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

United States of America,

Plaintiff,

v.

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

Defendants.

Civil Action No.

**COMPLAINT**

The UNITED STATES OF AMERICA, by authority of the Attorney General of the United States, on behalf of the United States Environmental Protection Agency (“EPA”), alleges as follows:

### **STATEMENT OF THE CASE**

1. This is a civil action against Lupton Petroleum Products Inc. and Brad Hall Associates Inc. brought under Sections 205(b) and 211(d) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7524(b) and 7545(d), for violations of the regulations prescribed under Sections 211(c) and (o) of the CAA, 42 U.S.C. §§ 7545(c) and (o), and promulgated at 40 C.F.R. Part 80.<sup>1</sup>

### **JURISDICTION & VENUE**

2. This Court has jurisdiction over the subject matter of this action and the parties under 28 U.S.C. §§ 1331, 1345, and 1355; and 42 U.S.C. § 11045.

3. The United States district courts are authorized to restrain violations, award other appropriate relief, and assess civil penalties for violations of Section 211 of the CAA, 42 U.S.C. § 7545, and the regulations promulgated thereunder. *See* 42 U.S.C. §§ 7524(b), 7545(d).

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<sup>1</sup> All citations to 40 C.F.R. Part 80 refer to the CAA Fuels Regulations that were effective during the times of the violations alleged in the Complaint. On January 1, 2021, the Fuels Regulatory Streamlining Rule consolidated and reissued the fuels regulations, except those under Subpart M relating to the Renewable Fuel Standard, from Part into 40 C.F.R Part 1090.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1395(a), and Section 205(b) of the CAA, 42 U.S.C. § 7524(b), because a substantial part of the events giving rise to the claims occurred in this judicial district.

### **DEFENDANTS**

5. Lupton Petroleum Products, Inc., (“Lupton Petroleum”) is a general business corporation incorporated in Idaho with its principal place of business in Idaho Falls, Idaho.

6. Brad Hall & Associates, Inc., (“BHA”) is a general business corporation incorporated in Idaho with its principal place of business in Idaho Falls, Idaho.

### **STATUTORY & REGULATORY FRAMEWORK**

#### ***A. Statutes Covering Fuel Production and Sale: CAA Section 211***

7. Section 211 of the CAA, 42 U.S.C. § 7545, contains provisions to ensure that fuel produced and introduced into commerce within the United States meets the specified fuel quality standards.

8. Section 211(a) of the CAA, 42 U.S.C. § 7545(a), provides that no manufacturer or processor of a designated fuel or fuel additive may sell, offer for sale, or introduce into commerce such fuel or fuel additive, unless that fuel or fuel

additive has been registered in accordance with Section 211(b), 42 U.S.C § 7545(b).

9. For the purpose of registering fuels, Section 211(b) of the CAA, 42 U.S.C. § 7545(b), requires that the manufacturer of a designated fuel notify the EPA of the commercial identifying name of the fuel and perform testing to determine potential public health and environmental effects of the fuel, emissions resulting from the use of the fuel, the effect of the fuel on emission control performance of any vehicle, vehicle engine, nonroad engine or nonroad vehicle, and the extent to which such emissions affect the public health or welfare.

10. Section 211(k), 42 U.S.C. § 7545(k), of the CAA prescribes requirements for the sale of reformulated gasoline to reduce mobile source air toxics and ozone forming volatile organic compounds (“VOCs”) in specified areas and provides for other areas to opt-in.

11. Section 211(l) of the CAA, 42 U.S.C. § 7545(l), prohibits any person from selling or dispensing to the ultimate consumer, and any refiner or marketer from directly or indirectly selling or dispensing to any person who sells or dispenses to ultimate consumers, any gasoline that does not contain detergent additives to prevent the accumulation of deposits in engines or fuel supply systems.

