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Anne Milgram  
Attorney General

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**For Immediate Release:**

August 31, 2009

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**Office of The Attorney General**

- Anne Milgram, *Attorney General*

## NJ Awarded \$866,932 in Elizabeth School Site Clean-up Costs

### State had sued Realty Firm, Getty

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TRENTON – Attorney General Anne Milgram announced today that a Superior Court judge has directed Getty Petroleum Marketing Inc. and Power Test Realty to pay the state more than \$866,932 as compensation for costs incurred by the Schools Development Authority in cleaning up a polluted service station property acquired for a school construction project in Elizabeth.

Following a nine-day trial in which 13 witnesses testified, Superior Court Judge Ross R. Anzaldi ruled that both Getty and Power Test are liable for petroleum-related soil and groundwater contamination at the former service station property on Newark Avenue in Elizabeth.

The judge also found that both Getty, of East Meadow, N.Y., and Power Test, of Jericho, N.Y., “abrogated their responsibility to take appropriate action” to address the pollution problem, and were unjustly enriched because they received fair market value for the property (as if it were not polluted).

Located at 743 Newark Avenue in Elizabeth, the property was acquired by the Schools Development Authority in 2003 -- the Authority was then known as the New Jersey Schools Construction Corporation -- and remediated by the state. Today, it is the site of Elizabeth School #30.

“This is an important decision for the citizens of New Jersey,” said Attorney General Milgram. “Substantial public dollars were invested in the clean-up of this property, and it’s only fair that the responsible parties – those who allowed it to become contaminated and failed to meet their duty to remove that contamination – should pay.”

“I am very pleased by the outcome of this litigation,” said SDA CEO Kris Kolluri. “The Schools Development Authority has been successfully pro-active in the cost-recovery measures it has taken to hold companies accountable for improper job performance and, in this instance, for their environmental responsibilities. This decision in favor of the SDA is a tremendous victory for the taxpayers of New Jersey.”

The Schools Development Authority acquired the Getty service station property in Elizabeth through condemnation in October 2003.

In 2004, separate testing efforts by both Getty and the state revealed the presence of various hazardous substances in the soil and groundwater including benzene, xylene, ethyl benzene and methyl tertiary ether.

In April 2004, additional investigation uncovered two, 3,000-gallon underground storage

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tanks for unleaded gasoline, and a 4,000-gallon underground storage tank for leaded gasoline. In addition, soil testing revealed the presence of hazardous pollutants where the tanks had been found, including total petroleum hydrocarbons.

The Schools Development Authority subsequently had 6,300 cubic yards of petroleum-contaminated soil removed from the Getty property, and also removed a total of eight underground fuel storage tanks – including a 550-gallon oil storage tank that had been found underground on an adjoining property.

In a two-count suit filed by the Division of Law on behalf of the Schools Development Authority in 2006, the state charged that the Newark Avenue property became contaminated over a span of years by the discharge of hazardous materials, and by the underground storage of petroleum products in massive tanks.

The suit contended that the state’s claim for recovery of clean-up and excavation costs site was authorized by the New Jersey Spill Act.

In ruling against Getty and Power Test on August 25 , Judge Anzaldi found that expert testimony introduced by attorneys for the state was “credible, convincing, probative and ultimately more reliable” than testimony offered by the defendants.

Deputy Attorney General Jennifer Killough Herrera served as trial attorney for the Schools Development Authority. Deputy Attorneys General A. Paul Stofa, Edward Devine, Joanna Grayer and Justine Torres assisted, as did State Investigator Denele Byrne.

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