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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:	)	
	)	**CONSENT AGREEMENT**
Suncor Energy (U.S.A.) Inc.,	)	
Commerce City Refinery	)	
5801 Brighton Boulevard	)	Docket No. CAA-08-2023-0008
Commerce City, CO 80022	)	Docket No. EPCRA-08-2023-0002
	)	Docket No. CERCLA-08-2023-0002
Respondent.	)	
	)	

I. CONSENT AGREEMENT AND FINAL ORDER

1. The U.S. Environmental Protection Agency (EPA or Complainant) and Suncor Energy (U.S.A.) Inc. (Suncor or Respondent) agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.

II. PRELIMINARY STATEMENT

2. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to sections 113(a)(3) and (d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3) and (d), and sections 325(b)(3) and (c)(4) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §§ 11045(b)(3) and (c)(4), 42 U.S.C. § 7413(d), section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9609.

3. Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter was appropriate for administrative penalty action.

4. The EPA Administrator has delegated these authorities to the EPA Regional Administrator of Region 8 who, in turn, has delegated it to the Complainants. The Complainants are the Manager of the Air and Toxics Enforcement Branch in the EPA Region 8 Enforcement and Compliance Assurance Division for the CAA and EPCRA claims; and the Associate Regional Counsel in the EPA Region 8 Office of Regional Counsel for the CERCLA claims.

5. Respondent is Suncor, a corporation formed in the state of Delaware, and authorized to conduct business in the state of Colorado.

6. This Consent Agreement and Final Order (CAFO or Consent Agreement) asserts that Respondent has violated the chemical accident prevention provisions in 40 C.F.R. part 68, promulgated pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and that Respondent is therefore in violation of sections 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This CAFO also serves as notice pursuant to section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34, of the EPA's intent to issue an order assessing penalties for these CAA section 112(r)(7) violations.

7. Furthermore, this CAFO asserts that Respondent has violated the Toxic Chemical Release Reporting and Community Right-to-Know regulations in 40 C.F.R. parts 355 and 370, promulgated pursuant to sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004 and 11022, and that Respondent is therefore in violation of sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004 and 10022.

8. Additionally, this CAFO asserts that Respondent has violated the reporting requirements in 40 C.F.R. part 300, promulgated pursuant to section 103 of CERCLA, 42 U.S.C. § 9603, and that Respondent is therefore in violation of section 103 of CERCLA, 42 U.S.C. § 9603.

9. To avoid the disruption of orderly business activities and the expense of litigation and to effect an expeditious settlement of this matter, Respondent, for purposes of this proceeding only, and as provided by 40 C.F.R. § 22.18(b)(2):

a. Respondent admits that the EPA has jurisdiction over the subject matter of this Consent Agreement and over the Respondent and waives any defenses it might have as to jurisdiction. Respondent agrees not to contest the EPA's jurisdiction to enter into this Consent Agreement, Complainant's delegated authority to execute this Consent Agreement, and the EPA's authority to enforce the terms of this Consent Agreement through the executed Final Order.

b. Respondent neither admits nor denies the alleged violations or conclusions of law in this Consent Agreement.

c. Respondent consents to the assessment of the full amount of the civil penalty as provided for in paragraph 79, below, and agrees to make payment in accordance with paragraph 83.

d. Respondent consents to all conditions specified in this Consent Agreement.

e. Respondent waives any right it might have against the EPA or the United States to contest through a judicial or administrative hearing the factual allegations and violations of law as alleged.

f. Respondent waives the rights it might have against the EPA or the United States to obtain judicial or administrative review of the Final Order accompanying this Consent Agreement under any otherwise applicable law.

10. Complainant and Respondent entered into a Tolling Agreement dated February 9, 2023, as amended by the Second Tolling Agreement on May 8, 2023, and tolls claims from February 1, 2023, through August 30, 2023, for any applicable statute of limitations for civil claims brought by Complainant against Respondent for violations of the CAA, EPCRA, or CERCLA, and their implementing regulations.

III. CAA SECTION 112(r)

CAA SECTION 112(r) REGULATORY BACKGROUND

11. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added section 112(r) to the CAA, 42 U.S.C. § 7412(r).

12. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment, the threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by section 112(r)(7), 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.

13. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. part 68 (referred to as the "RMP Regulations"), which implements section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The RMP Regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program must be described in a risk management plan that must be submitted to the EPA. The risk management plan must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, to protect human health and the environment.

14. Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), require the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity to submit a risk management plan to the EPA no later than June 21, 1999, three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which a regulated substance is first present above the threshold quantity in a process.

15. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines "stationary source," as "any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur."

16. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), listed in 40 C.F.R. § 68.130, table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

17. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), in 40 C.F.R. § 68.130.

18. The regulations at 40 C.F.R. § 68.3 define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

19. The regulations at 40 C.F.R. § 68.3 define "covered process" as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

CAA SECTION 112(r) GENERAL ALLEGATIONS

20. Respondent is a corporation and authorized to do business in the state of Colorado.

21. Respondent is the owner and operator of the petroleum refinery located at 5801 Brighton Boulevard, Commerce City, Colorado 80022 (Plant 1), the petroleum refinery located at 5800 Brighton Boulevard, Commerce City, Colorado 80022 (Plant 2), and the asphalt plant located approximately at 3875 East 56th Avenue, Commerce City, CO 80022 (Plant 3) (collectively, the Facility).

22. As a corporation, Respondent is a "person" as defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is subject to the assessment of civil penalties for the violations alleged herein.

23. Respondent is, and at times referred to herein was, the owner and operator of a "stationary source," as the term is defined in section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R.§ 68.3.

24. On June 17, 2020, Complainant issued a Notice of Inspection and Pre-Inspection Request for Information to the Respondent seeking information and documents to assess the Facility's compliance with the CAA, EPCRA, and CERCLA, as referenced above. Respondent provided all requested documents on July 30, 2020. EPA inspected the Facility on September 14-17, 2020.

25. Based on the observations of the EPA inspectors at the inspection, and after reviewing the documents submitted by Respondent, the EPA has determined that Respondent has the potential to use, store, or handle as much as 17,000 pounds of hydrogen sulfide, and 13,000,000 pounds of flammable mixtures in its processes which include 2-butene-cis, butane, 2-butene-trans, 1-butene, ethyl mercaptan, propylene, propane, pentane, methane, isopentane, isobutane, hydrogen, ethylene, and ethane.

26. Hydrogen sulfide and flammable mixtures are regulated substances pursuant to 42 U.S.C. § 7412(r), in the list of regulated substances compiled at 40 C.F.R. §§ 68.3 and 68.130, tables 3 and 4, which each have a threshold quantity of 10,000 pounds.

27. At all relevant times, the Facility stored over a threshold quantity of hydrogen sulfide and flammable mixtures and used those substances in a "process" as defined at 40 C.F.R. § 68.3.

28. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions of 40 C.F.R. part 68 apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System (NAICS) code or is subject to the Occupational Safety and Health Administration (OSHA) process safety management standard at 29 C.F.R. § 1910.119.

29. Respondent's Facility is subject to the RMP Regulations applicable to "Program 3" facilities withing the meaning of 40 C.F.R. §§ 68.10(d) and 68.12(d).

30. 40 C.F.R. § 68.12(d)(3) requires owners and operators of stationary sources with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65–68.87.

EPA FINDINGS OF CAA SECTION 112(r) VIOLATIONS

31. 40 C.F.R. § 68.65(c)(1)(iv) requires that information concerning the technology of the process shall include at least the following: safe upper and lower limits for such items as temperatures, pressures, flows or compositions. Respondent failed to maintain accurate process safety information (PSI) for safe upper limits for temperature for the #2 Fluid Catalytic Cracking Unit (FCCU). Respondent's failure to maintain information pertaining to the technology of the process, safe upper and lower limits for such items as temperatures, pressures, flows, or compositions is a violation of 40 C.F.R. § 68.65(c)(1)(iv).