12. Section 211(o) of the CAA, 42 U.S.C. § 7545(o), requires that the EPA create a credit trading system through which regulated parties may generate,

transfer, sell, and buy renewable fuel credits known as renewable identification numbers (“RINs”) to use in demonstrating compliance with their annual renewable volume obligations (“RVOs”).

13. Any person who violates CAA Sections 211(a), (k), (l), (o), the regulations promulgated under Sections 211(c), (k), (l), (o), or who fails to provide any information or conduct any test as required under Section 211(b) shall be liable to the United States for a civil penalty of not more than the sum of \$37,500 per day for each day of violation occurring between January 12, 2009 and November 2, 2015, up to \$57,617 per day for each violation occurring after November 2, 2015, plus the amount of any economic benefit or savings resulting from the violation, pursuant to CAA Section 211(d)(1), 42 U.S.C. § 7545(d)(1), and 40 C.F.R. § 19.4 (adjusted as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note; Pub. L. 101-410, as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701).

**B. *Regulations Covering Registration of Fuels and Fuel Additives:  
40 C.F.R. Part 79***

14. Fuels commonly or commercially sold as motor vehicle gasoline or motor vehicle diesel fuel have been designated for registration by the EPA.

40 C.F.R. §§ 79.32, 79.33.

15. Manufacturers of any fuel designated under Part 79 are prohibited from selling, offering for sale, or introducing into commerce in the United States such fuel unless the manufacturer has submitted an application and EPA has registered the fuel. 40 C.F.R. §§ 79.4; 79.10.

16. An application to register a designated fuel must include the following information: the commercial identifying name of each additive that will or may be used in such designated fuel, the range of concentration of each additive named, the purpose-in-use of each additive named, a description or identification of analytical methods that can be used to detect each additive named, other data and information as specified in the designation of the fuel in 40 C.F.R. Part 79, Subpart D, and must include the specified assurances. 40 C.F.R. § 79.11.

17. A manufacturer of a designated fuel must also comply with the testing requirements at 40 C.F.R. Part 79, Subpart F. 40 C.F.R. § 79.6.

18. Any person who violates CAA Section 211 subsections (a), (f), (g), (k), (l), (m), (n), or (o), 42 U.S.C. § 7545(a), (f), (g), (k), (l), (m), (n), or (o), the regulations prescribed under 211(c), (h), (i), (k), (l), (m), (n), or (o), or fails to furnish any information or conduct any tests required under 211(b) shall be liable to the United States for a civil penalty of not more than the sum of \$37,500 per day for each day of violation occurring between January 12, 2009 and November 2, 2015, up to \$57,617 per day for each violation occurring after November 2, 2015,

plus the amount of any economic benefit or savings resulting from the violation, pursuant to CAA Section 211(d)(1), 42 U.S.C. § 7545(d)(1), and 40 C.F.R. § 19.4 (adjusted as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note; Pub. L. 101-410, as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701).

**C. *Regulations Covering Fuels and Fuel Additives: 40 C.F.R Part 80***

19. Pursuant to CAA Section 211(c), 42 U.S.C. § 7545(c), the EPA has developed the fuel quality standards and programmatic requirements at 40 C.F.R. Part 80, Subparts D (Reformulated Gasoline), E (Anti-Dumping), F (Attest Engagement), G (Detergent Gasoline), H (Gasoline Sulfur, applicable until December 31, 2016), I (Motor Vehicle Diesel Fuel; Nonroad, Locomotive, and Marine Diesel Fuel (“MVNRLM”)); and Emission Control Area (“ECA”) Marine Fuel), L (Gasoline Benzene), and O (Gasoline Sulfur, applicable starting January 1, 2017).

20. A “refiner” under Part 80 is any person who owns, leases, operates, controls, or supervises a refinery. 40 C.F.R. § 80.2(i).

21. A “refinery” is any facility, including but not limited to, a plant, tank, tanker truck, or vessel where gasoline or diesel fuel is produced, including any

facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel. 40 C.F.R. § 80.2(h).

