**UNITED STATES**
**ENVIRONMENTAL PROTECTION AGENCY**
**REGION IX**

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| **IN THE MATTER OF:**<br><br>Lupton Petroleum Products, Inc. and Indian Grandchildren Trust,<br>Exit 359 (Grants Road) of Interstate 40<br>Lupton, Arizona<br><br>Respondents. | **Docket No.**<br>CAA(112r)-09-2021-0040<br><br>**CONSENT AGREEMENT AND FINAL ORDER**<br>**40 C.F.R. §§ 22.13 and 22.18** |

## CONSENT AGREEMENT

### A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region IX ("EPA").

3. Respondents are Lupton Petroleum Products, Inc. ("Lupton Petroleum") and Indian Grandchildren Trust ("Trust"), collectively referred to as "Respondents."

4. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division. Regional Delegation R9-7-6-A, dated February 11, 2013. On EPA's behalf, the Director

of the Enforcement and Compliance Assurance Division is therefore delegated the authority to settle civil administrative penalty proceedings under CAA Section 113(d), 42 U.S.C. § 7413(d).

5. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondents violated CAA Section 112(r), 42 U.S.C. § 7412(r).

6. Complainant and Respondents, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondents agree to comply with the terms of this CA/FO.

## B. GENERAL ALLEGATIONS

7. Lupton Petroleum operates and, at the time of the allegations made in this CA/FO, the Trust owned a facility located at Exit 359 (Grants Road) of Interstate 40 in Lupton, Arizona ("Facility"). The Facility is a small transmix processing facility that produces various products, including diesel and gasoline, using propane as a fuel for the refining operations. The Facility is located behind a truckstop that includes fuel pumps, a restaurant, and a convenience store and is adjacent to a significant roadway.

8. On January 26, 2016, a fire occurred at the Facility. The Facility's incident investigation report indicates that a Facility employee was using a shop vacuum to remove excess gasoline from one of the distillation towers when the hydrocarbons ignited. The fire resulted in minor injuries to an employee and caused significant damage to Facility equipment that later had to be replaced.

9. On September 20, 2016, EPA performed an inspection of the Facility pursuant to CAA Section 112(r), 42 U.S.C. § 7412(r), the Emergency Planning and Community Right-to-Know Act Sections 304-312, 42 U.S.C. §§ 11004-12, and the Comprehensive Environmental Response, Liability, and Compensation Act Section 103, 42 U.S.C. § 9603(a). Based upon the information gathered during this inspection and subsequent investigation, EPA determined that Respondents

violated certain provisions of the CAA. EPA and Respondents thereafter entered into an Administrative Compliance Order on Consent, Docket No. CAA-09-2019-3501, which terminated on April 25, 2020.

10. Pursuant to CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty in the same manner and to the same extent as section 654 of Title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

11. Respondents are subject to the powers vested in the EPA Administrator by CAA Section 113, 42 U.S.C. § 7413.

12. CAA Section 113, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of CAA Section 112(r), 42 U.S.C. § 7412(r).

13. EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 CFR § 19.4.

14. At all times relevant to this CA/FO, Lupton Petroleum and the Trust each has been a "person" as defined by CAA Section 302(e), 42 U.S.C. § 7602(e).

15. At all times relevant to this CA/FO, the Facility has been a "stationary source" as defined by CAA Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C).

16. Until December 31, 2020, the Trust has been the owner and Lupton Petroleum has been the operator of the Facility. After that date, Lupton Plant Property, LLC has been the owner and Lupton Petroleum has been the operator of the Facility.

17. Propane is a "regulated flammable substance" listed under CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3). 40 C.F.R. § 68.130, Table 3.

18. As used herein, the term "extremely hazardous substance" shall mean an extremely hazardous substance within the meaning of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1). Such substances include any chemical which may, as a result of short-term exposures because of releases to the air, cause death, injury, or property damage because of its toxicity, reactivity, flammability, volatility or corrosivity.

19. Transmix, diesel, and gasoline are highly flammable liquids and vapors and are reactive or incompatible with oxidizing materials. They are harmful and potentially fatal if inhaled or swallowed. Transmix may contain gasoline, diesel, kerosene, toluene, 1,2,4-trimethylbenzene, benzene, and n-hexane.

20. At all times relevant to this CA/FO, Respondents have produced, processed, handled, or stored propane, a regulated substance, and transmix, diesel, and gasoline, substances that are extremely hazardous substances within the meaning of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), at the Facility.

## C. ALLEGED VIOLATIONS

### COUNT I
### (Failure to Identify Hazards: Hazard Review)

21. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

22. One hazard assessment technique to identify hazards recognized in the petrochemical industries is performance of a hazard review, also called a hazard assessment or hazard evaluation. Examples of industry standards of care include the Center for Chemical Process Safety ("CCPS") Guidelines for Hazard Evaluation Procedures, third edition, and the American National Standards Institute (ANSI) Z590.3, 2011, Guidelines for Addressing Occupational Hazards and Risks in Design and Redesign Processes, Section 7.1.

