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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

v.

Lupton Petroleum Products, Inc. and
Brad Hall & Associates, Inc.,

Defendants.

Case No. 3:24-cv-08144-GMS

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States

Environmental Protection Agency (“EPA”), has filed a Complaint in this action concurrently with this Consent Decree, alleging that Lupton Petroleum Products, Inc. (“Lupton Petroleum”) and Brad Hall & Associates, Inc. (“BHA”) violated Section 211 of the Clean Air Act, 42 U.S.C. § 7545, and the fuels regulations promulgated thereunder at 40 C.F.R. Parts 79 and 80.¹

The Complaint alleges violations stemming from production of gasoline and diesel fuel at a transmix processing facility (“TPF”) located in Lupton, Arizona. The TPF is currently operated by Lupton Petroleum and was operated by Lupton Petroleum during all periods relevant to the Complaint. The Complaint also alleges violations relating to the further distribution and sale of gasoline and diesel fuel produced at the TPF by BHA. The alleged violations include failure to register with EPA; failure to conduct mandatory sampling, testing, reporting, and recordkeeping; distribution and sale of gasoline without required detergent additives; production, distribution, and sale of motor vehicle, non-road, locomotive, or marine diesel fuel with sulfur content in excess of the applicable

¹ All citations to 40 C.F.R. Part 80 refer to the Clean Air Act fuels regulations that were effective during the period covered by the Complaint. On January 1, 2021, the Fuels Regulatory Streamlining Rule consolidated and reissued the fuels regulations, except those relating to the Renewable Fuel Standard, from 40 C.F.R. Part 80 into 40 C.F.R. Part 1090.

limit; and failure to comply with renewable fuels requirements.

As part of this settlement, Lupton Petroleum has retired 273,519 valid Renewable Identification Numbers (“RINs”) in the following amounts with the D-codes specified in 40 C.F.R. § 80.1427(a)(2)(i)-(iv) for the corresponding Renewable Volume Obligations (“RVOs”) incurred for compliance years 2015-2019:

- a. 2,847 valid RINs to comply with the Cellulosic Biofuel RVO;
- b. 31,253 valid RINs to comply with the Biomass-Based Diesel RVO;
- c. 42,206 valid RINs to comply with the Advanced Biofuel RVO;
and
- d. 197,213 valid RINs to comply with the Renewable Fuel RVO.

Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in

Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 205(b) and 211(d) of the Clean Air Act, 42 U.S.C. §§ 7524(b) and 7545(d), and over the Parties. Venue lies in this District pursuant to Sections 205(b) and 211(d) of the Clean Air Act, 42 U.S.C. §§ 7524(b) and 7545(d), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendants consent to the Court's jurisdiction over this Consent Decree and any such action and over Defendants, and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 211 of the Clean Air Act, 42 U.S.C. § 7545, and the fuels regulations promulgated thereunder at 40 C.F.R. Parts 79 and 80.

3. Without admitting or denying the factual allegations contained in the Complaint, Defendants consent to the terms of this Decree.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

5. Lupton Petroleum shall be solely responsible for compliance with Section V (Compliance Requirements) and Section VI (Reporting Requirements). BHA shall have no obligations under those sections and will not be responsible for any failure of Lupton Petroleum to comply with Section V and Section VI of this Decree.

6. No transfer of ownership or operation of the TPF, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Lupton Petroleum of its obligation to ensure that the terms of the Consent Decree are implemented, unless (1) the transferee agrees to undertake the obligations required by this Decree and to be substituted for Lupton Petroleum as a Party under the Decree and thus be bound by the terms thereof, (2) the United States consents to relieve Lupton Petroleum of its obligations, and (3) the Court approves the substitution. The United States' decision to refuse to approve the substitution of the transferee for Lupton Petroleum shall be subject to dispute resolution and judicial review under Section IX (Dispute Resolution), but must be upheld unless arbitrary and capricious. Among the criteria that the United States anticipates

using in guiding its decision are the proposed transferee's financial and technical ability to comply with the requirements of the Consent Decree, and whether the proposed transferee has a history of noncompliance with the Clean Air Act, its implementing regulations, or analogous requirements. At least 30 Days prior to such transfer, Lupton Petroleum shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and the United States Department of Justice ("DOJ") in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the TPF without complying with this Paragraph constitutes a violation of this Consent Decree.

7. Lupton Petroleum shall provide a copy of this Consent Decree to all of its officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor it retains to perform work required under this Consent Decree. Lupton Petroleum shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. Copies of the applicable provisions of the Decree do not need to be supplied to firms who are retained to supply materials or equipment to satisfy requirements of this Decree.

8. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the Clean Air Act or in regulations promulgated pursuant to the Clean Air Act have the meanings assigned to them in the Clean Air Act or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

“**BHA**” means Brad Hall & Associates, Inc., a general business corporation incorporated in Idaho with its principal place of business in Idaho Falls, Idaho;

“**Facility Practices Plan**” means the compliance plan for the TPF to be submitted by Lupton Petroleum under Paragraph 16;

“**Complaint**” means the complaint filed by the United States in this action;

“**Consent Decree**” means this Consent Decree and all appendices attached hereto listed in Section XXIV (Appendices);

“**Day**” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the

last day would fall on a Saturday, Sunday, or Federal holiday, the period runs until the close of business of the next business day;

“**Defendants**” means Lupton Petroleum and BHA;

“**DOJ**” means the United States Department of Justice and any of its successor departments or agencies;

“**EPA**” means the United States Environmental Protection Agency and any of its successor departments or agencies;

“**Effective Date**” has the definition provided in Section XIV;

“**Lupton Petroleum**” means Lupton Petroleum Products, Inc., a general business corporation incorporated in Idaho with its principal place of business in Idaho Falls, Idaho. Lupton Petroleum operates the TPF;

“**Paragraph**” means a portion of this Consent Decree identified by an Arabic numeral;

