COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

West Central Regional Office
3019 Peters Creek Road, Roanoke, Virginia 24019
Telephone (540) 562-6700, Fax (540) 562-6725
www.deq.state.va.us

Robert G. Burnley
Director

Steven A. Dietrich
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
GETTY PETROLEUM MARKETING INC.

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Getty Petroleum Marketing Inc., for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.

2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Order.

6. "Getty Petroleum Marketing Inc." means the company certified to do business in Virginia.

7. "Facility" means the petroleum dispensing stations located in Roanoke, Virginia.

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8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

9. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. Getty Petroleum Marketing Inc. operates through its independent dealer network facilities in Roanoke, Virginia. These facilities are subject of the Emission Standards for Petroleum Liquid Storage and Transfer Operations, which states that gasoline transfers into underground storage tanks, within Roanoke County, must utilize Stage I Vapor Recovery Systems.

2. DEQ has noted two apparent violations of the Air Pollution Control Law and Regulations. These apparent violations, noted in a September 25, 2002 Warning Letter, and a March 13, 2003 Notice of Violation, include:

   A. On September 19, 2002, DEQ staff observed a Green Motor Lines (an independent petroleum delivery company) petroleum transport truck unloading gasoline at the Jamison Avenue Getty Mart (#71031) facility without utilizing Vapor Recovery Control equipment. Staff inspected the facility and observed that the Vapor Recovery Control equipment was installed, but that the driver of the transport truck had failed to utilize it. Staff informed the driver, Mr. Stephen King, and the independent dealer/operator of the apparent violation and requested that the equipment be utilized for any further shipments received.

   B. On March 12, 2003, DEQ staff observed a Green Motor Lines (an independent petroleum delivery company) petroleum transport truck unloading gasoline at the Peters Creek Road Getty Mart (#71704) facility without utilizing Vapor Recovery Control equipment. Staff inspected the facility and observed that the Vapor Recovery Control equipment was installed, but the driver of the transport truck stated that the system was not operating correctly. Staff informed the driver, Mr. Tommy Dooley, and the store manager of the apparent violation and stated that enforcement would ensue.

   The observations above are cited under the following regulation.

   Section 9 VAC 5-50-5220.E of the State Air Pollution Control Board Regulations states that no owners or other person shall allow the transfer or permit the transfer of gasoline into any stationary storage tank, located in Roanoke County, unless such tank is equipped with a vapor control system that will remove, destroy, or

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prevent the discharge into the atmosphere of at least 90% by weight of Volatile Organic Compound emissions.

3. Getty Petroleum Marketing Inc. has stated that Green Motor Lines has been informed of the requirements for Vapor Recovery and that it will require that this petroleum delivery company will ensure the use of control equipment in the future.

4. In the interest of settlement, the parties enter into this Special Order by Consent without the trial or adjudication of any issue of fact for law herein and without this Special Order by Consent constituting any evidence or admission by any party hereto with respect to any issue of law or fact herein.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders Getty Petroleum Marketing Inc., and Getty Petroleum Marketing Inc. agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders Getty Petroleum Marketing Inc., and Getty Petroleum Marketing Inc. voluntarily agrees to pay a civil charge of **$1,960.00** in settlement of the violations cited in this Order.

$1,960.00 of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include Getty Petroleum Marketing Inc.'s Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Getty Petroleum Marketing Inc., for good cause shown by Getty Petroleum Marketing Inc., or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to

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Getty Petroleum Marketing Inc. by DEQ on March 13, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Getty Petroleum Marketing Inc. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein, but notwithstanding, neither the entry into of this Order nor the payment of the associated penalty shall constitute an admission of liability by Getty Petroleum Marketing Inc. for any of the violations listed herein nor waiver of any defense to the allegations contained herein.

4. Getty Petroleum Marketing Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Getty Petroleum Marketing Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Getty Petroleum Marketing Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Getty Petroleum Marketing Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Getty Petroleum Marketing Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Getty Petroleum Marketing Inc. shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that

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may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

a. the reasons for the delay or noncompliance;

b. the projected duration of any such delay or noncompliance;

c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Getty Petroleum Marketing Inc. Notwithstanding the foregoing, Getty Petroleum Marketing Inc. agrees to be bound by any compliance date, which precedes the effective date of this Order.

11. This Order shall terminate upon receipt of the funds specified in Section D herein. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Getty Petroleum Marketing Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Getty Petroleum Marketing Inc. voluntarily agrees to the issuance of this Order.

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And it is so ORDERED this 19th day of MAY, 2003.

Steven A. Ostrich for
Robert G. Burnley, Director
Department of Environmental Quality

Getty Petroleum Marketing Inc. voluntarily agrees to the issuance of this Order.

By: Natasha Koll, Vice President

Date: May 13, 2003

State of NY
~~Commonwealth of Virginia~~
City/County of Nassau

The foregoing document was signed and acknowledged before me this 13th day of May, 2003, by Natasha Koll (name), who is Vice President (title) of Getty Petroleum Marketing Inc., on behalf of the Corporation.

Notary Public

My commission expires: [redacted].

JEANETTE GEYER
Notary Public, State of New York
No. 4925657
Qualified in Nassau County
Commission Expires April 4, ~~1995~~ 2006

APPENDIX A

Getty Petroleum Marketing Inc. shall:

1. From the effective date of the Order, require that the petroleum delivery companies it uses ensure that all shipments of gasoline received shall be unloaded using the Vapor Recovery Control equipment at the facility.