23. The failure to conduct a hazard review is likely to cause harm, as it increases the likelihood that a dangerous situation will not be recognized in time to prevent a release.

24. Until August 2019, Respondents had not conducted a hazard review.

25. Therefore, EPA alleges that Respondents failed to identify hazards which may result from accidental releases using a hazard review, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## COUNT II
## (Failure to Identify Hazards: Arc Flash Risk Assessment)

26. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

27. One hazard assessment technique to identify electrical hazards recognized by the National Fire Protection Association (NFPA) is performance of an arc flash risk assessment. An example of an industry standard of care is NFPA 70E, Standard for Electrical Safety in the Workplace, Section 130.3.

28. The failure to conduct an arc flash risk assessment is likely to cause harm, as it increases the likelihood that an electrical hazard will damage equipment or injure a person.

29. Until March 2018, Respondents had not conducted an arc flash risk assessment.

30. Therefore, EPA alleges that Respondents failed to identify hazards which may result from accidental releases using an arc flash risk assessment, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## COUNT III

**(Failure to Identify Hazards: Pressure Relief Valves Discharge Location)**

31. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

32. A hazard recognized by the petrochemical industries is the potential discharge of a flammable material from a pressure relief valve (PRV) near a source of ignition. An example of an industry standard of care is American Petroleum Institute (API) Standard 521, Pressure-relieving and Depressuring Systems.

33. The hazard of the discharge of flammable substances from a PRV near a source of ignition is likely to cause harm, as a fire or explosion could result.

34. Until October 2018, Respondents had not identified the hazard associated with an activation of the PRVs on the distillation column and the overhead knockout drum to determine the possibility of liquid discharge to the atmosphere near ground level.

35. Therefore, EPA alleges that Respondents failed to identify hazards which may result from accidental releases of flammable liquid to the atmosphere near ground level, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## COUNT IV

**(Failure to Design and Maintain a Safe Facility: Lack of Design Information on Pressure Relief Valves, Distillation Column, and Distillation Equipment)**

36. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

37. A hazard recognized by the petrochemical industries is the lack of information about equipment and protective systems in a process, and more specifically, inadequate information to determine whether pressure relief systems are correctly sized and designed to provide adequate protection against overpressurization of process equipment. Examples of industry standards of care include the CCPS Guidelines for Process Safety Documentation and API Standard 520, Sizing, Selection, and Installation of Pressure Relieving Devices in Refineries.

38. The hazard of a lack of design information for equipment and pressure relief systems in a process is likely to cause harm, as these documents provide owners and operators with essential understanding of the functioning, limits, and capacity of the process and the risks that the process poses. These design documents are essential in ensuring the safe operation and proper maintenance of the process equipment. Further, incorrect sizing of a pressure relief system could fail to protect equipment from overpressurization.

39. From the time the replacement distillation column and related equipment were installed in May 2016 and continuing through at least September 2018, Respondents did not have adequate design and safety information concerning the Facility's pressure relief valves, distillation column, and related distillation equipment.

40. Therefore, EPA alleges that Respondents failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## COUNT V
## (**Failure to Design and Maintain a Safe Facility: Lack of Isolation Valves**)

41. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

42. A hazard recognized by the petrochemical industries is the release of extremely hazardous substances from attempting to remove a pump from operation without proper isolation. One way to reduce this hazard is the installation of isolation valves on either side of a pump. An example of an industry standard of care is ANSI Standard 9.6.6, Rotodynamic Pumps for Pump Piping, Section 9.6.6.5.2.

43. The hazard of a release resulting from a lack of isolation valves around a pump is likely to cause harm.

44. At the time of the January 26, 2016, fire at the Facility, there were no isolation valves installed around the distillation tower pump from one distillation tower to a second distillation tower. The lack of isolation valves contributed to the fire, because gasoline was released as a result of the inability to isolate the pump from a distilation tower, and the gasoline subsequently ignited. Respondents installed the new distillation tower with isolation valves in May 2016.

45. Therefore, EPA alleges that Respondents failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## COUNT VI
## (Failure to Design and Maintain a Safe Facility: Inadequate Design Information on Flexible Hoses Used in Propane Service)

46. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

47. A hazard recognized by the petrochemical industries and the NFPA is the lack of information about equipment in a process, and more specifically, inadequate information to determine the rated operating pressure of piping and hose containing pressurized substances. Examples of industry standards of care include CCPS Guidelines for Process Safety

Documentation and NFPA Standard 58, Section 5.9 Piping (Including Hose), Fittings, and Valves, Subsection 5.9.1.4 and Section 6.14.1.

48. The hazard of a lack of design information for equipment in a process is likely to cause harm, as this information provides operators with essential understanding of the functioning, limits, and capacity of the equipment, which is necessary in ensuring the proper maintenance of the equipment.

49. Until October 2017, Respondents did not have adequate information concerning the design of or specifications for the flexible hoses with respect to rated operating pressure used in propane service off of the propane bullets.