“**Parties**” means the United States and Defendants;

“**Section**” means a portion of this Consent Decree identified by a Roman numeral;

“**Speedy’s Truck Stop**” means the retail outlet located at 35900 Hwy I-40 in Lupton, Arizona. Speedy’s Truck Stop is currently owned by Lupton Truck Stop Property, LLC.;

“**Transmix Processing Facility**” or “**TPF**” means the transmix processing facility and all associated piping, equipment, and tanks, located at 35900 Hwy I-40 in Lupton, Arizona. The TPF is currently owned by Lupton Plant Property and currently operated by Lupton Petroleum; and

“**United States**” means the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

10. Within 30 Days after the Effective Date, Defendants shall pay the sum of \$1,000,729 as a civil penalty, together with interest accruing from the Effective Date, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

11. Defendants shall pay the civil penalty due, together with interest, by FedWire Electronic Funds Transfer (“EFT”) to the DOJ account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Arizona after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Ryan Meikle
General Counsel
Brad Hall & Associates, Inc.
1568 E. 17th Street

Idaho Falls, Idaho 83404
ryan.meikle@bradhallcompanies.com

on behalf of Defendants. Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices).

12. At the time of payment, Defendants shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov and via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to DOJ via email and regular mail in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Lupton Petroleum Products, Inc. and Brad Hall & Associates, Inc.*, and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-12134.

13. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

14. Batch Component Quantity Measurement Instrumentation. Lupton Petroleum represents that the batch component quantity measuring instrumentation currently installed at the TPF includes both a) a single flow meter that measures the volumes of ethanol and previously certified gasoline (“PCG”), blended

sequentially, and b) radar tank gauges mounted on each of the component and finished product tanks which can be used to measure the volume of transmix gasoline product (“TGP”), ethanol, and PCG added to that tank. Lupton Petroleum shall use either the flow meter(s) and/or the radar tank gauges to conduct batch component quantity measurement for each batch of gasoline it produces. Lupton Petroleum shall calibrate (as required) and maintain both the flow meter(s) and the radar tank gauges in accordance with manufacturer’s recommendations and good industry practices. Manual tank gauging may be used if there is a problem with the above methods.

15. Within 30 Days after the Effective Date, Lupton Petroleum shall submit to EPA a description of the current instrumentation and include for each instrument the date of installation or estimated date of installation based on equipment tags, make and model, accuracy and precision specifications, location on a diagram or sitemap, a description of what the instrument is intended to measure, and the date of commencement or estimated date of commencement of use of each instrument.

16. Submission of Facility Practices Plan. Within 60 Days after the Effective Date, Lupton Petroleum shall submit to EPA for EPA review and approval a Facility Practices Plan for the TPF to facilitate compliance with the fuels regulations at 40 C.F.R. Part 1090. The Facility Practices Plan is the only

deliverable under this Consent Decree that is subject to EPA approval and shall include the following elements:

- a. Checklists and/or worksheets that employees shall use to record tank levels and flow meter measurements observed in the field and any deviations from standard operating procedures for blending and sampling each batch of gasoline and ultra-low sulfur diesel (“ULSD”) produced.
- b. Standard operating procedures employees shall follow to confirm that all feedstocks meet the definition of “transmix” provided at 40 C.F.R. Part 1090.
- c. Standard operating procedures employees shall follow for blending detergent additives, oxygenates, and PCG with Lupton Petroleum’s TGP.
- d. Standard operating procedures employees shall follow for sampling and testing to confirm gasoline and ULSD batch homogeneity, including procedures employees shall follow when the test results demonstrate that a batch is not homogeneous and requires further blending.

- e. Standard operating procedures employees shall follow for sampling and testing of gasoline and ULSD batches to measure the following:
 - (1) Distillation parameters of gasoline and ULSD;
 - (2) Reid Vapor Pressure (“RVP”) of gasoline during the summer season; and
 - (3) Sulfur content of gasoline and ULSD.

- f. Standard operating procedures employees shall follow when test results demonstrate that a batch does not meet the distillation requirements of ASTM D4814 for gasoline or ASTM D975 for ULSD, or does not meet the RVP standards for gasoline or sulfur fuel standards for gasoline and ULSD provided at 40 C.F.R. Part 1090.

- g. Standard operating procedures employees shall follow to account for any oxygenate already in the feedstock and to add the correct amount of oxygenate to the transmix gasoline product and previously certified gasoline blends to ensure that E10 produced by the TPF in reliance on the 1 pound per square inch ethanol waiver provision at Section 211(h)(4) of the Clean Air Act, 42 U.S.C. § 7545(h)(4), contain 9–10 percent ethanol.

h. Standard operating procedures employees shall follow for keeping gasoline and ULSD records related to:

- (1) Product transfer documents;
- (2) Sampling and testing, including:
 - (a) The location, date, time, and storage tank identification for each sample collected;
 - (b) The identification of the person(s) who collected the sample and the person(s) who performed the testing;
 - (c) The results of all tests as originally printed by the testing apparatus, or where no printed result is produced, the results as originally recorded by the person or apparatus that performed the test.

Electronic records are acceptable if the data is originally recorded directly to the laboratory information system without intermediate hand entry;
 - (d) The methodology used to test for homogeneity, distillation, RVP, sulfur and oxygenate content; and

- (e) Performance-based measurement and statistical quality control.
 - (3) The volumes of TGP recovered from transmix and the type and amount of any PCG added to the TGP to make gasoline;
 - (4) Oxygenate blending; and
 - (5) Gasoline detergent blending.
- i. Standard operating procedures employees shall follow for accurately measuring the volume of each batch of gasoline and ULSD produced and ensuring the volume in all maintained databases is accurate and timely updated.
 - j. Standard operating procedures employees shall follow for accurately reporting the volume and all of the values and properties required to be reported for each batch of gasoline and ULSD.
 - k. Standard operating procedures employees shall follow for producing E85 from TGP, PCG, and ethanol.
 - l. Standard operating procedures employees shall follow to arrange for attestation engagements and to confirm that the resulting report is properly submitted to EPA and that such

report, for any attestation engagement procedure that does not apply, includes an explanation supplied by Lupton Petroleum as to why the given procedure does not apply.