22. Under Part 80, “transmix” is an interface that does not meet the specifications for a fuel that can be used or sold, and that is composed solely of any combination of: (i) previously certified gasoline (including previously certified gasoline blendstocks that become gasoline solely upon the addition of an oxygenate); (ii) distillate fuel; or (iii) gasoline blendstocks that are suitable for use as a blendstock without further processing. 40 C.F.R. § 80.84(a)(2).

23. A refiner must register under Part 80 prior to producing gasoline and diesel fuel and receive EPA-issued identification numbers for use in their annual compliance reporting. 40 C.F.R. §§ 80.76, 80.103, 80.190, 80.597, 80.1225, and 80.1650.

24. Refiners must collect and analyze representative samples of each batch of gasoline and diesel fuel produced to determine whether the gasoline and diesel fuel meets the applicable standards. 40 C.F.R. §§ 80.8, 80.46, 80.47, 80.101(i)(1)(i)(A), 80.330, 80.580(a)–(b), 80.581, 80.1347, and 80.1630.

25. When collecting fuel samples for testing, refiners must follow the methods prescribed in 40 C.F.R. § 80.8, and 40 C.F.R. § 80.330(b) when collecting a gasoline sample to test the gasoline’s sulfur content. 40 C.F.R. §§ 80.8, 80.580(a).



26. Additionally, refiners must follow the applicable test method provided under 40 C.F.R. § 80.47 or request an alternative test method for determining the sulfur content of diesel fuel under 40 C.F.R. § 80.585. 40 C.F.R. §§ 80.47, 80.101(i)(1)(i)(A), and 80.580.

27. On March 31 of every year, refiners must submit to the EPA annual compliance reports for the fuel produced during the prior calendar year that include information regarding each batch of gasoline produced and whether it met the applicable standards. 40 C.F.R. §§ 80.105, 80.370, 80.1354, and 80.1652.

28. Refiners that produce gasoline must maintain records for a period of five years that include information relating to each batch of gasoline produced (*e.g.*, fuel sample collected from the batch and test results, batch volume and number, date of production, designation as summer or winter gasoline, etc.), information relating to the use of gasoline blendstocks, previously certified gasoline, transmix, and the calculations the refiner used to determine compliance with the annual average gasoline benzene and sulfur standards. 40 C.F.R. §§ 80.104, 80.365, 80.1350, and 80.1653.

29. Motor vehicle and NLRM diesel fuel must contain no more than 15 parts per million (“ppm”) per gallon of sulfur. 40 C.F.R. §§ 80.520(a)(1), 80.524(a), 80.510(c)(1).

30. No refiner, distributor, or retailer may produce, sell, offer to supply, store, transport, or cause the transport of motor vehicle and NRLM diesel fuel with a sulfur content in excess of 15 ppm per gallon. 40 C.F.R. § 80.612(a)(1)(iii).

31. Any person that transfers custody or title to motor vehicle or NRLM diesel fuel, heating oil, distillate global marine fuel, or ECA marine fuel, except for when such fuel is dispensed into motor vehicles or nonroad equipment, locomotives, marine diesel engines or steamships or Category 3 vessels, must provide product transfer documents (“PTDs”) with the diesel fuel that contain the following information: names and addresses of the transferor and transferee, volume of diesel fuel or distillate being transferred, location of the diesel fuel or distillate at the time of transfer, date of transfer, sulfur content standard that the transferor represents the fuel to meet, and an accurate statement of the applicable fuel uses and classifications as specified under 40 C.F.R. § 80.590(a)(7). 40 C.F.R. § 80.590(a).

32. Refiners that produce motor vehicle and NRLM diesel fuel must maintain records for a period of five years that include information relating to each batch of diesel fuel produced (*e.g.*, batch volume and number, date of production, etc.), and information relating to the sampling and testing performed to determine the sulfur content of each batch of diesel fuel to ensure it meets the 15 ppm sulfur standard. 40 C.F.R. §§ 80.592(a) and 80.602(a)-(b).

