COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Director

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Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Getty Petroleum Marketing Inc.
FOR
Getty Mart 71173
Facility ID No. 4-002293

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Getty Petroleum Marketing Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

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

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

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

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the physical location where the USTs are installed and/or operated, known as Getty Mart 71173 located at 7000 Three Chopt Rd. in Richmond, Virginia.

The Facility's USTs are owned by Getty Petroleum Marketing Inc., and the Facility is further identified by UST Facility ID# 4-002293.

5. "Getty" means Getty Petroleum Marketing Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Getty is a "person" within the meaning of Va. Code § 62.1-44.3.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

8. "PRO" means the Piedmont Regional Office of DEQ, located in Richmond, Virginia.

9. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

10. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*

11. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.

12. "UST" means underground storage tank as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

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

14. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Getty owns and operates the Facility in Richmond, Virginia. The Facility stores gasoline in USTs at the Facility. Getty is an UST owner and/or operator within the meaning of Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.

2. The USTs contain gasoline, a Regulated Substance, and are therefore subject to the Regulations. The Regulations require that all USTs meet final, specific performance requirements for release detection and spill, overfill, and corrosion protection.

3. On June 12, 2009, DEQ staff inspected the Facility for compliance with the requirements of the State Water Control Law and the Regulations. At that time, there were three active 10,000 gallon gasoline USTs on-site owned by Getty. DEQ staff observed a number of deficiencies. All deficiencies noted in the inspection have been corrected informally, except for the following:

    a. A review of the Statistical Inventory Reconciliation results of the months of May 2008 to May 2009 indicated several failures that were not reported to DEQ.

4. 9 VAC 25-580-130 requires that owners and operators must provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product. 9 VAC 25-580-140 specifies that USTs must be monitored at least every 30 days for releases using one of the methods listed.

5. 9 VAC 25-580-120 and 9 VAC 25-580-180 require that records of recent compliance with release detection requirements, including results of sampling, testing, or monitoring performed in the past year, must be maintained either at the UST site and immediately available for inspection, or at a readily available alternative site and be provided for inspection upon request.

6. 9 VAC 25-580-190 requires that owners/operators of UST systems report monitoring results from a release detection method that indicate a release may have occurred within 24 hours. It also requires that owners/operators follow the procedures set forth in 9VAC 25-580-210 within seven days of reporting the suspected release and take the necessary steps to address the risks posed by the release in accordance with Part VI of the Regulations. 9VAC 25-580-210 and 25-580-240 specify the procedures to follow upon discovery of a suspected release of a Regulated Substance at the UST site.

7. A Notice of Violation No. 07-09-PRO-597 was issued on July 31, 2009 for the violation listed in paragraph 3(a) above.

8. Pollution complaint (PC) # 2009-4538 was issued for the suspected release on June 12, 2009.

9. Getty conducted tank and line tightness testing in July, 2009. All tanks and lines passed.

10. On August 5, 2009, Getty submitted a written response to the NOV stating that work was proceeding to confirm whether a release occurred.

11. DEQ staff requested that a monitoring well be installed immediately down-gradient of the tanks and dispensers based upon groundwater flow direction data from two previous

pollution complaints. Results indicated low soil and groundwater contamination and DEQ staff analysis indicated there was no risk to receptors so the case was closed with no additional investigation required.

12. Based on the results of the June 12, 2009 inspection, and information submitted by Getty, the Board concludes that Getty has violated the deadline and other provisions contained in § 9 VAC 25-580-190 and -210 as described in paragraph 3(a) above.

13. Getty has submitted documentation that verifies that subsequent to issuance of the NOV, it has followed the release investigation and confirmation procedures set forth in 9VAC 25-580-210 to address the violation described in paragraph 3(a).

14. On February 11, 2010, staff held a telephone conference call with a Getty representative. The representative indicated that this facility had experienced more release detection inconclusives using the SIR method of release detection. The inconclusives were reported to DEQ and more testing was performed. All testing showed passing results so no PC# was issued.

15. Based on Getty's experience at this facility with the SIR method of release detection producing failures and inconclusives, it appears that valid SIR testing is not an effective method at this facility and is no longer an option for release detection.

16. In order for Getty to complete its return to compliance, DEQ staff and Getty representatives have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order and requires Getty to provide a plan and schedule for the installation of an acceptable alternative method to the current SIR release detection being performed at the facility.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Getty, and Getty agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $2,600.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Getty shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Getty for good cause shown by Getty, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Getty admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Getty 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 declares it has received fair and due process under the Administrative Process Act and the State Water 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 modify, rewrite, amend, or enforce this Order.

6. Failure by Getty 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 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 shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Getty shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that 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 verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Responsible Party intends 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.

11. This Order shall continue in effect until:

    a. Getty petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Getty.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Getty from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Getty and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Getty certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Getty to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Getty.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Getty voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

----------(Remainder of Page Intentionally Blank)----------

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

Date: 10/5/10 By: Scott Hanley, _____
(Person) (Title)
Getty Petroleum Marketing Inc.

State of New York
City/County of NASSAU

The foregoing document was signed and acknowledged before me this 5th day of OCTOBER, 2010, by SCOTT HANLEY who is DIRECTOR OF ENV. CONP. of Getty Petroleum Marketing Inc., on behalf of the corporation.

Roxanne Lohn-Cury
Notary Public

01LO4708913
Registration No.

My commission expires: 3/30/2014

ROXANNE LOHN-CURY
Notary Public, State of New York
No. 01LO4708913
Qualified in Queens County
Commission Expires March 30, 2014

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Release Detection method**

   a. Getty shall provide a plan and schedule for the installation of an acceptable alternative method to the current SIR release detection being performed at the facility by December 27, 2010.

2. **DEQ Contact**

   Unless otherwise specified in this Order, Getty shall submit all requirements of Appendix A of this Order to:

   Steve Pollock
   Department of Environmental Quality
   Piedmont Regional Office
   4949-A Cox Road
   Glen Allen, Virginia 23060
   804-527-5100
   Steve.pollock@deq.virginia.gov