- m. Standard operating procedures for initial employee training and annual refresher employee trainings that shall include (i) a review of the Facility Practices Plan and any other standard operating procedures in place for ensuring compliance with 40 C.F.R. Part 1090, and (ii) a field training component for all employees involved in the sampling of fuel in tanks or sample analysis that reviews and follows the standard operating procedures outlined in the Facility Practices Plan.

17. Implementation of Facility Practices Plan. Within 60 Days after EPA approval of the Facility Practices Plan submitted under Paragraph 16, Lupton Petroleum shall implement and comply with all terms of the Facility Practices Plan.

18. Except as provided by Paragraph 19 below, should Lupton Petroleum wish to make any changes to the terms of the Facility Practices Plan, Lupton Petroleum may revise the Facility Practices Plan provided that the terms of the Facility Practices Plan continue to include the elements required by Paragraph 16 of this Consent Decree and that the revisions are consistent with 40 C.F.R. Part

1090. Any revision to the Facility Practices Plan not in accordance with this Paragraph shall be a violation of this Consent Decree.

19. Limitations on the Use of Non-transmix Feedstocks and Blendstocks and the Production of E15. The limitations in subparagraphs (a)–(c) apply to the use of non-transmix feedstocks and blendstocks and the production of E15 at the TPF, unless and until Lupton Petroleum meets the requirements set forth in subparagraph (d).

- a. For all gasoline and ULSD production, Lupton Petroleum shall use only feedstocks that meet the definition of “transmix” provided at 40 C.F.R. Part 1090.
- b. Lupton Petroleum shall only produce gasoline from TGP or a combination of TGP and PCG.
- c. Lupton Petroleum shall only produce gasoline containing ethanol concentrations of 10 percent or less.
- d. Should Lupton Petroleum wish to use non-transmix feedstocks or blendstocks or to produce gasoline containing more than 10 percent ethanol, it shall notify EPA in writing, and submit for EPA review and approval revisions to the Facility Practices Plan submitted under Paragraph 16 providing protocols for use of non-transmix feedstocks and blendstocks or for the

production of gasoline containing more than 10 percent ethanol in compliance with 40 C.F.R. Part 1090 and with all waivers granted by EPA under Section 211(f)(4) of the Clean Air Act, 42 U.S.C. 42 U.S.C. § 7545(h)(4). Upon EPA approval of a revised Facility Practices Plan, Lupton Petroleum may then use non-transmix feedstocks or blendstocks or produce gasoline containing more than 10 percent ethanol in compliance with the revised Facility Practices Plan.

20. Third-Party Audits. Lupton Petroleum shall implement the Third-Party Audit Requirements attached hereto as Appendix A.

21. Approval of Deliverables. After review of the Facilities Practice Plan that is required to be approved by EPA pursuant to Paragraphs 16 and 19.d), EPA will in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. If EPA disapproves a submission, in whole or in part, it shall state in writing the basis for such disapproval.

22. If the submission is approved pursuant to Paragraph 21(a), Lupton Petroleum shall take all actions required by the plan, in accordance with the schedules and requirements of the plan as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 21(b) or (c),

Lupton Petroleum shall, upon written direction from EPA, take all actions required by the approved plan that EPA determines are technically severable from any disapproved portions, subject to the right to dispute only the specified conditions or the disapproved portions under Section IX (Dispute Resolution).

23. If the submission is disapproved in whole or in part pursuant to Paragraph 21(c) or (d), Lupton Petroleum shall, within 45 Days or such other time as EPA and Lupton Petroleum agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Lupton Petroleum shall proceed in accordance with the preceding Paragraph.

24. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Lupton Petroleum to correct any deficiencies, in accordance with the preceding Paragraphs, subject to the right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

25. If Lupton Petroleum elects to invoke Dispute Resolution as set forth in Paragraphs 22 or 24, it shall do so by sending a Notice of Dispute in accordance with Paragraph 53 within 30 Days (or such other time as EPA and Lupton Petroleum agree to in writing) after receipt of the applicable decision.

26. Any stipulated penalties applicable to the original submission pursuant to Section VII (Stipulated Penalties) shall accrue during the resubmission period established in Paragraph 23, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Lupton Petroleum's obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

27. Permits. Where any compliance obligation under this Section requires Lupton Petroleum to obtain a Federal, state, or local permit or approval, Lupton Petroleum shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Lupton Petroleum may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

28. If Lupton Petroleum violates, or has reason to believe that it may violate, any requirement of this Consent Decree, it shall notify DOJ and EPA at the

address set forth in Section XIII (Notices) of such violation and its likely duration, in writing, within ten business days of the Day that it first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Lupton Petroleum shall so state in the report. Lupton Petroleum shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day it became aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Lupton Petroleum of its obligation to provide the notice required by Section VIII (Force Majeure).

29. Whenever any violation of this Consent Decree or any other event affecting Lupton Petroleum's performance under this Consent Decree may pose an immediate threat to the public health or welfare or the environment, Lupton Petroleum shall notify EPA by email at the address set forth in Section XIII (Notices) as soon as possible, but no later than 24 hours after Lupton Petroleum first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

30. Each report submitted under this Section, under Paragraph 15, and under Paragraph 21 of Appendix A, shall be signed by officials of Lupton Petroleum and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

31. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

32. The reporting requirements of this Consent Decree do not relieve any Defendant of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other Federal, state, or local law, regulation, permit, or other requirement.

33. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

34. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under

Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any plan approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

35. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required under Paragraph 10 when due, Defendants shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

36. Reporting Requirements. If Lupton Petroleum fails to comply with the reporting requirements of Section VI (Reporting Requirements), Paragraph 15, or with Paragraph 21 of Appendix A, it shall pay the following stipulated penalties per violation per Day:

Period of Noncompliance	Penalty per Violation per Day
1st through 14th day	\$ 100
15th through 30th day	\$ 200
31st day and beyond	\$ 500

37. Batch Component Quantity Measurement Instrumentation. If Lupton Petroleum fails to comply with the requirements of Paragraph 14 to measure batch component quantities for each batch of gasoline it produces, Lupton Petroleum shall pay the following stipulated penalties per Day:

Period of Noncompliance	Penalty per Violation per Day
1st through 14th day	\$ 700
15th through 30th day	\$ 3,500
31st day and beyond	\$ 7,000

38. Facility Practices Plan and Third-Party Audits.

- a. If Lupton Petroleum fails to timely develop and submit a Facility Practices Plan in accordance with the requirements of Paragraph 16, fails to comply with the requirements of Paragraphs 18 and 19, or fails to timely comply with the compliance audit requirements of Paragraphs 11, 15, 16, 19, or 20 of Appendix A, it shall pay the following stipulated penalties per violation per Day:

Period of Noncompliance	Penalty per Violation per Day
1st through 14th day	\$ 700
15th through 30th day	\$ 3,500
31st day and beyond	\$ 7,000

- b. If Lupton Petroleum fails to implement the Facility Practices Plan in accordance with the requirements of Paragraph 17, or

fails to timely comply with the compliance audit requirements of Paragraphs 2–6, 9, 10, or 12–14 of Appendix A, it shall pay the following stipulated penalties per violation per Day:

Period of Noncompliance	Penalty per Violation per Day
1st through 14th day	\$ 100
15th through 30th day	\$ 200
31st day and beyond	\$ 500

39. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

40. The responsible Defendant or Defendants shall pay any stipulated penalty within 30 Days after receiving written demand from the United States.

41. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

42. Stipulated penalties shall continue to accrue as provided in Paragraph 39 during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a

decision of EPA that is not appealed to the Court, the responsible Defendant or Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days after the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the responsible Defendant or Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days after receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, the responsible Defendant or Defendants shall pay all accrued penalties determined to be owing, together with interest, within 15 Days after receiving the final appellate court decision.

43. The responsible Defendant or Defendants shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 11 and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

44. If a Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, that Defendant shall be liable for interest on such penalties,

as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for a Defendant's failure to pay any stipulated penalties.

45. The payment of penalties and interest, if any, shall not alter in any way any Defendant's obligation to complete the performance of the requirements of this Consent Decree.

46. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for any Defendant's violation of this Consent Decree or applicable law, including but not limited to an action against a Defendant or Defendants for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

47. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Lupton Petroleum, of any

entity controlled by Lupton Petroleum, or of Lupton Petroleum's contractors, that delays or prevents the performance of any obligation under this Consent Decree, despite Lupton Petroleum's best efforts to fulfill the obligation. The requirement that Lupton Petroleum exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Lupton Petroleum's financial inability to perform any obligation under this Consent Decree.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Lupton Petroleum shall provide notice by telephone or by email to the EPA Attorney-Advisor listed in Section XIII (Notices), within 72 hours of when they first knew that the event might cause a delay. Within seven Days thereafter, Lupton Petroleum shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; its rationale for attributing such delay to a force majeure event

if it intends to assert such a claim; and a statement as to whether, in the opinion of Lupton Petroleum, such event may cause or contribute to an endangerment to public health, welfare or the environment. Lupton Petroleum shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Lupton Petroleum from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Lupton Petroleum shall be deemed to know of any circumstance of which the Lupton Petroleum, any entity controlled by it, or its contractors, knew or should have known.

49. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Lupton Petroleum in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

50. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Lupton Petroleum in writing of its decision.

51. If Lupton Petroleum elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Lupton Petroleum shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Lupton Petroleum complied with the requirements of Paragraphs 47 and 48. If Lupton Petroleum carries this burden, the delay at issue shall be deemed not to be a violation by Lupton Petroleum of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

52. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

53. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal

negotiations. The dispute shall be considered to have arisen when Lupton Petroleum sends DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 14 Days after the conclusion of the informal negotiation period, Lupton Petroleum invokes formal dispute resolution procedures as set forth below.

54. Formal Dispute Resolution. Lupton Petroleum may invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending DOJ and EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Lupton Petroleum's position, and any supporting documentation relied upon.

55. Within 45 Days after receipt of Lupton Petroleum's Statement of Position pursuant to the preceding Paragraph, the United States will send Lupton Petroleum its Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States.

The United States' Statement of Position is binding on Lupton Petroleum, unless Lupton Petroleum files a motion for judicial review of the dispute in accordance with the following Paragraph.

56. Judicial Dispute Resolution. Lupton Petroleum may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion must be filed within ten Days after receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Lupton Petroleum's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. The motion may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 53.

57. The United States shall respond to Lupton Petroleum's motion requesting judicial resolution of the dispute within the time period allowed by the Local Rules of this Court. Lupton Petroleum may file a reply memorandum, to the extent permitted by the Local Rules.

58. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 54 of this Decree (Formal Dispute Resolution), Lupton Petroleum shall bear the burden of demonstrating that its

position complies with this Consent Decree and the Clean Air Act, and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and Lupton Petroleum reserves the right to oppose that position.

59. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of any Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 42. If Lupton Petroleum does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

60. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Lupton Petroleum or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Lupton Petroleum's compliance with this Consent Decree.

61. Upon request, Lupton Petroleum shall provide EPA or its authorized representatives splits of any samples taken by Lupton Petroleum. Upon request, EPA shall provide Lupton Petroleum splits of any samples taken by EPA.

