank barge HTCO 2301 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.

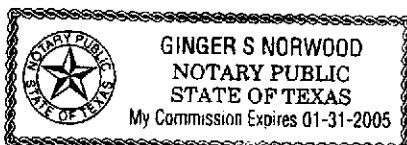
9. On December 27, 1993, the tank barge HTCO 3007 was taken to the Palmer Barge Facility in Port Arthur, Texas to have the steam coils tested for leaks and flushed. The barge was empty at the time with its previous cargo being Crude Oil. No cargo was removed from the barge into the Palmer facility. Testing 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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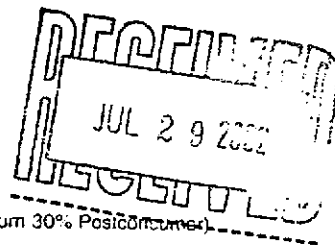


EXHIBIT 4



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,

A handwritten signature in cursive script, appearing to read "Samuel Coleman, P.E.", written in dark ink.

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.

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 RID/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(e)(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 to 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 RI/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.

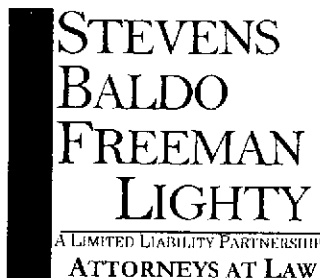
93. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which

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



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).

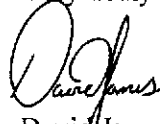
Additionally, Higman can produce affidavit evidence that it was Palmer's practice to separate oil recovered by it in the cleaning process and sell that oil. To that extent, oil recovered

Joseph Compton
May 22, 2007
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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**

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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 300–850°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

Table 1. Distillation Fractions of Petroleum

Fraction	Boiling, °C
light naphtha	–1 to 150
gasoline	–1 to 180
heavy naphtha	150–205
kerosene	205–250
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 350°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, H_2S , 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.

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-light colored liquid, it is often referred to as conventional petroleum.

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