33. Refiners are required to engage an independent certified public accountant (“CPA”) or a certified internal auditor (“CIA”) to perform a verifying audit, called an attestation engagement, of the information that forms the basis of the fuel manufacturer’s annual compliance reports under 40 C.F.R. §§ 80.105, 80.370, 80.1354, and 80.1652. 40 C.F.R. §§ 80.125–80.133, 80.415, 80.1356, and 80.1667.

34. When selling, offering for sale, dispensing, supplying, transporting or causing the transportation of gasoline, refiners must provide with the gasoline PTDs that include specific information about the gasoline. 40 C.F.R. § 80.171.

35. Gasoline may not be sold or transferred to a party who sells or transfers gasoline to the ultimate consumer unless such gasoline contains detergent additives that have been certified according to the requirements of 40 C.F.R. § 80.161. 40 C.F.R. §§ 80.161(a)(1)(iii), 80.168(a)(1).

36. Pursuant to CAA Section 211(o), 42 U.S.C. § 7545(o), the EPA promulgated the Renewable Fuel Standard (“RFS”) program at 40 C.F.R. Part 80, Subpart M.

37. The EPA defines “obligated parties” under the RFS program as any refiner that produces gasoline or diesel fuel within the 48 contiguous states or Hawaii, or any importer that imports gasoline or diesel fuel into the 48 contiguous states or Hawaii. 40 C.F.R. § 80.1406(a)(1).

38. Obligated parties must demonstrate compliance with their annual RVOs by acquiring and removing a sufficient number of RINS from the RIN market in an action known as “RIN retirement” to meet their RVO for each category of renewable fuel. 40 C.F.R. § 80.1427(a).

39. Obligated parties must submit annual compliance reports that include the following information: the volume in gallons of gasoline, diesel fuel, heating oil, and jet fuel the obligated party produced during the compliance period; the obligated party’s RVO in gallons for each category of renewable fuel; the number and category of RINs retired to demonstrate compliance with each RVO. 40 C.F.R. § 80.1451.

40. Obligated parties must engage a CPA or CIA to perform attestation engagements to verify that the volumes reported to EPA agree with the volumes in the inventory reconciliation analysis and the volumes of non-renewable fuel diesel produced or imported. 40 C.F.R. § 1464(a).

41. No obligated party shall fail to acquire sufficient RINs, or use invalid RINs, to meet the party’s RVOs under 40 C.F.R. § 80.1427, or fail to meet any applicable requirement under Subpart M. 40 C.F.R. § 1460(c)(1); 40 C.F.R. § 80.1460(f).

## GENERAL ALLEGATIONS

42. The Lupton Refinery is a transmix processing facility located in Lupton, Arizona.

43. Lupton Petroleum is the current operator of the Lupton Refinery and operated the Lupton Refinery during all times relevant to the Complaint.

44. Lupton Petroleum produces gasoline and motor vehicle diesel fuel at the Lupton Refinery by processing feedstock, primarily transmix, to separate the gasoline components from the diesel fuel components of the transmix before blending the separate components with other blendstocks to produce finished fuels.

45. The Lupton Refinery is a “refinery” within the meaning of 40 C.F.R. § 80.2(h).

46. Lupton Petroleum is a “refiner” within the meaning of 40 C.F.R. § 80.2(i).

47. BHA is a “distributor” within the meaning of 40 C.F.R. § 80.2(l).

48. At times relevant to this Complaint, BHA supplied Lupton Petroleum with transmix and other blendstocks used at the Lupton Refinery.

49. At times relevant to this Complaint, BHA purchased gasoline, gasoline blendstocks, and diesel fuel from the Lupton Refinery.

50. At times relevant to this Complaint, BHA distributed gasoline and diesel fuel from the Lupton Refinery to a retail station.