62. Until two (2) years after the termination of this Consent Decree, Lupton Petroleum shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate to Lupton Petroleum's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention

period, upon request by the United States, Lupton Petroleum shall provide copies of any non-privileged documents, records, or other non-privileged information required to be maintained under this Paragraph. This record retention requirement shall not apply to voicemail messages or text messages so long as these forms or communication are not used for substantive discussions concerning compliance with the Consent Decree. Nor shall this retention requirement apply to outside counsel retained specifically for purposes of potential litigation.

63. At the conclusion of the information-retention period provided in the preceding Paragraph, Lupton Petroleum may destroy such documents, records, or other information. However, upon request by the United States, Lupton Petroleum shall deliver any such non-privileged documents, records, or other information to EPA. If Lupton Petroleum asserts that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law, it shall provide the United States with the following:

- (a) the title of the document, record, or information;
- (b) the date of the document, record, or information;
- (c) the name and title of each author of the document, record, or information;
- (d) the name and title of each addressee and recipient;
- (e) a description of the subject of the document, record, or information; and
- (f) the privilege asserted by Lupton Petroleum.

However, no documents, records, or other

information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

64. Lupton Petroleum may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Lupton Petroleum seeks to protect as CBI, Lupton Petroleum shall follow the procedures set forth in 40 C.F.R. Part 2.

65. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable Federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable Federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

66. This Consent Decree resolves only the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

67. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Clean Air Act or implementing regulations, or under other Federal

laws, regulations, or permit conditions, except as expressly specified in Paragraph 66.

68. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the TPF, Speedy's Truck Stop, or Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 66.

69. This Consent Decree is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable Federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Air Act, 42 U.S.C. § 7401, et

seq., or with any other provisions of Federal, State, or local laws, regulations, or permits.

70. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

71. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

72. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect, from the non-paying Defendant, the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by a Defendant.

XIII. NOTICES

73. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by mail or email (with a preference for email), addressed as follows:

As to DOJ by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-12134

As to DOJ by mail: EES Case Management Unit
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-12134

As to EPA by email: nelson.karen@epa.gov

As to EPA by mail: Karen Nelson
Attorney-Advisor
Air Enforcement Division
U.S. Environmental Protection Agency
1595 Wynkoop Street (8MSU)
Denver, CO 80202

As to Lupton Petroleum
by email: ryan.meikle@bradhallcompanies.com

As to Lupton Petroleum
by mail: Ryan Meikle
General Counsel
Lupton Petroleum Products, Inc.
1568 E. 17th Street
Idaho Falls, Idaho 83404

As to BHA by email: ryan.meikle@bradhallcompanies.com

As to BHA by mail: Ryan Meikle
General Counsel
Brad Hall & Associates, Inc.
1568 E. 17th Street
Idaho Falls, Idaho 83404

74. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

75. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

76. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

77. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Consent Decree.

XVI. MODIFICATION

78. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties, except that the terms of Section V and Appendix A may be modified by a subsequent written agreement signed only by Lupton Petroleum and the United States. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

79. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 58, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

80. After Lupton Petroleum has satisfactorily completed its obligations under this Consent Decree, including implementation of Section V (Compliance Requirements), and has thereafter maintained satisfactory compliance with this Consent Decree for a period of one year, and Defendants have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination— to be submitted to DOJ and EPA in accordance with Section **Error! Reference source**

not found. (Notices) – stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

81. Following receipt by the United States of Defendants' Request for Termination, Defendants and EPA shall confer informally concerning the Request and any disagreement that Defendants and EPA may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, Defendants and the United States shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

82. If the United States does not agree that the Consent Decree may be terminated, it shall notify Defendants in writing as to which requirements for termination have not been satisfied. If Defendants disagree with the United States' position on termination, they may invoke Dispute Resolution under Section IX, but shall not do so until 60 Days after service of their Request for Termination.

XVIII. PUBLIC PARTICIPATION

83. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or

inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

XIX. SIGNATORIES/SERVICE

84. Each undersigned representative of Defendants and the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

85. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail or email with respect to the Complaint and all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendants need not file answers to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree, in which case Defendants' answers would be due 30 Days following the Court's order.

XX. INTEGRATION

86. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXI. FINAL JUDGMENT

87. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants.

XXII. HEADINGS

88. Headings to the Sections and Subsections of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.

XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

89. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii) and 26 C.F.R. § 162-21(b)(2)(iii)(A), performance of Section II (Applicability)

Paragraph 7; Section V (Compliance Requirements) Paragraphs 14–22 and 27; Section VI (Reporting Requirements) Paragraphs 28 and 30; Section X (Information Collection and Retention) Paragraphs 60–63; and Appendix A, is restitution, remediation, or required to come into compliance with law.

XXIV. APPENDICES

90. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is the Third Party Audit Requirements.

“Appendix B” is the Third Party Auditor Certification Form.

Dated and entered this ___ day of _____, 2024.

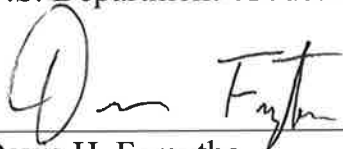
UNITED STATES DISTRICT JUDGE

Signature Page for United States v. Lupton Petroleum Products, Inc., et al.

FOR THE UNITED STATES OF AMERICA:

Patricia McKenna
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

July 17, 2024
Date



Davis H. Forsythe
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Denver, CO 80202

Signature Page for United States v. Lupton Petroleum Products, Inc., et al.

FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:

DAVID
UHLMANN

 Digitally signed by DAVID
UHLMANN
Date: 2024.06.20 12:46:10 -04'00'

DAVID M. UHLMANN
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

ROSEMARIE A. KELLEY
Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

MARY E. GREENE
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

OF COUNSEL:

Karen Nelson
Attorney-Advisor
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Signature Page for United States v. Lupton Petroleum Products, Inc., et al.

