



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SEP 28 2011

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2011 SEP 28 A 11:02
REGIONAL HEARING
CLERK

Via CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Frances Stella, Esq.
BrachEichler, LLC
101 Eisenhower Parkway
Roseland, NJ 07068

Re: *In the Matter of Getty Petroleum Marketing, Inc.*,
Docket No. RCRA-02-2011-7509

Dear Ms. Stella:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency - Region 2.

Please note the payment provisions of the Agreement. Please arrange for payment of the penalty according to the instructions given in the Final Order.

Sincerely,

Naomi P. Shapiro
Assistant Regional Counsel

cc: James Hamilton, Administrator
Bureau of Water Compliance and Enforcement
New Jersey Department of Environmental Protection
P.O. Box 422
401 East State Street, 4th Floor East
Trenton, New Jersey 08625-0422

Jonathan Berg, Program Manager
Underground Storage Tank Enforcement
Bureau of Water Compliance and Enforcement
New Jersey Department of Environmental Protection
P.O. Box 422
401 East State Street, 4th Floor East
Trenton, New Jersey 08625-0422

Enclosure

bcc: JohnJ Martin, PAD/POB
Dennis McChesney, RCB/UST
George Meyer, RCB
William Sawyer, WTSB
Ed Guster, RCB/UST
Naomi Shapiro, WTSB

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 SEP 28 A 11: 02
REGIONAL HEARING
CLERK

In the Matter of:

Getty Petroleum Marketing Inc.,
Respondent

Proceeding Under Section 9006
of the Solid Waste Disposal Act,
as amended.

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-02-2011-7509

This is a civil administrative proceeding instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by 42 U.S.C. §6901 et seq. (referred to collectively as the "Act" or "RCRA").

The Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute and carry forward this proceeding. The Respondent is Getty Petroleum Marketing Inc. ("GPMI"), the "owner" of "underground storage tank" or "UST Systems" as those terms are defined in Section 9001 of the Act, 42 U.S.C. §§ 6991, and 40 C.F.R. § 280.12, at gasoline service stations in the state of New Jersey ("facilities") at times relevant to this action. Complainant alleges that there have been violations of applicable federal underground storage tank ("UST") requirements involving GPMI's UST systems at five facilities.

Pursuant to 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Getty Petroleum Marketing, Inc. of East Meadow, NY.
2. Respondent is the owner of USTs located at gasoline service stations in New Jersey. At times relevant to this action, Respondent was subject to the requirements of the Act and its implementing regulations applicable to underground storage tanks.
3. At times relevant to this action, Respondent owned the USTs at the following facilities:

GPMI Station #	Facility Address
Getty 56112	745 Convery Blvd, Perth Amboy, NJ
Getty 56156	1 West 9th Street, Ocean City, NJ
Getty 56195	345 Route 22 East, Greenbrook, NJ
Getty 56311	1139 Cooper St, Edgewater Park, NJ
Getty 56925	676 Garfield Ave, Jersey City, NJ

4. Pursuant to Section 9005 of RCRA, on or about March 3, 2008, April 29, 2009, June 28, 2009, and April 09, 2010, EPA sent Information Request Letters (“IRL”) to Respondent in order to determine Respondent’s compliance with the UST regulations for the USTs at its New Jersey stations, including the facilities listed in paragraph 3, above.
5. Respondent timely submitted responses to EPA’s IRLs.

6. In its Responses to EPA's IRLs, Respondent identified Statistical Inventory Reconciliation as the method of leak detection employed at its New Jersey stations, including at the facilities listed in paragraph 3, above
7. In its Responses to EPA's IRLs, Respondent provided Statistical Inventory Reconciliation reports for the facilities listed in paragraph 3, above.
8. Based on Respondent's responses to the IRL, EPA determined that there were several months in the period from December 2006 to November 2009 during which Respondent failed to implement properly Statistical Inventory Reconciliation ("SIR") at the facilities listed in paragraph 3, above.
9. The failures to implement SIR described in paragraph 8, above, are failures to have a method of release detection for the USTs in question, in violation of 40 C.F.R. § 280.41(a).
10. Respondent continues to own the USTs at the Perth Amboy, Ocean City, and Jersey City facilities identified in paragraph 3, above.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, the parties hereby agree, as follows:

1. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the Findings of Fact and Conclusions of Law set forth above.
2. Respondent certifies that, to the best of its knowledge, the USTs it owns at the Perth

Amboy, Ocean City, and Jersey City facilities (*see paragraphs 3 and 10 in the above Findings of Fact and Conclusions of Law*) are, as of the date of Respondent's signature on this Consent Agreement, in compliance with the applicable release detection requirements found in 40 C.F.R. Part 280, Subpart D.

