

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:)
)
Getty Petroleum Corp.)
)
)
)
Respondent.)

SETTLEMENT AGREEMENT

AED/MSEB 4680

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Getty Petroleum Corporation, located in Jericho, New York ("Respondent").

Preliminary Statement

1. On November 7, 1996, a Notice of violation ("Notice") was issued to Respondent for violation of § 211 of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). The Notice stated that on June 25, 1995 gasoline was sold and offered for sale at the branded Getty retail facility which had a Reid vapor pressure (RVP) in excess of the applicable standard of 9.0 psi and that Respondent was liable for these violations. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation and the amount of the economic benefit or savings resulting from the violation. After considering the gravity of the violations and Respondent's history of compliance with the Act, EPA proposed in the Notice a civil penalty of Four Thousand Dollars (\$4,000).

2. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, which consideration is acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

3. The parties agree that the settlement of this matter, without further litigation, is in the public interest and that this Settlement Agreement ("Agreement") is the most appropriate means of resolving the matter.

4. By entering into this Agreement, Respondent does not admit that it is in any way responsible for the alleged violations or that any violations of law have occurred.

5. The parties stipulate and agree to the following matters. It is further agreed that these stipulations are applicable to this Agreement and any penalty proceeding arising out of this Agreement:

a. At all relevant times, Respondent was a distributor and a retailer as defined within the meaning of 40 C.F.R. § 80.2.

b. On June 26, 1995, EPA conducted an inspection at a Getty retail station located at 126 Canal Street in Brattleboro, Vermont.

c. As a result of the inspection, EPA determined that on June 26, 1995, 93 octane gasoline having an average RVP of 9.36 psi was being sold and offered for sale at this Getty branded retail station, in violation of 40 CFR § 80.27. Pursuant to 40 CFR § 80.28, Respondent is liable for violations of 40 CFR § 80.27.

d. EPA and Respondent have entered into this Agreement in the spirit of compromise and to avoid litigation.

e. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7545, 40 C.F.R. § 80.20, and other provisions of law.

f. In order to prevent future violations, Respondent has prepared a letter to be sent to distributors during March, 1997 which outlines the necessary actions and specific steps distributors must take to be in compliance by June 1 at all spots in the downstream distribution chain. For example, low turnover branded retail stations must draw down inventory prior to June 1 sufficient to meet RVP standards. A copy of the letter as sent will be provided to EPA at the address in paragraph 6, below.

6. After considering the gravity of the alleged violation and Respondent's history of compliance with the regulations, EPA has determined to remit and mitigate the civil penalty to three thousand four hundred dollars (\$3,400.00), subject to successful completion of the terms of this Agreement.

Respondent agrees to pay \$3,400.00 to the United States of America. The due date for payment shall be sixty (60) days from receipt of written notice that this Agreement is executed by EPA ("the due date"). In accordance with section 3717 of the Debt Collection Act of 1982, 31 U.S.C. § 3717, if the debt is not entirely paid within thirty (30) days following the due date, interest will accrue from the due date through the date of actual payment. Interest will be computed in accordance with section 3717(a) of the Debt Collection Act. A late payment handling charge of Twenty Dollars (\$20.00) will also be imposed if the amount due is not paid by the due date, with an additional charge of Ten Dollars (\$10.00) for each additional thirty (30) day period. Respondent agrees to pay the amount by check made payable to the "United States of America," and to mail the payment to:

U.S. Environmental Protection agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251.
Attn: AED/MSEB 4680

A photocopy of the check shall be mailed simultaneously to:

Angela E. Fitzgerald, Esquire
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
Air Enforcement Division (2242A)
401 M Street, S.W.
Washington, D.C. 20460
Attn: AED/MSEB 4680

7. Time is of the essence to this Agreement. Respondent's failure to timely pay the payment amount specified in Paragraph 6 within 30 days following the due date shall be deemed a default under the terms of this Agreement. The parties further agree that upon any such default, EPA may refer this matter to the United States Attorney General for collection pursuant to § 211(d) of the Clean Air Act, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement, or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default, EPA may proceed in an action based on the original claim of violation of section 211 of the Clean Air Act, 42 U.S.C. § 7545, and Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.

8. This agreement becomes effective upon the date accepted by EPA, at which time a copy will be returned to Respondent.

9. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent.

10. For purposes of this Agreement, in addition to the waivers specifically set forth in Paragraph 7 hereof, Respondent waives its right, if any, to object to EPA's jurisdiction to settle this matter.

11. Except as expressly set forth in Sections 7 and 10 hereof, the terms of this Settlement Agreement shall not be construed as waiving, barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or defenses that the Respondent may have.

12. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

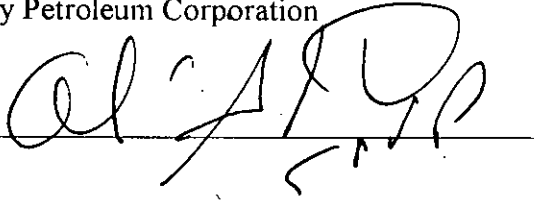
13. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

14. Timely payment of the payment amount specified in Paragraph 6 hereof and any stipulated penalties and interest due under this Settlement Agreement shall constitute full and final settlement and satisfaction of this matter; and, upon EPA's receipt of such payment, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Getty Petroleum Corporation

by:



Date:

3/4/97

United States
Environmental Protection Agency

by:

Bruce C. Buckheit
Bruce C. Buckheit, Director
Air Enforcement Division

Date:

5/2/97