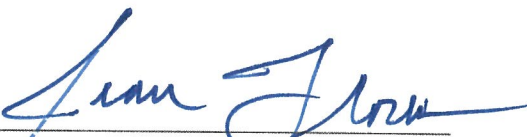
FOR LUPTON PETROLEUM PRODUCTS, INC.:

6/10/24
Date


RYAN MEIKLE
Chief Legal Officer
1568 E. 17th Street
Idaho Falls, Idaho 83404

APPROVED AS TO FORM
COUNSEL FOR LUPTON PETROLEUM PRODUCTS, INC.

GUIDA, SLAVICH & FLORES, P.C.

— 

JEAN M. FLORES
Guida, Slavich & Flores, P.C.
5876 Elderwood Drive
Dallas, Texas 75230
Admitted *Pro Hac Vice*
U.S. District Court for the District of Arizona [2:24-ph-99905]
Texas Bar No. 13755500

Signature Page for United States v. Lupton Petroleum Products, Inc., et al.

FOR BRAD HALL & ASSOCIATES, INC.:

6/10/27

Date

Ryan Meikle

RYAN MEIKLE

Chief Legal Officer

1568 E. 17th Street

Idaho Falls, Idaho 83404

APPROVED AS TO FORM
COUNSEL FOR BRAD HALL & ASSOCIATES, INC.

GUIDA, SLAVICH & FLORES, P.C.

Jean Flores

Jean M. Flores

Guida, Slavich & Flores, P.C.

5876 Elderwood Drive

Dallas, Texas 75230

Admitted *Pro Hac Vice*

U.S. District Court for the District of Arizona [2:24-ph-99905]

Texas Bar No. 13755500

APPENDIX A TO CONSENT DECREE

Third Party Audit Requirements

THIRD PARTY AUDIT REQUIREMENTS

I. Hiring an Independent Third Party Auditor

1. Lupton Petroleum shall hire an independent third party auditor (“Auditor”) to conduct two compliance audits (“Audits”) at the Transmix Processing Facility (“TPF”), as set forth below, to evaluate Lupton Petroleum’s compliance with the terms of the Facility Practices Plan related to: (i) sampling and testing to confirm gasoline and ULSD batch homogeneity, (ii) sampling and testing of gasoline and ULSD batches to establish distillation parameters of gasoline and ULSD, RVP of gasoline, and sulfur content of gasoline and ULSD, and (iii) recordkeeping. The Auditor shall also evaluate any revisions Lupton Petroleum has made to the Facility Practices Plan under Paragraph 18 of the Consent Decree subsequent to its approval by EPA, to confirm that such revisions are consistent with 40 C.F.R. Part 1090 and that the terms of the Facility Practices Plan continue to include the elements required by Paragraph 16 of the Consent Decree.

2. Lupton Petroleum shall bear the cost of retaining the Auditor, and shall require that the Auditor conducts the Audits in accordance with the requirements of this Appendix A.

3. Within 90 Days of the Effective Date, Lupton Petroleum shall submit to DOJ and EPA the names and qualifications of three independent third party auditors that meet the following requirements:

- a. The proposed Auditor has represented in writing to Lupton Petroleum that it possesses the expertise and competence in the regulatory fuels programs Section 211 of the Clean Air Act, 42 U.S.C. § 7545, and the associated fuels regulations published at 40 C.F.R. Parts 79 and 1090;
- b. The proposed Auditor and its personnel have not been employed by Lupton Petroleum, have not conducted research and/or development for Lupton Petroleum, and have not provided advisory services of any kind (including, but not limited to: design, construction, financial, engineering, hazardous waste management, legal, or consulting services) to Lupton Petroleum within the last three years;
- c. The proposed Auditor has not been retained by Lupton Petroleum to satisfy any of the requirements of Section V (Compliance Requirements) of this Consent Decree; and

d. The proposed Auditor has executed the certification attached to the Consent Decree as Appendix B, a copy of which shall be submitted to DOJ and EPA by Lupton Petroleum along with the list of proposed Auditors.

4. The United States shall inform Lupton Petroleum in writing which of the proposed Auditors, if any, it has approved. Within 30 Days of United States' written approval, Lupton Petroleum shall retain the approved candidate to serve as the Auditor and to perform the activities set forth in this Appendix A.

5. If the United States disapproves of all proposed Auditors, Lupton Petroleum shall, within 30 Days of receipt of the United States' written notification, submit to DOJ and EPA for approval the names and qualifications of an additional two proposed Auditors that meet the qualifications set forth in Paragraph 3 of this Appendix A. The United States will review the proposed Auditors in accordance with Paragraph 4 of this Appendix A.

6. Lupton Petroleum shall not employ the Auditor or any of its personnel who managed, conducted, or otherwise participated in the Audits to provide any other commercial, business, or voluntary services to Lupton Petroleum for a period of at least one year following the Auditor's submission of its final Audit Report.

7. Auditor Replacement Procedure. If Lupton Petroleum or the United States independently determine that the Auditor approved by the United States cannot satisfactorily perform the required Audits, Lupton Petroleum and the United States shall informally confer. If they agree that a new Auditor should be selected, Lupton Petroleum shall submit to DOJ and EPA for approval the name and qualifications of two proposed replacement Auditors that meet the qualifications set forth in Paragraph 3 of this Appendix A. The United States shall review the proposed replacement Auditors in accordance with Paragraph 4 of this Appendix A. If Lupton Petroleum and the United States do not agree on the need to select a replacement Auditor, the United States' position shall control, subject to Lupton Petroleum's right to invoke the dispute resolution procedures in Section IX (Dispute Resolution) of this Consent Decree.

8. Nothing in Paragraph 7 of this Appendix A precludes the United States from assessing stipulated penalties for missed Audit deadlines associated with the need to replace an Auditor, unless Lupton Petroleum successfully asserts that the inability of the Auditor to perform the required Audits was due to a Force Majeure event in accordance with Section VIII (Force Majeure) of this Consent Decree. For purposes of assessing whether a Force Majeure event has occurred, the Auditor shall not be considered to be an entity controlled by Lupton Petroleum, or to be Lupton Petroleum's contractor.