**FIRST CLAIM FOR RELIEF**

**Lupton Petroleum's Violations of the Part 79 Fuel Registration Requirement**

51. Paragraphs 1 through 50 are incorporated herein by reference.

52. Motor vehicle gasoline and diesel fuel are designated fuels under 40 C.F.R. Part 79 and must comply with the registration and testing requirements in Part 79. 40 C.F.R. §§ 79.1–79.68.

53. From January 2015 to April 2019, Lupton Petroleum produced motor vehicle gasoline and diesel fuel at the Lupton Refinery, but failed to register that motor vehicle gasoline and diesel fuel in violation of 40 C.F.R. Part 79.

54. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive relief and civil penalties for each day that Lupton Petroleum failed to register the fuels it was producing under 40 C.F.R. Part 79.

**SECOND CLAIM FOR RELIEF**

**Lupton Petroleum's Violations of the Part 80 Refiner and Refinery Registration Requirement**

55. Paragraphs 1 through 50 are incorporated herein by reference.

56. Prior to producing gasoline or diesel fuel, refiners must register with the EPA. 40 C.F.R. §§ 80.76, 80.103, 80.190, 80.597, 80.1225, and 80.1650.

57. From January 2015 to April 2019, Lupton Petroleum produced gasoline and diesel fuel at the Lupton Refinery without being registered with the

EPA, in violation of 40 C.F.R. Sections 80.76, 80.103, 80.190, 80.597, 80.1225, and 80.1650.

58. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive relief and civil penalties for each day that Lupton Petroleum failed to register itself and the Lupton Refinery under 40 C.F.R. Parts 79 and 80.

### **THIRD CLAIM FOR RELIEF**

#### **Lupton Petroleum's Violations of Gasoline Sampling and Testing Requirements**

59. Paragraphs 1 through 50 are incorporated herein by reference.

60. Refiners are required to sample the gasoline they produce and test certain properties: sulfur content, benzene content, and volatility measured using the Reid Vapor Pressure ("RVP") in pounds per square inch ("psi"). 40 C.F.R. §§ 80.8, 80.46, 80.47, 80.101(i)(1)(i)(A), 80.330, 80.1347, and 80.1630.

61. From January 2015 to April 2019, Lupton Petroleum failed to sample the gasoline produced at the Lupton Refinery, in violation of 40 C.F.R. Sections 80.8, 80.46, 80.47, 80.101(i)(1)(i)(A), 80.330, 80.1347, and 80.1630.

62. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive relief and civil penalties for each day that Lupton Petroleum produced gasoline and

failed to sample and test that gasoline for its sulfur content, benzene content, and RVP.

**FOURTH CLAIM FOR RELIEF**

**Lupton Petroleum's Violations of Diesel Fuel Sampling and Testing Requirements**

63. Paragraphs 1 through 50 are incorporated herein by reference.

64. Refiners are required to sample the diesel fuel they produce and test it for its sulfur content. 40 C.F.R. §§ 80.8, 80.580(a)–(b), and 80.581.

65. From January 2015 to April 2019, Lupton Petroleum failed to sample the diesel fuel produced at the Lupton Refinery, in violation of 40 C.F.R. Sections 80.8, 80.580(a)–(b), and 80.581.

66. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive relief and civil penalties for each day that Lupton Petroleum produced diesel fuel and failed to sample and test that fuel for its sulfur content.

**FIFTH CLAIM FOR RELIEF**

**Lupton Petroleum's Violations of Gasoline Reporting Requirements**

67. Paragraphs 1 through 50 are incorporated herein by reference.

68. Refiners are required to annually submit reports about each batch of conventional gasoline produced and whether the batches meet the applicable standards, as well as other program requirements. 40 C.F.R. §§ 80.105, 80.370, 80.1354, and 80.1652.



