

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

IN THE MATTER OF:

SUNCOR ENERGY (U.S.A.) INC.

Respondent.

MOTION REQUESTING
SUBSTITUTION OF A REVISED
APPENDIX A

Docket No. CAA-HQ-2023-8425

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) hereby moves to substitute a revised version of Appendix A to be included in the Consent Agreement for the above-captioned enforcement action. The Respondent, Suncor Energy (U.S.A.) Inc. (Suncor), consents to this request. In support of the EPA's Motion Requesting Substitution of a Revised Appendix A, the EPA states as follows:

II. PROCEDURAL HISTORY

On August 7, 2023, the EPA and Suncor filed a Consent Agreement and proposed Final Order to settle the above-captioned enforcement action regarding alleged violations of Section 211 of the Clean Air Act (CAA), 42 U.S.C. § 7545, and the implementing regulations found at 40 C.F.R. Part 1090. The alleged violations pertain to fuel produced at two Suncor fuel manufacturing facilities located in Commerce City, Colorado. The Consent Agreement requires Suncor to pay a civil penalty of \$160,660 and to implement a \$600,000 Supplemental Environmental Project (SEP) that requires the purchase or subsidization of electric lawn and garden equipment that will replace gasoline- and diesel-powered lawn and garden equipment that will be scrapped or destroyed. The Consent Agreement was ratified by the Environmental Appeals Board (Board) on August 24, 2023.

III. LEGAL STANDARD

This proceeding is governed by the Consolidated Rules of Practice. 40 C.F.R. Part 22.

The Rules of Practice address motions as follows:

All motions, except those made orally on the record during a hearing, shall:

- (1) Be in writing;
- (2) State the grounds therefor, with particularity;
- (3) Set forth the relief sought; and
- (4) Be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.

40 C.F.R. § 22.16(a).

IV. DISCUSSION

Appendix A to the Consent Agreement describes the requirements of the SEP, including who is eligible to receive electric lawn and garden equipment purchased or subsidized by Suncor through the SEP. The electric lawn and garden equipment purchased or subsidized by the SEP is intended for residents, schools, and local governments near Suncor's Commerce City, Colorado fuel manufacturing facilities, where the noncompliant fuel was distributed.

SEP eligibility for residents is determined based on the ZIP Code that the resident lives in. The list of ZIP Codes for determining residential eligibility that was originally submitted to the Board and ratified on August 24, 2023, inadvertently omitted certain Denver County Zip codes that were contemplated in the bargained-for agreement between the Parties. The full list is as follows:

Adams County ZIP Codes:

- 80022 – Commerce City
- 80024 – Dupont and Derby
- 80221 – Sherrelwood, Western Hills, Twin Lakes, Zuni
- 80640 – Henderson
- 80229 – Welby, and parts of Thornton
- 80260 – Federal Heights, and parts of Thornton

Denver County ZIP Codes:

- 80216 – Globeville, Elyria, Swansea, North Washington
- 80205 – Clayton, North Denver
- 80211 – North Denver
- 80207 – Park Hill
- 80238 – Central Park, Northfield
- 80239 – Montbello
- 80249 – Green Valley Ranch

Attached to this motion is a revised version of Appendix A that includes the complete list of eligible ZIP Codes. The Parties have initialed the revised Appendix A. Also attached to this motion is an email from Suncor’s counsel dated August 30, 2023, consenting to these revisions.

V. CONCLUSION

For the reasons stated above, the EPA respectfully requests that the Board grant the EPA’s Motion Requesting Substitution of a Revised Appendix A and substitute the version of Appendix A that was previously approved by the Board on August 24, 2023, with the revised version of Appendix A attached to this Motion. The EPA further requests that the date the Board approves substitution of the revised Appendix A become the effective date of the Consent Agreement.

Dated this 5th day of September 2023.

Respectfully submitted,

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 (MC-2242A)
Washington, D.C. 20460

Ryan Bickmore
Attorney-Adviser
Fuels Enforcement Branch
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

Attachment A (Revised Appendix A)

APPENDIX A
Supplemental Environmental Project Description

APPENDIX A
ELECTRIC LAWN AND GARDEN EQUIPMENT SUPPLEMENTAL
ENVIRONMENTAL PROJECT (SEP)

I. SEP Purpose

The electric lawn and garden equipment Supplemental Environmental Project (Electric Lawn and Garden Equipment SEP) shall be for the purpose of replacing gasoline- or diesel-powered lawn and garden equipment with cleaner electric-powered lawn and garden equipment that will be purchased or subsidized by Respondent and distributed within Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld Counties in Colorado; the replaced gasoline- or diesel-powered lawn and garden equipment shall be scrapped or destroyed, which will reduce emissions of volatile organic compounds (VOCs), including benzene, as well as nitrogen oxides, carbon monoxide, and greenhouse gases.

II. SEP Implementation, Project Dollars, and Scope

Suncor Energy (U.S.A.) Inc. (Suncor) has selected the Regional Air Quality Council (RAQC) as the SEP Implementer for the Electric Lawn and Garden Equipment SEP, but Suncor is ultimately responsible for ensuring that the Electric Lawn and Garden Equipment SEP is implemented satisfactorily.

Suncor must initiate implementation of the project by providing \$600,000 to the RAQC within thirty (30) days of the effective date of this CAFO (Project Dollars). No more than ten percent (10%) of the Project Dollars may go towards administrative support and outreach costs associated with implementation of the Electric Lawn and Garden Equipment SEP.

Project Dollars, except those going towards administrative support and outreach costs, must be used to purchase or subsidize the purchase of the following types of electric lawn and garden equipment: lawn mowers, trimmers, edgers, cutters, leaf-blowers, chainsaws, utility carts, and other similar devices, as well as battery-packs, chargers, and other accessories that are necessary to support use of the electric equipment.