II. Conducting the Audits

9. Lupton Petroleum shall give the Auditor a copy of this Consent Decree and all appendices, a copy of the Facility Practices Plan, and all other information and access necessary to complete the Audits.

10. Each Audit shall include an on-site portion, involving one or more visits to the TPF by the Auditor, and shall be conducted to permit the Auditor to assess Lupton Petroleum's compliance consistent with Paragraph 1 of this Appendix A, and to complete an Audit Report as detailed in Paragraph 16 of this Appendix A.

11. The first Audit shall begin no earlier than 180 Days after EPA's approval of the Facility Practices Plan submitted under Paragraph 16 of the Consent Decree, and the document review and on-site portion of the first Audit shall be completed no later than the Day that is the one-year anniversary after such approval. The second Audit shall begin no earlier than 180 Days after Lupton Petroleum submits the Completion Report from the first Audit under Paragraph 21 of this Appendix A, and the document review and on-site portion of the second Audit shall be completed no later than 365 Days after such submission.

12. One or more representatives of Lupton Petroleum (who may be an employee, an outside consultant, or both) familiar with the Facility Practices Plan and 40 C.F.R. Part 1090 shall accompany the Auditor during the on-site

portion of each Audit to assist the Auditor in understanding how the Facility Practices Plan works and applies to specific operations and employees. Other representatives of Lupton Petroleum may also participate in the on-site portions of the Audit as observers. The representatives of Lupton Petroleum shall not interfere with the independent judgment of the Auditor.

13. Upon showing proper credentials and complying with applicable TFP health and safety requirements, designated representatives of EPA shall be permitted to participate in the on-site portion of each Audit as observers; however, the Audit may proceed if EPA elects not to send observers. Lupton Petroleum shall notify EPA at least 14 Days before each on-site visit by the Auditor is scheduled to allow EPA time to make arrangements for observers to be present.

14. Lupton Petroleum shall cooperate fully with any reasonable requests of the Auditor, and provide the Auditor with access, upon reasonable notice and taking into account operational impacts, to all records, employees, contractors, and properties under Lupton Petroleum's ownership or control as reasonably necessary for the Auditor to effectively perform the duties described in this Appendix A. Any dispute between Lupton Petroleum and the Auditor over the application of this paragraph shall initially be the subject of informal discussions between Lupton Petroleum and the Auditor. If the dispute remains unresolved,

Lupton Petroleum shall next confer informally with EPA. If informal discussions with EPA do not resolve the dispute, Lupton Petroleum may then invoke the procedures in Section IX of the Consent Decree (Dispute Resolution).

15. Lupton Petroleum shall direct the Auditor to prepare an Audit Report upon completion of the document review and on-site portion of each Audit pursuant to Paragraph 11 of this Appendix A. No later than 60 Days after the completion of each Audit, the Auditor shall simultaneously send a copy of the Audit Report to Lupton Petroleum and to EPA.

16. Each Audit Report shall present the Audit findings and shall, at a minimum, contain the following information:

- a. Audit scope, including the period of time covered by the Audit;
- b. The date(s) the on-site portion of the Audit was conducted;
- c. Identification of Audit team members;
- d. Identification of representatives of Lupton Petroleum and regulatory agency personnel observing the Audit;
- e. A summary of the Audit process, including any obstacles encountered; and
- f. Detailed Audit findings, including:

- i. For each provision at 40 C.F.R. Part 1090, Subparts M and N, a statement whether the provision applies to Lupton Petroleum's operation of the TPF and, for each provision that does apply, comments supporting the basis of a finding of compliance or any areas of concern identified;
- ii. A summary of Lupton Petroleum's compliance with the terms of the Facility Practices Plan related to (1) sampling and testing to confirm gasoline and ULSD batch homogeneity, (2) sampling and testing of gasoline and ULSD batches to establish distillation parameters of gasoline and ULSD, RVP of gasoline, and sulfur content of gasoline and ULSD, and (3) recordkeeping; and
- iii. Whether any revisions Lupton Petroleum has made to the Facility Practices Plan under Paragraph 18 of the Consent Decree subsequent to its approval by EPA are consistent with 40 C.F.R. Part 1090, and whether the terms of the Facility Practices

Plan continue to include the elements required by Paragraph 16 of the Consent Decree.

- g. Recommendations by the Auditor based on the Audit findings and areas of concern;
- h. Identification of any Audit findings corrected or areas of concern addressed during the Audit, and a description of the corrective measures and when they were implemented;
- i. Identification of any Audit findings with which Lupton disagreed during the on-site portion of the Audit, and
- j. A certification by the Auditor that the Audit was conducted in accordance with the provisions of this Consent Decree.

17. Upon the Auditor's submission of an Audit Report under Paragraph 15 of this Appendix A, Lupton Petroleum and EPA shall have 30 Days to submit written comments or objections on the Audit Report, if any, to the Auditor, with a written copy to the other party. The Auditor shall then, within 30 Days, make any revisions to the Audit Report it determines are appropriate in light of the comments or objections received, and submit a revised Final Audit Report to Lupton Petroleum and EPA. If the Auditor elects to make no revisions, it shall

instead resubmit the report initially submitted under Paragraph 15 of this Appendix A as a Final Audit Report to Lupton Petroleum and EPA.

18. The United States shall not be bound by the Audit Reports, Final Audit Reports, or by any other statements made or opinions expressed by the Auditor. If the United States determines that Lupton Petroleum is in violation of the requirements of this Consent Decree, it may seek stipulated penalties under Section VII of the Consent Decree regardless of any recommendations made or conclusions reached in the Audit Reports or Final Audit Reports.