32. 40 C.F.R. § 68.65(c)(1)(iv) requires that information concerning the technology of the process shall include at least the following: safe upper and lower limits for such items as temperatures, pressures, flows or compositions. Respondent failed to maintain accurate PSI for safe upper limits for torch oil flow rate for the #2 FCCU. Respondent's failure to maintain information pertaining to the technology of the process, safe upper and lower limits for such items as temperatures, pressures, flows, or compositions is a violation of 40 C.F.R. § 68.65(c)(1)(iv).

33. 40 C.F.R. § 68.65(c)(1)(v) requires that information concerning the technology of the process shall include at least the following: an evaluation of the consequences of deviations. Respondent failed to maintain a complete evaluation of the consequences of deviations for the #2 FCCU. Respondent's failure to include an evaluation of the consequences of deviations for the #2 FCCU process is a violation of 40 C.F.R. § 68.65(c)(1)(v).

34. 40 C.F.R. § 68.67(f) requires that at least every five (5) years after the completion of the initial process hazard analysis (PHA), the PHA shall be updated and revalidated by a team meeting the requirements in paragraph (d) of this section, to assure that the process hazard analysis is consistent with the current process. Updated and revalidated PHAs completed to comply with 29 C.F.R. § 1910.119(e) are acceptable to meet those requirements. Respondent failed to complete the PHAs for 11 of their processes within their RMP-covered process within 5 years of the completion of the prior PHA revalidation. Respondent's failure to update and revalidate their PHAs within 5 years, to assure that the process hazard analysis is consistent with the current process is a violation of 40 C.F.R. § 68.67(f).

35. 40 C.F.R. § 68.69(a)(1)(iv) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the PSI and shall address at least the following elements for each operating phase: emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner. Respondent failed to clearly identify the conditions under which emergency shutdown is required in the #2 FCCU Normal Startup operating procedure. Respondent's failure to develop and implement written operating procedures, that identified conditions under which and emergency shutdown is required, is a violation of 40 C.F.R. § 68.69(a)(1)(iv).

36. 40 C.F.R. § 68.69(a)(1)(iv) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the PSI and shall address at least the following elements for each operating phase: emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified

operators to ensure that emergency shutdown is executed in a safe and timely manner. Respondent failed to provide clear instructions for safely conducting activities in the #2 FCCU for the blower failure emergency shutdown procedure used on March 17, 2020. Respondent's failure to develop and implement written operating procedures that identified the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner, is a violation of 40 C.F.R. § 68.69(a)(1)(iv).

37. 40 C.F.R. § 68.69(a)(1)(vii) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the PSI and shall address startup following a turnaround, or after an emergency shutdown. Respondent failed to provide clear instructions for safely conducting activities in the #2 FCCU Normal Startup procedure used on December 11, 2019. Respondent's failure to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and address steps for each operating phase including startup following a turnaround, or after an emergency shutdown, is a violation of 40 C.F.R. § 68.69(a)(1)(vii).

38. 40 C.F.R. § 68.69(a)(2) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the PSI and addresses operating limits. Respondent failed to maintain accurate operating limits in operating procedures in the #2 FCCU Normal Startup operating procedure. Respondent's failure to develop and implement written operating procedures that address operating limits in the #2 FCCU Normal Startup operating procedure, is a violation of 40 C.F.R. § 68.69(a)(2).

39. 40 C.F.R. § 68.69(a)(2)(i) and (ii) requires that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the PSI and shall address at least the following elements for operating limits: (i) consequences of deviation; and (ii) steps required to correct or avoid deviation. Respondent failed to identify the consequences of deviation or steps required to correct or avoid deviation for high torch oil flow rate. Respondent's failure to address consequences of deviation and steps required to correct or avoid deviation for high torch oil flow rate, is a violation of 40 C.F.R. §§ 68.69(a)(2)(i) and (ii).

40. 40 C.F.R. § 68.69(c) requires that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate. Respondent failed to adequately review the #2 FCCU Normal Startup procedure prior to its use on December 11, 2019. Respondent's failure to assure the operating procedures reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources, is a violation of 40 C.F.R. §§ 68.69(c).

41. 40 C.F.R. § 68.75(a), requires that the owner or operator shall establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process. Respondent failed to follow its management of change (MOC) procedures when

conducting MOC M2019392-001. Respondent's failure to establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process, is a violation of 40 C.F.R. § 68.75(a).