50. Therefore, EPA alleges that Respondents failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## COUNT VII
## (Failure to Design and Maintain a Safe Facility: Lack of Information on Safe Operating Limits and the Consequences of Deviations from those Limits)

51. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

52. A hazard recognized by the petrochemical industries is the deviation from safe operating limits, such as the safe upper and lower limits for parameters such as temperature, pressure, flows, or compositions. One way to reduce this hazard is to maintain information about the safe operating limits or an evaluation of the consequences of deviations from safe operating limits. An example of an industry standard of care is CCPS Guidelines for Process Safety Documentation.

53. The hazard of a deviation from safe operating limits is likely to cause harm.

54. Until October 2018, Respondents did not have information concerning safe operating limits or an evaluation of the consequences of deviations from such limits.

55. Therefore, EPA alleges that Respondents failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## COUNT VIII
## (Failure to Design and Maintain a Safe Facility: Failure to Train Employees in Hazards of the Process and Operating Procedures)

56. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

57. A hazard recognized by the petrochemical industries is the lack of employees' understanding about the hazards of the process and the operating procedures. One way to reduce this hazard is for owners and operators to train employees in the hazards of the process and the operating procedures. An example of an industry standard of care is CCPS Plant Guidelines for Technical Management of Chemical Process Safety.

58. The hazard of an employee unaware of the hazards of the process or operating procedures is likely to cause harm.

59. Until 2018, the Facility's employees were not trained in either the hazards of the process or the operating procedures. This lack of awareness contributed to the fire, as an operator used non-intrinsically safe electrical equipment in close proximity to a portion of the process which contains flammable materials, and specifically when flammable materials were released on January 26, 2016, resulting in the ignition of the gasoline.

60. Therefore, EPA alleges that Respondents failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## COUNT IX
## (Failure to Design and Maintain a Safe Facility: Failure to Create and Implement a Program for Managing Changes)

61. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

62. A hazard recognized by the petrochemical industries is implementation of an inappropriate change without an evaluation of the consequences of such change. One way to reduce this hazard is the creation and implementation of a program to manage changes. Examples of industry standards of care include CCPS Guidelines for Management of Change ("MOC") for Process Safety and ANSI Standard Z10, Occupational Health and Safety Management Systems, Section 5.3.

63. The hazard of not assessing the new or additional hazards caused by a change in a process is likely to cause harm.

64. Prior to September 30, 2017, Respondents lacked a program for managing changes and made substantial modifications to the distillation process in 2016 without managing the changes via a change analysis process.

65. Therefore, EPA alleges that Respondents failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## COUNT X
## (Failure to Design and Maintain a Safe Facility: Lack of Electrical Area Classification Information and Failure to Train Operators on Electrical Area Classification Information)

66. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

67. A hazard recognized by the petrochemical industries is the potential for electrical equipment to be installed in a location where it could ignite flammable gases and vapors. Some ways to reduce this hazard include compilation of electrical area classification information and training operators on such information. An example of an industry standard of care is API

Recommended Practice (RP) 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, section 5.1.

68. The hazard of electrical equipment that is not designed for flammable service being used or installed in a location where it could ignite flammable gases or vapors is likely to cause harm.

69. Until April 23, 2019, Respondents did not have electrical area classification information and did not train the operators regarding electrical area classification information.

70. Therefore, EPA alleges that Respondents failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

**COUNT XI**
**(Failure to Design and Maintain a Safe Facility: Failure to Create and Implement a Complete Preventive Maintenance Program)**

71. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

72. A hazard recognized by the petrochemical industries is the malfunction, degradation, or breakdown of equipment due to inadequate preventive maintenance. One way to reduce this hazard is the creation and implementation of a preventive maintenance program that identifies inspection and testing protocols and schedules for equipment in the process and provides for repairing or replacing faulty or damaged equipment. Examples of industry standards of care include API Standard 510, API Standard 570, API RP 572, API RP 574, API RP 576, API Standard 653, and CCPS Guidelines for Mechanical Integrity (MI) Systems.

73. The hazard of a lack of preventive maintenance is likely to cause harm, as it increases the likelihood and severity of a release.

74. Until March 2019, Respondents did not have a complete preventive maintenance program, including a plan and schedule for conducting thickness testing or mechanical testing of the distillation equipment, vessels, controls, and piping.

75. Therefore, EPA alleges that Respondents failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## COUNT XII
(**Failure to Design and Maintain a Safe Facility: Failure to Conduct a Siting Study**)

76. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

77. A hazard recognized by the petrochemical industries is the placement of buildings, electrical equipment, and operator controls in a location where they could exacerbate a release, ignite flammable materials, result in injuries to someone in a building if there were a release of extremely hazardous substance(s), or hinder or prevent access to operator controls. One way to reduce this hazard is to conduct a siting study to inform the design of the process and area around the process. Examples of industry standards of care include CCPS Guidelines for Facility Siting and Layout; API RP 752, Management of Hazards Associated with Location of Process Plant Permanent Buildings; and API Standard 521 Pressure-relieving and Depressuring Systems, Section 5.8.1.

78. The hazard of a lack of appropriate siting of buildings, electrical equipment, and operator controls is likely to cause harm.