III. Development and Implementation of Action Plan to Address Final Audit Report Findings

19. Upon the Auditor's submission of each Final Audit Report under Paragraph 17 of this Appendix A, Lupton Petroleum shall investigate and report to the Auditor and EPA on any recommendations or areas of concern identified in the Final Audit Report, as follows:

- a. Within 90 Days after the Auditor's submission of each Final Audit Report under Paragraph 17 of this Appendix A, Lupton Petroleum shall submit for the Auditor's review and comment an Action Plan to fully and expeditiously address all recommendations and areas of concern contained in the Final Audit Report. The

Action Plan shall identify the results of Lupton Petroleum's investigation of the areas of concern identified by the Auditor, and shall provide specific deliverables, responsibility assignments, and an implementation schedule to address those areas of concern. As necessary, the Action Plan shall also include a schedule to update the Facility Practices Plan. If Lupton Petroleum objects to any findings of the Final Audit Report and, as a result, does not intend to take action in response to those findings, it shall so state in the Action Plan. Lupton Petroleum shall provide EPA with a copy of the Action Plan when it is submitted to the Auditor;

- b. Lupton Petroleum shall require the Auditor to review and comment on the Action Plan. No later than 30 Days after receiving the Action Plan, the Auditor shall simultaneously send a copy of its comments on the Action Plan to Lupton Petroleum and EPA; and

- c. Within 30 Days of receiving the Auditor's comments on the Action Plan, EPA may provide additional comments, if any, to Lupton Petroleum.

20. Within 60 Days after receiving comments from the Auditor on the Action Plan pursuant to Paragraph 19.b of this Appendix A, Lupton Petroleum shall (i) revise the Action Plan to address comments from the Auditor and comments from EPA, if any, and to identify any remaining areas of objection where Lupton Petroleum does not intend to take action based on the Auditor's findings, the Auditor's comments on the Action Plan, or EPA's comments on the Action Plan; (ii) provide the revised Action Plan to EPA; and (iii) implement the revised Action Plan in accordance with the requirements and schedules set forth therein.

21. Within 60 Days after implementation of the Action Plan is complete, Lupton Petroleum shall submit to EPA a Completion Report explaining how each item in the Action Plan was addressed, and certifying that implementation of the Action Plan is complete. The Completion Report shall comply with the certification requirements of Paragraph 30 of the Consent Decree.

22. EPA and Lupton Petroleum may agree in writing to modify any deadline contained in this Appendix A, consistent with the requirements of Section XVI (Modification) of the Consent Decree. Any deadline extension of less

than 90 Days shall not be considered a material change for purposes of Section XVI of the Consent Decree.

IV. EPA Authority to Waive Second Audit

23. As stated in Paragraph 1 of this Appendix A, Lupton Petroleum is obligated to hire an Auditor to conduct two consecutive Audits of the TPF. Following receipt of the Completion Report for the first Audit under Paragraph 21 of this Appendix A, however, EPA may, in its sole discretion, determine that a second Audit is unnecessary. If EPA determines that a second Audit is unnecessary, it shall notify Lupton Petroleum in writing, and Lupton Petroleum shall then no longer be required to conduct a second Audit under the terms of this Appendix A.

V. Confidential Business Information

24. Lupton Petroleum may assert that any information required to be provided under this Appendix is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2 by following the procedures set forth in 40 C.F.R. Part 2.

APPENDIX B TO CONSENT DECREE
Third Party Auditor Certification Form

*Appendix B to Consent Decree in
United States v. Lupton Petroleum, et al.*

CERTIFICATION

[APPLICANT NAME] makes the following certifications and representations in connection with its proposed appointment as Auditor to oversee compliance aspects of the consent decree entered in *United States v. Lupton Petroleum Products, Inc., et al.*

“Proposed Auditor” means [APPLICANT NAME], and the employees or contractors who would provide the oversight described above.

“Lupton Parties” means Lupton Petroleum Products, Inc., and Lupton Plant Property, LLC.

1. Financial interests.
 - a. Proposed Auditor has no financial interest in the Lupton Parties or any of their subsidiaries or affiliates.
 - b. If, between the date of this certification and when Proposed Auditor’s term as the Auditor expires, Proposed Auditor’s financial interests with respect to the Lupton Parties change, Proposed Auditor agrees to notify the U.S. Department of Justice by email at eescdcopy.enrd@usdoj.gov, including a reference to the case name and DOJ case number 90-5-2-1-12134, as soon as reasonably possible after becoming aware of the change. Proposed Auditor is aware that acquiring a financial interest in the Lupton Parties could disqualify it from continuing the oversight work described above.
2. Employment, professional relationships, and affiliations.
 - a. Proposed Auditor is not a party to any employment, consulting, agency, attorney-client, auditing or other professional relationship or affiliation with

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the Lupton Parties, or any of their subsidiaries or affiliates.

- b. Proposed Auditor has not been a party to such a professional relationship or affiliation with the Lupton Parties within the past three years.
- c. Proposed Auditor agrees not to engage in such a professional relationship or affiliation with the Lupton Parties during its term as Auditor and for a period of at least one year after the termination of its term as Auditor.
- d. After the date of this certification, to the extent that the services of additional personnel will be utilized in the proper discharge of the Auditor's duties, prior to engaging any such personnel, Proposed Auditor agrees to review the backgrounds of all such personnel to determine whether said personnel or any other entity with which said personnel is affiliated, is or has been a party to any employment, consulting, agency, attorney-client, auditing or other professional relationship or affiliation with the Lupton Parties or any of its subsidiaries or affiliates. To the extent any such relationship or affiliation exists, Proposed Auditor will notify the U.S. Department of Justice by email at eesdcopy.enrd@usdoj.gov, including a reference to the case name and DOJ case number 90-5-2-1-12134, to seek a determination whether it is appropriate to engage said personnel to assist in audits of the Lupton Parties.

Date: _____

Name:
On behalf of [APPLICANT NAME]

***Appendix B to Consent Decree in
United States v. Lupton Petroleum, et al.***