42. 40 C.F.R. § 68.75(a), requires that the owner or operator shall establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process. Respondent failed to follow its management of change procedures for operating procedures when making changes to the #2 FCCU Normal Startup operating procedure (OP 002 300) during the February 6, 2020, and May 4, 2020, changes. Respondent's failure to establish and implement written procedures to manage changes to the #2 FCCU Normal Startup operating procedure (OP 002 300) during the February 6, 2020, and May 4, 2020, changes, are violations of 40 C.F.R. § 68.75(a).

43. 40 C.F.R. § 68.75(d), requires that if a change covered by this paragraph results in a change in the PSI required by § 68.65 of this part, such information shall be updated accordingly. Respondent failed to update written process safety information for materials of construction changed by MOC# 950021003. Respondent's failure to update a change in the process safety information, as required by §68.65 of this part, is a violation of 40 C.F.R. § 68.75(d).

CAA SECTION 112(r) PENALTY LIABILITY

44. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations, limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Such a determination was made as stated in paragraph 3, above. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. part 19, increased this statutory maximum penalty to $55,808 per day per violation for violations that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.

IV. CERCLA & EPCRA

CERCLA AND EPCRA REGULATORY BACKGROUND

45. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (Reportable Quantity or RQ). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

46. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. part 302, requires a person in charge of a facility to immediately notify the National Response Center (NRC) established under section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as they have knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ of that substance.

47. Section 302(a) of EPCRA, 42 U.S.C. §11002(a), requires the Administrator of the EPA to publish a list of extremely hazardous substances (EHSs) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c), (Reportable Quantity or RQ). The list of EHSs and their respective RQs is codified at 40 C.F.R. part 355, appendices A and B.

48. Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), as implemented by 40 C.F.R. part 355, subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) immediately following the release of an EHS in an amount exceeding the RQ for such substance.

49. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. part 370, requires that the owner or operator of a facility required to prepare or have available a material safety data sheet or safety data sheet for a hazardous chemical in accordance with the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, 29 U.S.C. §§ 651 et seq., and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable minimum threshold level for reporting (MTL) or threshold planning quantity (TPQ) to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemical and providing the information described in section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

CERCLA AND EPCRA GENERAL ALLEGATIONS

50. Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21); 40 C.F.R. § 302.3; and section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and is subject to the assessment of civil penalties for the violations alleged herein.

51. At all times relevant to this CAFO, Respondent has been in charge of the Facility, within the meaning of section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

52. The Facility is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 302.3, section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61.

53. The Facility is an "onshore facility," as defined at section 101(18) of CERCLA, 42 U.S.C. § 9601(18), and 40 C.F.R. § 302.3.

54. At the time of the April 15, 2018, and May 7, 2019, releases described below, Respondent was "in charge of" the onshore facility.

55. Respondent is an "owner or operator" of the Facility as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and referenced in section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. §§ 355.2 and 355.30.

56. At all times relevant to this CAFO, the Facility was a facility at which an EHS was produced, used, or stored.

57. Based upon the inspection, the information requested, and documentation submitted by Respondent, as referenced in paragraphs 24 and 25, Respondent's Facility produces, uses, or stores sulfur dioxide and hazardous waste with hazardous waste codes F037, F038, K048, and K051, each of which is an EHS.

58. The EPA has determined from its document review that Respondent failed to comply with certain EPCRA and CERCLA reporting requirements.

EPA FINDINGS OF EPCRA SECTION 304 VIOLATIONS

59. 40 C.F.R. § 355.43(a) requires that emergency release notification described under § 355.40(a) must be provided immediately. Respondent failed to make timely notification (i.e., within 15 minutes) to the SERC and LERC based on the documentation provided for the April 15, 2018, sulfur dioxide release event which exceeded the RQ for that EHS. Respondent's failure to immediately notify the SERC and LERC of the April 15, 2018, sulfur dioxide release is a violation of section 304 of EPCRA, 42 U.S.C. § 11004 and 40 C.F.R. § 355.43(a).