79. Until July 12, 2019, Respondents lacked a siting study to identify and minimize the consequences related to the hazards of a potential release from the distillation tower and overhead accumulation drum atmospheric pressure relief valves. The Facility's operator control building

and an open electrical building were located in close proximity to the distillation tower and overhead accumulation drum, such that if there were a release from the distillation tower or pressure relief valves, it could injure a person in the control room, or the open electrical building could provide a spark to ignite released hydrocarbons. Additionally, the operator control building was constructed of materials, such as wood and glass, that were not designed to withstand a blast or significant fire.

80. Therefore, EPA alleges that Respondents failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, in violation of CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1).

## D. CIVIL PENALTY

81. EPA proposes that Respondents be assessed, and Respondents agree to pay, a total of **TWO HUNDRED SEVENTY-NINE THOUSAND, FOUR HUNDRED SEVENTY-TWO DOLLARS ($279,472)**, as the civil penalty for the violations alleged herein.

82. The proposed penalty was calculated in accordance with the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" dated June 2012, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

## E. ADMISSIONS AND WAIVERS OF RIGHTS

83. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purposes of this proceeding, Respondents: (i) admit the jurisdictional allegations of the complaint; (ii) neither admit nor deny specific factual allegations contained in the CA/FO; (iii) consent to the assessment of any stated civil penalty and to any conditions specified in the consent agreement; (iv) waive any right to contest the allegations contained in Section C of the CA/FO; and (v) waive any right to appeal the proposed final order contained in this CA/FO.

84. EPA and Respondents agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

## F. PARTIES BOUND

85. This CA/FO shall apply to and be binding upon Respondents, and their successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) has been paid, the compliance tasks under Section G have been completed, and any delays in performance and/or stipulated penalties have been resolved. When those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

86. No change in ownership or legal status relating to the Facility will in any way alter Respondents' obligations and responsibilities under this CA/FO.

87. Until termination of this CA/FO pursuant to Paragraph 85, Respondents shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

88. The undersigned representative of the Trust hereby certifies that he or she is fully authorized by the Trust to enter into and execute this CA/FO, and to legally bind the Trust to it.

89. The undersigned representative of Lupton Petroleum hereby certifies that he or she is fully authorized by Lupton Petroleum to enter into and execute this CA/FO, and to legally bind Lupton Petroleum to it.

## G. COMPLIANCE TASKS

90. All submissions to EPA required in this section shall be in writing and sent electronically to Donald Nixon at nixon.donald@epa.gov or another representative designated by EPA and identified to Respondent in writing.

91. If Lupton Petroleum is unable to complete any of the compliance tasks required in this section within the associated schedule, Lupton Petroleum shall submit a written request, including the basis for the request, for an extension to EPA in advance of the deadline. Based on this request, EPA may in its sole discretion grant or deny, in full or in part, an extension to the aforementioned schedule.

92. Lupton Petroleum confirms to EPA that it has made available in an electronic database to appropriate Facility personnel the specifications for replacement equipment, piping, and material in the process at the Facility, based on the results of the fitness for service tests in the following reports: (i) October 16, 2020, report of fitness for service test of heat exchanger AC-101A; (ii) October 16, 2020, report of fitness for service test of heat exchanger AC-101B (iii) October 13, 2020, report of fitness for service test of shell and tube heat exchanger E-103A; (iv) October 13, 2020, report of fitness for service test of shell and tube heat exchanger E-103B; (v) September 23, 2020, report of fitness for service test of pressure vessel D-101; and (vi) September 1, 2020, report of fitness for service test of fired heater H-101.

93. Training. Within twenty-six (26) calendar months starting on the first day of the first full calendar month after the Effective Date, Lupton Petroleum shall submit to EPA proof of operator training relating to hazards of the process, operating procedures, and the Facility's electrical area classification plan at the Facility conducted during the period between the Effective Date and two years anniversary of the Effective Date. The proof of operator training will be consistent in subject matter and format with the completion of training certificates attached hereto as Exhibit "A" which contains certificates applicable to employee and contractor initial and refresher training.

94. Preventive Maintenance.

a. Ultrasonic Thickness Examination.

i. By March 1, 2025, Lupton Petroleum shall submit to EPA documentation of the external visual inspection and ultrasonic thickness examination conducted between the Effective Date and January 31, 2025, of the following equipment at the Facility:

(1) T-101 Distillation Tower

(2) D-101 Naphtha Accumulator

(3) AC-101A/B Naphtha and Diesel Air Coolers

(4) E-102A/B Diesel/Transmix Heat Exchanger ("Lower")

(5) E-103A/B Heat Exchanger East Bank

(6) E-101 Naphtha/Transmix Heat Exchanger ("Upper")

(7) H-101 Fired Heater (Tubes)

(8) Propane bullets

ii. Such external visual inspections and ultrasonic thickness examinations shall be performed consistent with the applicable version of the API Standard 510, Pressure Vessel Inspection Code, In-Service Inspection, Rating, Repair, and Alteration and API RP 573, Inspection of Fired Boilers and Heaters, in effect at the time of the inspections and examinations. The inspections and examinations shall be performed by certified inspectors.