3. If in the future EPA believes that any information certified to is untrue or inaccurate, EPA will so advise the Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit comments to EPA concerning the alleged untrue or inaccurate certification. If, after consideration of Respondent's reply, EPA determines that the certification was untrue or inaccurate, Respondent shall be liable to EPA for a stipulated penalty of \$16,000. Nothing herein shall preclude EPA or the United States from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.

4. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement, and agrees to comply with the compliance provisions of this Consent Agreement and to its conditions.

5. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Forty-Nine Thousand and Five Hundred Dollars (\$49,500.00)**. The payment instrument shall be payable to the "Treasurer of the United States of America" and shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Or by **OVERNIGHT MAIL:**

U.S. Bank

1005 Convention Plaza
Mail Station SL-MO-C2GL
Attn: USEPA Box No. 979077
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

The check shall be identified with a notation of the name and docket number of this case as: In the Matter of the Getty Petroleum Marketing, Inc., RCRA-02-2011-7509.

Respondent shall also send a copy of the check to both Naomi Shapiro, Assistant Regional Counsel, United States Environmental Protection Agency, 290 Broadway, 16th Floor, New York, New York 10007-1866, and Karen Maples, Regional Hearing Clerk, at the same address.

- a. The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the “due date”).
- b. Failure to pay the full amount, according to the above provisions may result in the referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- c. Further, if timely payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period,

or any portion thereof, following the due date in which the balance remains unpaid.

- d. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.
- e. The effective date of this Consent Agreement and Final Order shall be the date of its filing with the Regional Hearing Clerk, Region 2, New York, New York.

6. Unless Respondent makes a showing in accordance with Paragraph 7, below, all stipulated penalties are due and payable within forty-five (45) calendar days of Respondent's receipt from EPA of a written demand for payment. All stipulated penalty payments shall be made in accordance with the payment instructions in paragraph 5, above. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this CA/FO. Failure to pay in full any stipulated penalty demanded may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or appropriate action.

7. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission, Complainant determines that Respondent has failed to provide a certification compliant with the requirements of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the

stipulated penalties due under this Consent Agreement, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA.

8. This Consent Agreement and Final Order shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, state or local environmental laws.

9. This Consent Agreement is being voluntarily and knowingly entered into by Respondent and EPA to resolve (upon full payment of the civil penalty) Respondent's liability pursuant to Section 9006 for civil penalties for the violations specifically described in paragraphs 8 and 9 of the Findings of Fact and Conclusions of Law section in this CA/FO. Respondent has read the foregoing Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance of the accompanying Final Order. The parties agree that all terms of settlement are set forth herein. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

10. Respondent hereby waives its right to request or to seek any Hearing on any of the terms of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

11. Respondent waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional

Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

12. Respondent certifies that its signatory is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

13. Each party hereto agrees to bear its own costs and fees in this matter.

14. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

15. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding, except one to enforce the terms of this CA/FO.

16. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns and upon Complainant.

RESPONDENT:

BY: Scott Hanley
Name (Print)

Scott Hanley
Title Vice President of Marketing
Getty Petroleum Marketing, Inc.

DATE: September 23, 2011

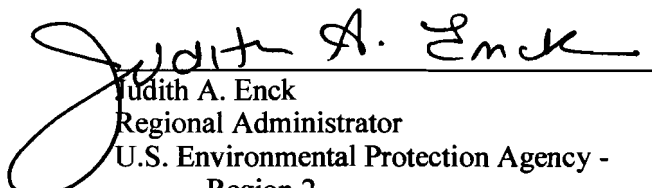
COMPLAINANT:

BY: Dore LaPosta
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency -
Region 2

DATE: SEPTEMBER 27, 2011

FINAL ORDER

The Regional Administrator (or anyone duly delegated to act on her behalf) of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Getty Petroleum Marketing, Inc, bearing Docket No. RCRA-02-2011-7509. The Consent Agreement, having been duly accepted and entered into by the parties to this matter, is hereby ratified, and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. Section 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. Section 22.18(b)(3) and shall constitute an order issued under authority of Section 9006 of RCRA, 42 U.S.C. Section 6991e.


Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: 9/22/11

CERTIFICATE OF SERVICE

I certify that I have caused to be sent the foregoing CONSENT AGREEMENT and its accompanying FINAL ORDER bearing the below-referenced docket number, in the following manner to the respective addressees listed below:

Copy by
Certified Mail/
Return Receipt Requested:

Frances B. Stella
Brach Eichler, LLC
101 Eisenhower Parkway
Roseland, NJ 07068

Attorney for GPMI

Original and One Copy
by Hand:

Karen Maples
Office of Regional Hearing Clerk
U. S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Dated: SEP 28, 2011
New York, New York