Residents that receive electric lawn and garden equipment purchased or subsidized with the Project Dollars must reside in one of the following ZIP Codes:

Adams County ZIP Codes

- 80022 – Commerce City
- 80024 – Dupont and Derby
- 80221 – Sherrelwood, Western Hills, Twin Lakes, Zuni
- 80640 – Henderson
- 80229 – Welby, and parts of Thornton
- 80260 – Federal Heights, and parts of Thornton

Denver County ZIP Codes

- 80216 – Globeville, Elyria, Swansea, North Washington
- 80205 – Clayton, North Denver
- 80211 – North Denver
- 80207 – Park Hill
- 80238 – Central Park, Northfield
- 80239 – Montbello
- 80249 – Green Valley Ranch

At least \$50,000 of the Project Dollars must be used to purchase or subsidize the purchase of electric lawn and garden equipment for residents residing in the above-listed ZIP Codes.

Local governments or schools that receive electric lawn and garden equipment purchased or subsidized with the Project Dollars must be located within Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld Counties in Colorado.

III. Environmental Benefit

Use of electric-powered lawn and garden equipment instead of gasoline- or diesel-powered equipment will reduce emissions of VOCs, including benzene in the area impacted by the alleged violations.

VOCs are a precursor to the formation of ground-level ozone. Depending on the level and duration of exposure, ground-level ozone can contribute to certain health effects (*see* <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>). Benzene is a known human carcinogen.

In addition, as a co-benefit of these reductions, use of electric-powered lawn and garden equipment instead of gasoline- or diesel-powered equipment will result in significant reductions of greenhouse gas emissions. Greenhouse gases from human activities are a primary cause of climate change and global warming.

IV. Implementation Requirements

In order to ensure that the environmental benefit anticipated from the Electric Lawn and Garden Equipment SEP will be achieved, Suncor shall collect gasoline- or diesel-powered lawn and garden equipment from residents, local governments, and schools that receive electric lawn and garden equipment from the Project Dollars and scrap or destroy the gasoline- or diesel-powered equipment. Suncor must keep an itemized list of all gasoline- or diesel-powered lawn and garden equipment that was collected and records demonstrating that the gasoline- or diesel-powered equipment was scrapped or destroyed.

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MEK

V. Schedule

Suncor shall provide the funds for the Electric Lawn and Garden Equipment SEP within thirty (30) days of the effective date of this CAFO to the RAQC.

Suncor shall complete the Electric Lawn and Garden Equipment SEP no later than one year (365 calendar days) after the effective date of this CAFO.

Within 60 days of the completion of the Electric Lawn and Garden Equipment SEP, Suncor shall submit a SEP Completion Report to:

Ryan Bickmore
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202
E-mail: Bickmore.Ryan@epa.gov

Attachment B (Email from Suncor's Counsel)

From: [Michael Korenblat](#)
To: [Bickmore, Ryan](#)
Cc: [Jeff Krafve](#); [Christine Jochim](#); [Nelson, Karen](#); [Waanders, Taylor](#)
Subject: Revised Appendix A - Suncor Approval
Date: Wednesday, August 30, 2023 11:36:49 AM
Attachments: [image001.png](#)
[Revised Appendix A .docx](#)

Ryan-

Per our discussion, on behalf of Suncor Energy (U.S.A.) Inc. (Suncor), Suncor agrees that Appendix A to the parties' CAFO, originally approved by the Environmental Appeals Board (Board) on August 24, 2023, needs to be revised to include certain Denver County ZIP Codes in the residential portion of the SEP that were inadvertently excluded in the previous version of Appendix A that was filed with the Board.

By this e-mail, Suncor approves the Revised Appendix in the form attached to this e-mail. This e-mail approval may be used in lieu of Suncor's signature. Suncor requests that the effective date of the Consent Agreement be extended to the date that the Board approves substitution of the revised Appendix A, as our payment deadlines are based on effective date of the CAFO.

For clarity, Appendix A should be revised to clarify that residents that live in the following areas are eligible to participate in the electric lawn and garden equipment SEP:

Adams County ZIP Codes

- 80022 – Commerce City
- 80024 – Dupont and Derby
- 80221 – Sherrelwood, Western Hills, Twin Lakes, Zuni
- 80640 – Henderson
- 80229 – Welby, and parts of Thornton
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- 80205 – Clayton, North Denver
- 80211 – North Denver
- 80207 – Park Hill
- 80238 – Central Park, Northfield
- 80239 – Montbello
- 80249 – Green Valley Ranch"

Please let me know if you require any additional information.

Thanks,

M

Michael E. Korenblat, Esq. (he, him, his)
Suncor Energy (U.S.A.) Inc.
**Secretary and
Director, Legal Affairs - Downstream U.S.A.**

5455 Brighton Blvd.

Commerce City, Colorado 80022

O. +1.303.793.8052

mkorenblat@suncor.com



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CERTIFICATE OF SERVICE

I certify that on the date noted below I filed via email the original of this Motion Requesting Substitution of a Revised Appendix A, Docket No. CAA-2023-8425, to the Clerk of the Environmental Appeals Board.

I further certify that a copy of the foregoing Motion Requesting Substitution of a Revised Appendix A, Docket No. CAA-2023-8425, was sent to the following person in the manner indicated:

By E-mail:

Michael Korenblat
Suncor Energy (U.S.A.) Inc.
5455 Brighton Blvd
Commerce City, Colorado 80022
Email: MKorenblat@Suncor.com

Ryan Bickmore
Attorney-Adviser
Fuels Enforcement Branch
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202