iii. The documentation required by Paragraph 94(a)(i) shall include the determinations made by Lupton Petroleum or its contractor as to the corrosion rates, the life expectancy of the equipment specified in Paragraph 94(a)(i), and the schedule for future inspections and testing of such specified equipment, including ultrasonic thickness testing. Submittal of the Facility's Preventive Maintenance Program in effect at the time of the submittal shall constitute one

acceptable form of the documentation required by Paragraph 94(a)(i), provided that it contains the determinations enumerated in this Paragraph 94(a)(iii). Alternative documentation in the form of the Facility's records or the certified inspector's reports, containing the determinations enumerated in this Paragraph 94(a)(iii), may be submitted in lieu of the Facility's Preventive Maintenance Program.

b. By March 1, 2025, Lupton Petroleum shall also submit to EPA documentation that the results identified in Section 3(a)(iii) have been incorporated into the Facility's Preventive Maintenance Program. Submittal of the Facility's Preventive Maintenance Program in effect at the time of the submittal shall constitute one acceptable form of the documentation required by this Section 3(b). Alternative documentation in the form of a certification by a manager or owner that the schedule in the reports has been incorporated into the Facility's Preventive Maintenance Program may be submitted in lieu of the Facility's Preventive Maintenance Program.

c. By March 1, 2025, Lupton Petroleum shall also submit to EPA documentation showing that Lupton Petroleum has conducted all inspections, testing, and maintenance with an interval of one year or greater, as required under the Facility's Preventive Maintenance Program attached hereto as Exhibit "B," or under the applicable version of the Facility's Preventive Maintenance Program if revised by the Facility subsequent to the date of submission, during the time period from the Effective Date through the date of submission, on the following types of equipment at the Facility:

(1) pumps associated with the distillation process;

(2) piping; and

(3) relief valves.

Acceptable documentation for this submission may be either 1) the Facility's or a contractor's record of such inspection, testing, and maintenance with an interval of one year or greater; or 2) a certification by a manager or owner that Lupton Petroleum has conducted such inspection, testing, and maintenance with an interval of one year or greater during the time period from the Effective Date through the date of submission.

## H. PAYMENT OF CIVIL PENALTY

95. Respondents consent to the assessment of and agree to pay civil penalties of a total of **TWO HUNDRED SEVENTY-NINE THOUSAND, FOUR HUNDRED SEVENTY-TWO DOLLARS ($279,472)**, in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of CAA Section 112(r), 42 U.S.C. § 7412(r), alleged in Section C above.

96. Respondents shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO, as established in Section L of this CA/FO.

97. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the appropriate EPA docket number of this action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

PO Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Craig Steffen (513) 487-2091, steffen.craig@epa.gov

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

Online Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter SFO 1.1 in the search field
Open form and complete required fields

Respondents shall send a copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, with a transmittal letter indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Armsey.Steven@epa.gov

and

Donald Nixon
Nixon.Donald@epa.gov

98. Failure to send the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

99. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondents or any other person or entity for federal, state or local taxation purposes.

## I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

100. In the event Respondents fail to meet any requirement set forth in this CA/FO, Respondents shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS ($500) per day for the first to fifteenth day of delay, SEVEN HUNDRED FIFTY DOLLARS ($750) per day for the sixteenth to thirtieth day of delay, and THREE THOUSAND DOLLARS ($3,000) per day for each day of delay thereafter. Compliance by Respondents shall include completion of any activity under this

CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

101. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondents shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of this CA/FO.

102. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11. EPA reserves the right to take any additional action, including but not limited to the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

103. The payment of stipulated penalties specified in this Section shall not be deducted by Respondents or any other person or entity for federal, state or local taxation purposes.

104. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

105. The determination of whether Respondents have satisfactorily complied with the terms of this CA/FO and the determination of whether Respondents have made a good faith, timely effort to complete the tasks required by this CA/FO are within the sole discretion of the Director, Enforcement and Compliance Assurance Division, EPA Region IX.

## J. RESERVATION OF RIGHTS

106. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondents perform tasks in addition to those required by this CA/FO. EPA further reserves

all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this CA/FO, including without limitation the assessment of penalties under the CAA or any other statutory, regulatory or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA or any other statutory, regulatory or common law enforcement authority of the United States.

107. Compliance by Respondents with the terms of this CA/FO shall not relieve Respondents of their obligations to comply with the CAA or any other applicable local, state, tribal or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondents of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state or local permit.

108. The entry of this CA/FO and Respondents' consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Respondents' full compliance with this CA/FO shall only resolve Respondents' liability for federal civil penalties for the violations and facts alleged herein.

109. EPA reserves its right to seek reimbursement from Respondents for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

## K. MISCELLANEOUS

110. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondents.

111. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

112. Each party to this action shall bear its own costs and attorneys' fees.

113. Respondents consent to entry of this CA/FO without further notice.

## L. EFFECTIVE DATE

114. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

Respondent Lupton Petroleum Products, Inc.