60. 40 C.F.R. § 355.43(a) requires that emergency release notification described under § 355.40(a) must be provided immediately. Respondent failed to make timely notification (i.e., within 15 minutes) to the SERC and LERC based on the documentation provided for the May 7, 2019, hazardous waste release event which exceeded the RQ for that EHS. Respondent's failure to immediately notify the SERC and LERC of the May 7, 2019, hazardous waste release is a violation of section 304 of EPCRA, 42 U.S.C. § 11004 and 40 C.F.R. § 355.43(a).

EPA FINDINGS OF EPCRA SECTION 312 VIOLATIONS

61. Respondent stored lead-acid batteries on site. Lead-acid batteries contain lead and sulfuric acid, each of which is a "hazardous chemical" as defined by section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66, and is subject to section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

62. Respondent stored a TPQ for lead and sulfuric acid during the reporting years of 2018, 2019, 2020.

63. Respondent did not submit to the SERC, LEPC, and local fire department, a Chemical Inventory Form for calendar years 2017, 2018 and 2019 by March 1st of the following years in 2018, 2019 or 2020, identifying lead and sulfuric acid as present in the lead-acid batteries at the Facility in a quantity equal to or greater than the TPQ, and providing the information required by section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

64. Respondent's failure to submit to the SERC, LEPC, and local fire department, with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar years 2018, 2019, and 2020 constitute violations of section 312 of EPCRA, 42 U.S.C. § 11022,

and Respondent is, therefore, subject to the assessment of penalties under section 325 of EPCRA, 42 U.S.C. § 11045.

EPCRA PENALTY LIABILITY

65. Respondent's violations of EPCRA, as stated in paragraphs 59, 60, and 64, subjects Respondent to the assessment of penalties under section 325 of EPCRA, 42 U.S.C. § 11045.

66. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the EPA to assess a civil penalty of up to $25,000 per day for each violation of sections 304 and 312 of EPCRA and their implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. part 19, increased this statutory maximum penalty to $67,544 per day per violation for violations that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.

EPA FINDINGS OF CERCLA SECTION 103(a) VIOLATIONS

67. Hazardous wastes with waste codes F037, F038, K048 and K051 are "hazardous substances" as defined at section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3.

68. 40 C.F.R. § 302.4, states that the reportable quantity for a Hazardous Waste release is one pound each for Hazardous Waste with codes F037 and F038, and ten pounds each for Hazardous Waste with codes K048 and K051, as determined in any 24-hour period.

69. The Release on May 7, 2019, of Hazardous Waste was a "release" into the environment, as defined at section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and 40 C.F.R. § 302.3.

70. The Release of Hazardous Waste on May 7, 2019, with waste codes F037, F038, K048, and K051 from the Facility exceeded the reportable quantity during the Release.

71. The Release was not a "federally permitted release," as defined at section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

72. Accordingly, Respondent was required to immediately (i.e., within 15 minutes) notify the NRC as soon as Respondent knew that the amount of Hazardous Waste released exceeded the reportable quantity.

73. Respondent knew or should have known that the Release exceeded the reportable quantity on May 7, 2019, or shortly thereafter.

74. Respondent did not timely notify the NRC of the Release.

75. Accordingly, Respondent's failure to immediately notify the NRC as soon as it had knowledge that the Release at the Facility exceeded the reportable quantity violated section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.3.

CERCLA PENALTY LIABILITY

76. Respondent's violation of CERCLA, as stated in paragraph 75, subjects Respondent to the assessment of penalties under section 109(b) of CERCLA, 42 U.S.C. § 9609(b).

77. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b) authorizes the EPA to assess a civil penalty of up to $25,000 per day for each day the violation continues for violations of section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. part 19, increased this statutory maximum penalty to $67,544 per day per violation for violations that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.

V. SETTLEMENT

78. Respondent consents to the issuance of this Consent Agreement, and consents for the purposes of settlement to the payment of the civil penalty, and performance of the Supplemental Environmental Project, below.

