

EXHIBIT 6

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**In Re: Methyl Tertiary Butyl Ether (“MTBE”)
Products Liability Litigation**
(SAS): M21-88

Master File No. 1:00 – 1898
MDL 1358

This document relates to:

*New Jersey Department of Environmental Protection v.
Getty Properties Corp., et al., v. HP Delta, Robert
Melecci and Dhandi Transport, No. 08 Civ. 00312*

Expert Report of: James A. Schaefer, Jr.
Date: April 2, 2013



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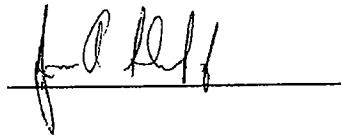
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Signature Page

I, James A. Schaefer, Jr., have been retained as an expert consultant to prepare this Expert Report by Rawle & Henderson, LLP, counsel for Defendant/Third-Party Plaintiff, Getty Properties Corp. (GPC), in regard to the Third-Party claims asserted against Third-Party Defendants HP Delta, Robert Melecci and Dhandi Transport in the matter of New Jersey Department of Environmental Protection, et al, v. Getty Properties Corp, et al.

I understand that I may be called to present expert testimony at trial and have been requested to prepare this written report with respect to testimony. Compilation and evaluation of data and mapping was performed by Kleinfelder staff. The opinions rendered herein, and which I am prepared to testify to, relate to the specific circumstances of petroleum fuel (gasoline) releases at the HP Delta retail petroleum station located in Colonia, Woodbridge, New Jersey.

Signed By:



Date:

April 2, 2013

Opinion #2: The NJDEP inspector reported that impacted soils were removed down to a clean clay layer located 3 feet below the bottom of the tanks. Based on this the vertical extent of petroleum hydrocarbon contamination was determined to be 3 feet below the bottom of the tanks which is approximately 15 feet below grade.

Opinion #3: The NJDEP inspector reported groundwater contamination did not occur because the water table was not encountered. Due to the concrete tank pad and surrounding paved parking lot the area in the vicinity of the USTs received no groundwater recharge during rain events. The observed clay layer at 15 feet below grade acted as a confining unit preventing petroleum hydrocarbons and MTBE from migrating to groundwater.

July 8, 1987: Mr. Downs reported "The soil was being removed and staged on plastic on the parking lot." Further he reported, "The clay layer was clean about 15 feet below the surface."

Opinion #4: The NJDEP inspector documented that the soil which was placed back into the excavation for safety reasons was re-excavated down to a clean clay layer at a depth of 15 feet below grade. This re-excavation confirmed the extent of soil contamination was limited to 15 feet due to the presence of a confining "clean" clay layer.

July 9, 1987: Mr. Downs reported an estimated 400 cubic yards of soil was removed and staged on plastic on the parking lot.

Handex Remediation Company (HRC) collected four soil samples from the excavated soil pile on July 8, 1987 for waste characterization analyses. The analyses included waste disposal specific parameters including Total Petroleum Hydrocarbons (TPH). TPH concentrations ranged from 142 to 5,218 mg/kg (Accutest, 1987).

Opinion #5: NJDEP regulations in 1987 required remedial action when TPH in soil exceeded 1,000 parts per million. Three out of the four samples collected were below this remedial action threshold. Based on this approximately 75% of the excavated soil did not require removal and the amount of soil requiring remedial action was limited in extent to less than 125 cubic yards.

Once stockpiled, the soil pile was covered with plastic as a temporary measure to contain the soil during precipitation events. In August 1987 NJDEP observed that the plastic had been removed uncovering the contaminated soil resulting in issuance of a discharge violation. The soil stockpile remained on Site for four months resulting in NJDEP administering a consent order to GPC on December 15, 1987. GPC was ordered to submit all sampling results to the NJDEP within five days, properly dispose of the contaminated soil within seven days, and submit a receipt of the proper disposal to NJDEP within 14 days of received letter (NJDEP, 1987). The stockpiled soil was eventually removed off-Site. Based on provided Site documents, NJDEP did not require further action regarding the removal of the USTs and subsequent disposal of stockpiled soil.

Opinion #6: GPC properly removed the USTs to the satisfaction of NJDEP. NJDEP required no further action because the petroleum hydrocarbon soil contamination was over-excavated and disposed of off-Site and no groundwater impacts were observed.

In 1988 the owner of the property, Robert Melecci installed a new gasoline UST dispensing system at a new location on the Site not in the old tank field. This new gasoline UST dispensing system is currently in operation at the Site today and consists of three fiberglass-clad steel 6,000-gallon gasoline storage tanks, one fiberglass-clad steel 4,000-gallon gasoline storage tank, one fiberglass-clad steel 6,000-gallon diesel storage tank, and the associated steel product piping. USTs and piping were not lined and are not equipped with secondary containment (NJDEP, 1989). The locations of the new USTs are shown in the Site Plan in Exhibit B, Figure 2.

The new UST tank field is much larger than the former requiring excavating approximately 25% more soil to accommodate the new tanks. To protect the structural integrity of the adjacent roadway and building, the excavation most likely required sheet piling to shore the sidewalls of the excavation. Standard practice is to drive sheet piles down twice the depth of the planned excavation. Based on the size of the new tanks the excavation was most likely between 13 and 15 feet deep and required sheet piles driven to 30 feet below grade. A comparison of the former and new USTs follows:

| <u>Former USTs</u> | <u>New USTs</u> | <u>Capacity Increase</u> | <u>Excavation Increase</u> |
|--------------------|-----------------|--------------------------|----------------------------|
| 3,000-gallon | 4,000 gallon | 1,000 gallons | 10 cubic yards |

and early 2000's. Gasoline containing MTBE was stored in the new UST system and sold at the Site during this time period.

Opinion #12: The investigation, testing, available Site related and public data and analysis of same, indicate that MTBE detected at the off-Site wells were the result of the 2004-2006 hydrocarbon spills/release(s) at the HP Delta Service Station from the new UST system (Exhibit D: Analytical Model Summary, Tables and Figures). One of the causes of this hydrocarbon release appears to be reported overfilling or spills/release during gasoline deliveries made by Dhandi Transport.

Gasoline discharges from the 1987 former UST system posed no damages to these residential supply wells due to the following conditions:

- NJDEP inspected and identified the clay confining layer as "clean clay" indicating the vertical extent of petroleum hydrocarbon contamination was limited to 15 feet below grade at the Site and confined above the clay layer.
- NJDEP inspected and reported that groundwater was not impacted in 1987.
- Based on analytical model estimates the source of the MTBE detected in residential supply wells dates back to a discharge between 1999 and 2006.
- Constituents detected in residential supply wells consisted of benzene and MTBE. Benzene degrades readily in the subsurface. The degradation half-life of benzene in glacial deposits is less than one year (e.g., concentration decreases by 50% in one year). Based on this, over the span from 1987 to 2005 benzene in groundwater would have degraded from its initial source concentration (solubility concentration) to below NJDEP standards. Moreover, a same but slower degradation process would have diminished MTBE concentrations over time to below New Jersey standards.

4.0 DAMAGES ASSESSMENT

Damages associated with the former gasoline UST dispensing system were limited to approximately 500 cubic yards of contaminated soil. This soil was transported and disposed off-Site in 1987.