DATE: 4-15-21

BY: Cole Hall
Name: COLE HALL
Title: PRESIDENT

Respondent Indian Grandchildren Trust

DATE: 4/15/21

By: Mark Nicholson
Name: Mark Nicholson
Title: Trustee

United States Environmental Protection Agency, Region 9

DATE: 4/28/2021

BY: AMY MILLER-BOWEN
Digitally signed by AMY MILLER-BOWEN
Date: 2021.04.28 14:25:27 -07'00'
Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance Division

## FINAL ORDER

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.13 and 22.18 (Docket No. CAA(112r)-09-2021-0040) be entered and that Respondents pay a civil penalty of TWO HUNDRED SEVENTY-NINE THOUSAND, FOUR HUNDRED SEVENTY-TWO DOLLARS ($279,472) due within thirty (30) days from the Effective Date of this CA/FO, and that Respondent Lupton Petroleum Products, Inc. shall implement the compliance tasks described in Section G, in accordance with all terms and conditions of this CA/FO.

STEVEN JAWGIEL

Digitally signed by STEVEN JAWGIEL
Date: 2021.05.17 12:37:23 -07'00'

Date

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

## Exhibit A

Training Certificates

# CERTIFICATE *of* COMPLETION

THIS ACKNOWLEDGES THAT

## (Operator Name)

HAS SUCCESSFULLY COMPLETED THE

### (course title) - Initial Training Course

**The trainee has attended a training course and has demonstrated retained knowledge of said subject material. This course satisfies the requirements identified by Clean Air Act Section 112(r)**

_____

Date

*Signed: ( Trainer Name)*

**PRINTED**, (*Trainer Name*, Trainer Title)

Lupton
petroleum products inc

# CERTIFICATE *of* COMPLETION

THIS ACKNOWLEDGES THAT

## (Operator Name)

HAS SUCCESSFULLY COMPLETED THE

### (course title) - Refresher Training Course

The trainee has attended a training course and has demonstrated retained knowledge of said subject material. This course satisfies the requirements identified by Clean Air Act Section 112(r)

_____

Date

*Signed: ( Trainer Name)*

**PRINTED**, (*Trainer Name*, Trainer Title)

Lupton
petroleum products inc

# CERTIFICATE *of* COMPLETION

THIS ACKNOWLEDGES THAT

## (Contractor Name)

representing (Contractor Company Name)

HAS SUCCESSFULLY COMPLETED THE

### (course title) - Initial Training Course

The trainee has attended a training course and has demonstrated retained knowledge of said subject material. This course satisfies the requirements identified by Clean Air Act Section 112(r)

_____

Date

*Signed: ( Trainer Name)*

**PRINTED**, (*Trainer Name*, Trainer Title)

Lupton
petroleum products inc

# CERTIFICATE *of* COMPLETION

THIS ACKNOWLEDGES THAT

## (Contractor Name)

representing (Contractor Company Name)

HAS SUCCESSFULLY COMPLETED THE

**(course title) - Refresher Training Course**

The trainee has attended a training course and has demonstrated retained knowledge of said subject material. This course satisfies the requirements identified by Clean Air Act Section 112(r)

_____

Date

*Signed: ( Trainer Name)*

**PRINTED**, (*Trainer Name*, Trainer Title)

Lupton
petroleum products inc

## Exhibit B

Preventive Maintenance Program

# Annual Inspections

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Pumps | As Needed | | | | | | | |
| As Needed | TM 1 | May-16 | | | | | | |
| As Needed | TM 2 | May-16 | | | | | | |
| As Needed | Reboiler 1 | May-16 | | | | | | |
| As Needed | Reboiler 2 | May-16 | | | | | | |
| As Needed | Diesel 1 | May-16 | | | | | | |
| As Needed | Diesel 2 | May-16 | | | | | | |
| As Needed | Naptha 1 | Sept-18 | | | | | | |
| As Needed | Naptha 2 | Sept-18 | | | | | | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Heat Exchangers | | Baseline | | | | | | |
| 5 yrs | Naptha | Sep-18 | | | | | | |
| 5 yrs | Diesel | Sep-18 | | | | | | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Fin / Fan | Internal Inspection | | | | | | | |
| 10 yrs | Diesel | Aug-18 | | | | | | |
| 5 yrs | Naptha | Aug-18 | | | | | | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Piping / Tanks | | | | | | | | |
| 20 yrs | piping Diesel | May-18 | | | | | | |
| 20 yrs | piping Naptha | May-18 | | | | | | |
| 20 yrs | Piping Transmix | May-18 | | | | | | |
| 20 yrs | Tanks | May-18 | | | | | | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Tower | Visual Internal | | | | | | | |
| 10 yrs | | Jul-18 | | | | | | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Heater | Visual Internal | | | | | | | |
| 10 yrs | | Oct-16 | | | | | | |

Electric / Automation Armored Monthly

# Pumps Maintenance

Operators conduct walk around at the beginning of every shift. Noting any change to pumps such as

- Noise
- Oil leaks
- Discoloration
- Oil level Checks

The only repairs that are done to the pump are

- Love Joy replacements (Spider Gears)

Replacement of pumps is on an as need basis, We find that rebuilding of a pump is more costly. To add a new is more efficient. Pumps were installed in May 2016
Just a reminder Lupton Petroleum does operate on a 2 pump system, if 1 pump was to fail the other pump would be activated immediately.