VI. CIVIL PENALTY

79. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a total civil penalty in the amount of SIXTY THOUSAND DOLLARS ($60,000), which total includes TWENTY-SEVEN THOUSAND DOLLARS ($27,000) for alleged violations of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7) (CAA civil penalty), TWENTY-FIVE THOUSAND DOLLARS ($25,000) for alleged violations of section 304 of EPCRA, 42 U.S.C. § 11004, and section 312 of EPCRA, 42 U.S.C. § 11022 (EPCRA civil penalty), and EIGHT THOUSAND DOLLARS ($8,000) for alleged violations of section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (CERCLA civil penalty), which Respondent shall be liable to pay in accordance with the terms set forth below.

80. The CAA civil penalty stated herein is based upon Complainant's consideration of several factors, including, but not limited to, the penalty criteria set forth in section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. part 19 and the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. part 68 (June 2012).

81. The EPCRA civil penalty and the CERCLA civil penalty are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in section 325(b)(1)(C) of EPCRA, 42 U.S.C. §11045(b)(1)(C) and section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), including, the following: the nature, circumstances, extent and gravity of the violation or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to the EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999), which reflects the statutory penalty criteria and factors set forth at section 325(b)(1)(C) of EPCRA and section 109(a)(3) of CERCLA, the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. part 19, and the applicable EPA memoranda addressing the EPA's civil penalty policies to account for inflation.

82. Payment of the CAA civil penalty, the EPCRA civil penalty, and the CERCLA civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall

be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, i.e., CAA-08-2023-0008; EPCRA-08-2023-0002; and CERCLA-08-2023-0002.

b. All checks in payment of the CERCLA civil penalty shall be made payable to the "EPA-Hazardous Substances Superfund."

c. All payments made by check in payment of the CERCLA civil penalty and sent by regular mail shall be addressed and mailed to the following address:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

d. All checks in payment of the CAA civil penalty and the EPCRA civil penalty shall be made payable to the "United States Treasury."

e. All payments made by check in payment of the CAA civil penalty and the EPCRA civil penalty and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

f. For additional information concerning other acceptable methods of payment of the civil penalty amounts see:

https://www.epa.gov/financial/makepayment

g. A copy of Respondent's checks or other documentation of payment of the penalties using the method selected by Respondent for payment shall be sent simultaneously to the following individuals:

Marc Weiner
Senior Assistant Regional Counsel
U.S. EPA, Region 8 (8ORC)
1595 Wynkoop Street
Denver, CO 80202
weiner.marc@epa.gov

and

Daniel Webster
Environmental Engineer
U.S. EPA, Region 8 (R8-ECAD-TPES)

1595 Wynkoop Street
Denver, CO 80202
webster.daniel@epa.gov

83. 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, provide that the EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

84. Payment of the CAA civil penalty, the EPCRA civil penalty, and the CERCLA civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed Final Order approving the Consent Agreement (CAFO). Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

85. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, the EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).

86. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to appendix 2 of EPA's Resources Management Directives – Case Management, chapter 9, the EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

87. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

88. Failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil penalty assessed by the Final Order in accordance with the terms of this CAFO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, and section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

89. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

90. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to

accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

91. In response to the alleged violations of the CAA, EPCRA and CERCLA and in settlement of this matter, although not required by the CAA, EPCRA, CERCLA, or any other federal, state or local law, Respondent agrees to implement a Supplemental Environmental Project (SEP) for the Purchase of Emergency Response Equipment, as described and set forth in appendix A.

92. Respondent shall provide the emergency response equipment specified in appendix A to the identified emergency response organization to assist it in responding to emergencies in the communities where Respondent operates and where chemical processes are undertaken that are regulated by the CAA, EPCRA, and CERCLA. The parties agree that the SEP is consistent with the EPA's 2015 SEP Policy and is intended to secure significant environmental and public health protection and benefits by enhancing the hazardous material incident response capabilities of first responders in the areas by providing equipment and training that is necessary to respond to emergency releases of hazardous chemicals. Respondent is obligated to expend no less than TWO HUNDRED FORTY THOUSAND DOLLARS ($240,000), which is associated with implementing the SEP that Respondent has chosen, and costs incurred by contractors and other third parties selected by Respondent to develop, implement, maintain, and administer the SEP.