69. From April 2016 to April 2019, Lupton Petroleum failed to submit annual gasoline compliance reports, in violation of 40 C.F.R. Sections 80.105, 80.370, 80.1354, and 80.1652.

70. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive relief and civil penalties for each day that Lupton Petroleum failed to submit gasoline compliance reports.

**SIXTH CLAIM FOR RELIEF**

**Lupton Petroleum's Violations of Gasoline Recordkeeping Requirements**

71. The foregoing Paragraphs are re-alleged and incorporated herein by reference.

72. To verify compliance with the applicable gasoline standards, refiners are obligated to maintain records for a period of five years that include certain information (*e.g.*, sample collection, testing results, volume, batch number, date of production, designation as summer or winter gasoline) related to each batch of gasoline, gasoline blendstocks, previously certified gasoline, transmix, and calculations used to determine compliance with the annual average sulfur and benzene standards. 40 C.F.R. §§ 80.104, 80.365, 80.1350, and 80.1653.

73. From January 2015 to April 2019, Lupton Petroleum failed to maintain gasoline samples and records relating to the gasoline produced at the

Lupton Refinery, in violation of 40 C.F.R. Sections 80.104, 80.365, 80.1350, and 80.1653.

74. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive relief and civil penalties for each day that Lupton Petroleum failed to maintain records.

#### **SEVENTH CLAIM FOR RELIEF**

##### **Lupton Petroleum's Violations of Diesel Fuel Recordkeeping Requirements**

75. Paragraphs 1 through 50 are incorporated herein by reference.

76. To verify compliance with the MVNRLM diesel fuel standards, refiners are required to maintain records for a period of five years that include certain information (*e.g.*, volume, batch number, date of production) related to each batch of diesel fuel, and records relating to the sampling and testing for sulfur content of each batch subject to the 15 ppm per-gallon MVNRLM sulfur standard. 40 C.F.R. §§ 80.592(a) and 80.602(a)–(b).

77. From January 2015 to April 2019, Lupton Petroleum failed to maintain diesel fuel samples and records relating to the MVNRLM diesel fuel produced at the Lupton Refinery, in violation of 40 C.F.R. Sections 80.592(a) and 80.602(a)–(b).

78. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive

relief and civil penalties for each day that Lupton Petroleum failed to maintain records.

**EIGHTH CLAIM FOR RELIEF**

**Lupton Petroleum’s Violations of Fuel Quality Attest Engagement Reporting Requirements**

79. Paragraphs 1 through 50 are incorporated herein by reference.

80. Because compliance with the fuels regulations requires refiners to self-certify, refiners are required to engage CPAs to review and confirm that the information reported to the EPA is correct through annual attestation reporting; these annual reports are called “attest engagements.” 40 C.F.R. §§ 80.125-80.133, 80.415, 80.1356, and 80.1667.

81. From June 2016 to April 2019, Lupton Petroleum failed to engage a CPA to perform attest engagements of the information that Lupton Petroleum reported to the EPA, in violation of 40 C.F.R. Sections 80.125-80.133, 80.415, 80.1356, and 80.1667.

82. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive relief and civil penalties for each day that Lupton Petroleum failed to perform attest engagements.

**NINTH CLAIM FOR RELIEF**

**Lupton Petroleum and BHA's Violations of Gasoline Product Transfer Document Requirements**

83. Paragraphs 1 through 50 are incorporated herein by reference.

84. When selling, offering for sale, dispensing, supplying, transporting or causing the transportation of gasoline, refiners must provide transferees with the gasoline PTDs that include specific information about the gasoline, including whether the gasoline is base-gasoline with no additives, which cannot be sold to ultimate consumers, or has been detergent-additized and is ready for sale.

40 C.F.R. § 80.171.

85. From January 2015 to April 2019, Lupton Petroleum and BHA failed to identify the gasoline sold and distributed from the Lupton Refinery as base gasoline and failed to include the statement, "Not for sale to the ultimate consumer," in the gasoline product transfer documents, in violation of 40 C.F.R. Section 80.171.

86. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum and BHA to injunctive relief and civil penalties for each day that Defendants failed to include the required information on their gasoline product transfer documents.

**TENTH CLAIM FOR RELIEF**

**Lupton Petroleum and BHA's Violations of Gasoline Additive Requirements**

87. Paragraphs 1 through 50 are incorporated herein by reference.

88. All gasoline offered for sale to ultimate consumers or transferred to a party who sells or transfers gasoline to the ultimate consumer must contain a minimum quantity of detergent additive. 40 C.F.R. § 80.168.

89. From January 2015 to April 2019, Lupton Petroleum failed to add sufficient detergent additive to the gasoline it was producing at the Lupton Refinery and sold, transferred, or caused the fuel to be transferred to the ultimate consumer, in violation of 40 C.F.R. Section 80.168.

90. From January 2015 to April 2019, BHA transferred under-additized gasoline to a party who sells gasoline to the ultimate consumer, in violation of 40 C.F.R. Section 80.168.

91. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum and BHA to injunctive relief and civil penalties for each day that Defendants transferred or sold under-additized gasoline.

**ELEVENTH CLAIM FOR RELIEF**

**Lupton Petroleum and BHA's Violations of Motor Vehicle, Nonroad, Locomotive, and Marine (MVNRLM) Diesel Fuel Product Transfer Document Requirements**

92. Paragraphs 1 through 50 are incorporated herein by reference.

93. Any person that transfers custody or title to MVNRLM diesel fuel, heating oil, distillate global marine fuel, or ECA marine fuel, except for when such fuel is dispensed into motor vehicles or nonroad equipment, locomotives, marine diesel engines or steamships or Category 3 vessels, must provide PTDs with the diesel fuel. 40 C.F.R. § 80.590(a).

94. Diesel fuel PTDs must include certain information specified under the regulations, including the sulfur content standard that the fuel transferor represents the fuel to meet. 40 C.F.R. § 80.590(a)(5).

95. From January 2015 to April 2019, Lupton Petroleum failed to specify on its diesel fuel PTDs the sulfur standard that the diesel fuel being transferred was represented to meet, in violation of 40 C.F.R. Section 80.590(a)(5).

96. From January 2015 to April 2019, Lupton Petroleum incorrectly designated on PTDs diesel fuel as "MVNRLM diesel fuel," when that diesel fuel was actually being used as heating oil that is not subject to the 15 ppm sulfur standard, in violation of 40 C.F.R. Section 80.590(a)(6)(ii).

97. From January 2015 to April 2019, BHA transferred custody and title of MVNRLM diesel fuel without specifying the sulfur standard the diesel fuel was represented to meet on PTDs, in violation of 40 C.F.R. Section 80.590(a).

98. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum and BHA to injunctive relief and civil penalties for each day that Defendants transferred MVNRLM without the required information included on their diesel fuel PTDs.

**TWELFTH CLAIM FOR RELIEF**

**Lupton Petroleum and BHA's Violations of Diesel Fuel Per-Gallon Sulfur Standard**

99. Paragraphs 1 through 50 are incorporated herein by reference.

100. Motor vehicle diesel fuel produced and sold within the United States must meet a per-gallon 15 ppm sulfur standard. 40 C.F.R. §§ 80.520 and 80.524.

101. Under 40 C.F.R. Sections 610(a)(1) and (f), no person may produce, sell, offer for sale, dispense, supply, offer for supply, store, or transport motor vehicle diesel fuel that does not comply with the per-gallon 15 ppm sulfur standard.

102. Samples of diesel fuel traceable to Lupton Petroleum and BHA were taken from a retail station by the RFG Survey Association, an independent third-party that operates under an EPA-approved national fuel survey plan, showed that on days in August 2015 and May 2016 the diesel fuel produced by Lupton

Petroleum exceeded the 15 ppm per-gallon diesel fuel sulfur standard under 40 C.F.R. Section 80.520. The sulfur content of these two samples were 24 ppm and 22 ppm.