# Heat Exchangers Maintenance

Operators conduct walk around at the beginning of every shift.
The heat exchangers are inspected every 5 years.
They are disassembled, washed, and cleaned out and inspected for signs of ware. The tubes are stainless steel and in our experience usually show no signs of ware.
An indication if they need to be cleaned out earlier is a high than normal feed pressure to the tower.Also a low GPM rate is an indicator
Heat exchangers were cleaned and inspected in Sept. 2018

# Fin Fan Maintenance;

Operators conduct walk around at the beginning of every shift.
Fin fan is is cleaned and inspected every 5 years on gas and 10 on Diesel side. The tubes are stainless steel. The Diesel side historically shows no signs of ware or need of cleaning because of the lubricity of diesel. The Gas side usually has coking.

Motor, belts and fan blades are checked
Fan is inspected for any wear & tear

This is usually done the same time the heat exchangers are cleaned
Plugs are located outside of the fin fan so all leaks are visible, any leaks would require a shut down and a repair.
Fin Fan was last maintenance on August 2018

# Piping & Tank Maintenance;

Operators conduct walk around at the beginning of every shift. Pipes are all above ground and can visibly inspected by operator
All pipes are painted every 5 years or as needed.
Pipes are checked for thickness;

- Diesel pipes every 20 years
- Transmix every 20 years
- Gas run down pumps every 20 years

NDT premiere inspected all pipes in May 2018
Pipes were all installed new in May 2016

# Tower Maintenance;

Operators conduct walk around at the beginning of every shift.
The tower is stainless steel and does not corrode in our application, It is Inspected every 10 years, which includes opening top and bottom covers to look for corrosion
And check for buildup on the trays. Tower installation date is May 2016

# Heater Maintenance;

Operators conduct walk around at the beginning of every shift.
It is opened up and inspected internally every 10 years or as needed. In our experience the heater internals were very little do to the diesel being a lubricant and the heat keeps water out
Heater installation date is Oct. 2016

# Electric / Automation

Operators conduct walk around at the beginning of every shift.
Operators monitor the operation of the unit and contact Armored Electric if any Irregularities exist.
Valves are repaired or replaced at Armored's discretion with our approval
All valves were installed new in May 2016

# Unit Walk round Daily

Name:_____ Date's:_____

| Task Description | Checked by (initial) | Comment (If further action is required) |
|---|---|---|
| Discharge static electricity build up (touch grounding pole) | | |
| Inspect tower (top and bottom) | | |
| Electrical Shed | | |
| Listen for any unusual sounds | | |
| Smell for smoke, Look for smoke | | |
| **If any of the 2 above are found in the Electrical Shed stop operations immediately and Notify Management** | | |
| Make sure all cabinet doors are closed | | |
| Inspect fin fan bolts | | |
| Inspect pipelines flanges | | |
| Inspect gauges | | |
| Pipeline to Bio Tank | | |
| Bio tank containment for leaks or stain | | |
| Gas accumulator tank | | |
| Sight level compare to level inside | | |
| Drain accumulated water. | | |
| **Accumulator should be checked every time you take a sample** | | |
| Space between heat exchangers and concrete | | |
| Gasoline rundown pumps | | |
| No staining or standing product | | |
| Check this side of the Fin Fan | | |

# Unit Walk round Daily

| | | |
|---|---|---|
| Turn Right at the gasoline run down pumps and | | |
| Check this side of the Fin Fan. (top & bottom) | | |
| Conduit (as you walk) | | |
| Look at the bolts to make sure there is no leaking product of seepage | | |
| Used oil tank containment, for leaks or product | | |
| Use ladder inspect the top of the accumulator tank | | |
| Check gauges | | |
| Check flanges for seepage or leaks. | | |
| Check Pipelines going into the heat exchanger, visually inspecting flanges | | |
| Check heat exchanger caps for leaks or seepage | | |
| Inspect overhead pipelines going to the heater. | | |
| Check PSI gauges to insure operating correctly. | | |
| Gasoline knockout pod | | |
| Drain Tank, (drain accumulated water) | | |
| Inspect pod for leaks | | |
| Heater Unit | | |
| Inspect all welds and connections for any leaks or seepage and smell | | |

# Unit Walk round Daily

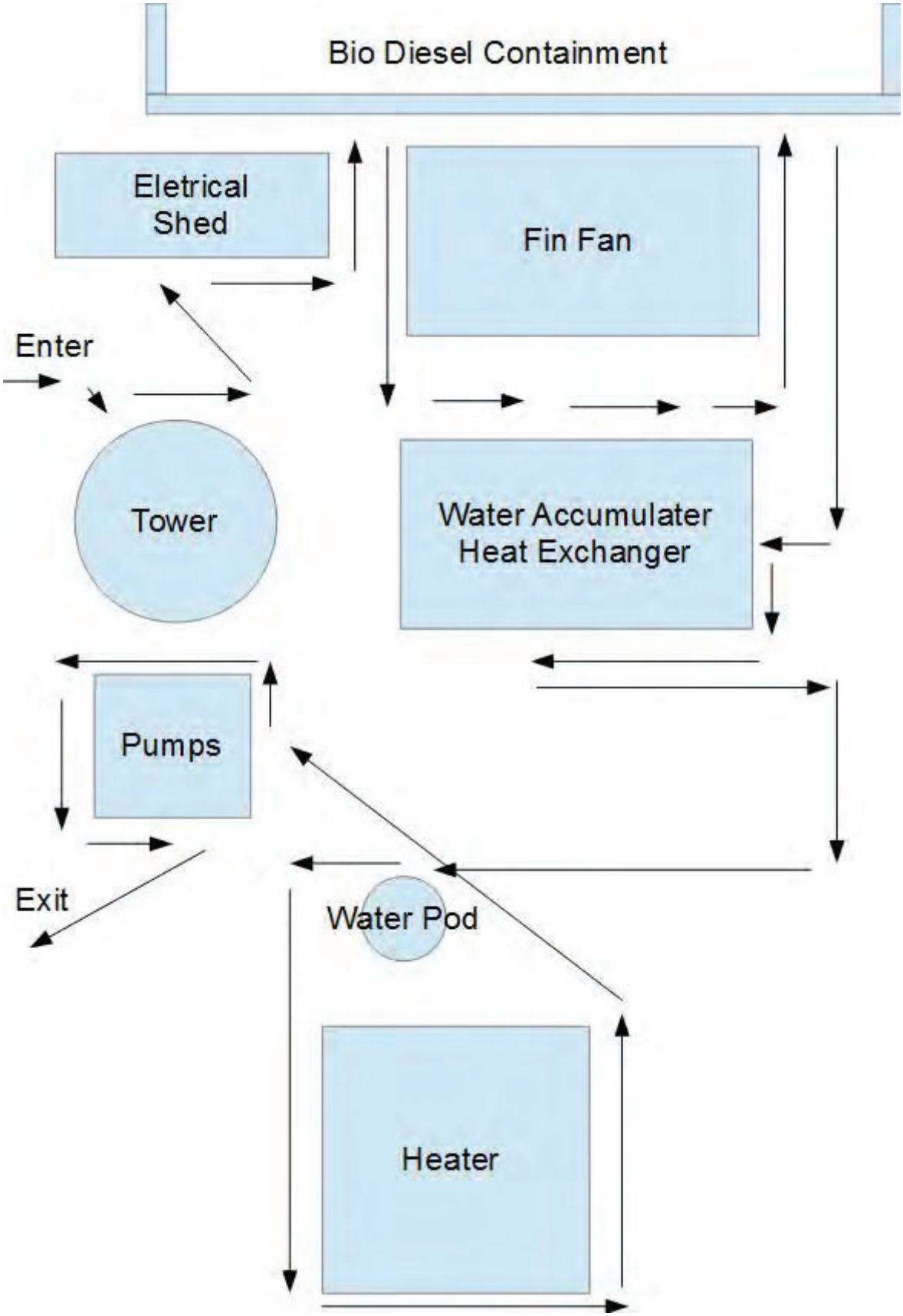
| | | |
|---|---|---|
| Inspect blower ensure there is no trash in air intake | | |
| Inspect all gauges e.g., no wires hanging out or flashing lights | | |
| Inspect back of the heater | | |
| Inspect flanges on the pipeline system going into the heater (look on the ground for any trace of product) | | |
| Reboiler 1&2 | | |
| Inspect the diesel rundown pumps and the trans-mix pumps. | | |
| Inspect gauges | | |

Once done note all findings and report it to management. If you find any big leaks or anything that you find unsafe in the operations SHUT DOWN CALL Management right away

Dayshift Operator_____

Nightshift Operator_____

# Unit Walk round Daily



CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Lupton Petroleum Products, Inc., and Indian Grandchildren Trust* **(CAA(112r)-09-2021-0040)**, signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondents, and Counsel for EPA, as indicated below:

VIA E-MAIL:

Respondents:

Cole Hall
Chief Operating Officer
Lupton Petroleum Products, Inc.
Cole.Hall@bradhallfuel.com

Mark Nicholson
Trustee
Indian Grandchildren Trust
mark@spartin.net

Counsel for Respondents:

Jean M. Flores
Guida, Slavich & Flores, P.C.
flores@guidaslavichflores.com

Ryan Meikle
Lupton Petroleum Products
ryan.meikle@bradhallfuel.com

Walter D. James III
JAMES PLLC
walter.james@jamespllc.com

Counsel for Complainant:

Madeline Gallo
Office of Regional Counsel
Environmental Protection Agency, Region IX
Gallo.Madeline@epa.gov

STEVEN ARMSEY

Digitally signed by STEVEN ARMSEY
Date: 2021.05.18 20:05:42 -07'00'

Steven Armsey
Regional Hearing Clerk
EPA, Region 9