103. In August 2015 and May 2016, Lupton Petroleum produced, sold, dispensed, or supplied, and BHA sold, dispensed, or supplied, motor vehicle diesel fuel that did not comply with the per-gallon 15 ppm sulfur standard, in violation of 40 C.F.R. Sections 80.520 and 80.524.

104. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum and BHA to injunctive relief and civil penalties for each day that Defendants produced, sold, dispensed, or supplied motor vehicle diesel fuel that did not comply with the 15 ppm per-gallon sulfur standard.

### **THIRTEENTH CLAIM FOR RELIEF**

#### **Lupton Petroleum's Violations of Annual RFS Reporting Requirements**

105. Paragraphs 1 through 50 are incorporated herein by reference.

106. Obligated parties subject to the RFS must self-certify compliance through the submission of annual compliance reports where they certify that they have acquired and retired for compliance sufficient RINs to satisfy their RVO. 40 C.F.R. § 80.1451.

107. For compliance years 2015 to 2018, Lupton Petroleum failed to submit annual RFS compliance reports, in violation of 40 C.F.R. Section 80.1451.



108. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive relief and civil penalties for each day that Lupton Petroleum failed to submit annual RFS compliance reports.

**FOURTEENTH CLAIM FOR RELIEF**  
**Lupton Petroleum's Violations of RFS Attest Engagement Reporting Requirements**

109. Paragraphs 1 through 50 are incorporated herein by reference.

110. Because compliance with the RFS program requires refiners to self-certify, refiners must engage CPAs to review and confirm that the RFS information reported to the EPA is correct through RFS attest engagements. 40 C.F.R. § 80.1464.

111. For compliance years 2015 to 2018, Lupton Petroleum failed to engage CPAs to perform RFS attest engagements, in violation of 40 C.F.R. Section 80.1464.

112. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive relief and civil penalties for each day that Lupton Petroleum failed to perform the required RFS attest engagements.

**FIFTEENTH CLAIM FOR RELIEF**

**Lupton Petroleum's Violations of RFS Renewable Volume Obligation**

113. Paragraphs 1 through 50 are incorporated herein by reference.

114. Under the RFS program, obligated parties are required to acquire sufficient RINs to meet their renewable volume obligations as calculated under 40 C.F.R. Section 80.1427(a)(1). 40 C.F.R. §§ 80.1434(a)(1) and 80.1460(c)(1).

115. For compliance years 2015 to 2018, Lupton Petroleum failed to acquire or retire sufficient RINs to meet its RVOs, in violation of 40 C.F.R. Sections 80.1427(a)(1), 80.1434(a)(1), and 80.1460(c)(1).

116. As provided in Section 211(d)(1) of the CAA, 42 U.S.C. § 7545(d)(1), and 40 C.F.R. Part 19, these violations subject Lupton Petroleum to injunctive relief and civil penalties for each day that Lupton Petroleum failed to meet its RVO.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff the United States respectfully requests that this Court:

1. Impose civil penalty on Defendants for each violation of the applicable provisions of the CAA and their implementing regulations of up to \$37,500 per day for each violation that occurred on or before November 2, 2015, and \$57,617 per day for each violation that occurred after November 2, 2015, plus the amount of any economic benefit or savings resulting from the violation;

2. Impose such injunctive relief on Defendant Lupton Petroleum as may be necessary to prevent, detect, or mitigate further violations of the regulations prescribed under Sections 211(c) and (o) of the CAA, 42 U.S.C. §§ 7545(c) and (o), and promulgated at 40 C.F.R. Part 80; and
3. Award such other relief as the Court may deem just and proper.

Respectfully submitted,

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U.S. Department of Justice

/s/ Davis H. Forsythe  
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