93. Respondent is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Agreement. "Satisfactory completion" means completing the SEP in accordance with the requirements and schedules set forth in appendix A. Respondent may use contractors or consultants in planning and implementing the SEP.

94. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

a. All cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate, and Respondent, in good faith, estimates the cost to implement the SEP is two hundred forty thousand dollars ($240,000).

b. As of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum.

c. The SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO.

d. Respondent has not received and will not receive credit for the SEP in any other enforcement action.

e. Respondent will not receive any reimbursement for any portion of the SEP from any other person.

f. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

g. Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.

h. Respondent has inquired of the SEP recipients whether each is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by each of the SEP recipients that it is not a party to such a transaction.

95. For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement loan, federally guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

96. Respondent hereby waives any confidentiality rights it has under 26 U.S.C. § 6103 with respect to SEP costs on its tax returns and on the information supporting its tax returns. This waiver of confidentiality is solely as to the EPA and the Department of Justice and solely for the purpose of ensuring the accuracy of Respondent's SEP cost certification.

97. Respondent shall send a confirmation email to the EPA within ten (10) days of completing the purchase of the emergency equipment for the SEP recipient. Within thirty (30) days after completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP as implemented;

b. a description of any material problems encountered in completing the SEP and the solutions thereto;

c. itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, and/or wire transfer records that specifically identify and itemize the individual costs associated with the SEP. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified;

d. certification that each SEP has been fully implemented pursuant to the provisions of this CAFO;

e. a description of the environmental and public health benefits resulting from the implementation of the SEP;

f. a statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the SEPs;

g. the following statement, signed by Respondent's officer or authorized representative of Respondent with knowledge of the SEP, under penalty of law, attesting that the information contained in the SEP Completion Report is true, accurate, and not misleading:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

98. Respondent shall maintain, for a period of three (3) years from the date of submission of the SEP Completion Report, legible copies of all research, data, and other information upon which the Respondent relied to write the SEP Completion Report and shall provide such documentation within fourteen (14) days of a request from the EPA.

99. Respondent agrees that failure to submit the confirmation email and/or the SEP Completion Report shall be deemed a violation of this CAFO, and the Respondent shall, after written notice from the EPA and failure to cure any alleged violation within thirty (30) days, become liable for stipulated penalties in accordance with paragraph 109.

100. After receipt of the SEP Completion Report, the EPA, after a reasonable opportunity for review, will notify Respondent in writing: (i) the project has been completed satisfactorily; (ii) identify any deficiencies in the SEP Completion Report itself and grant Respondent an additional thirty (30) days to correct any deficiencies; or (iii) determine the project has not been completed satisfactorily.

101. If the EPA elects to exercise options (ii) or (iii) in paragraph 100, Respondent may object in writing to the notice of deficiency within ten (10) days of receipt of such notice, except that this right to object shall not be available if the EPA found that the project was not completed satisfactorily because Respondent failed to implement or abandoned the project. The EPA and Respondent shall have an additional thirty (30) days from the receipt by the EPA of Respondent's objection to reach agreement on changes necessary to the SEP or SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, which may be extended by the written agreement of both the EPA and Respondent, the EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any reasonable requirements imposed by the EPA that are consistent with this CAFO as a result of any failure to comply with the terms of this CAFO.

102. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent, its contractors, or third-party implementers referring to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, In the Matter of Suncor Energy (USA), Inc., taken by the U.S. Environmental Protection Agency to enforce federal environmental laws."

103. If Respondent's purchase of the emergency response equipment identified in appendix A does not expend the full amount set forth in paragraphs 92 and 94, and if the EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondent will identify, purchase, and provide additional emergency response equipment to the emergency response organization identified in appendix A.

VIII. NOTIFICATIONS

104. Submissions required by this SEP Agreement shall be in writing and shall be mailed to the following address with a copy also sent by electronic mail:

Daniel Webster
Environmental Engineer
U.S. EPA, Region 8 (R8-ECAD-AT-P)
1595 Wynkoop Street
Denver, CO 80202
webster.daniel@epa.gov
Office Phone: (303) 312-7076

105. The EPA will send all written communications, including electronic mail, to the following representative(s) for Respondent:

Suncor Energy (U.S.A.) Inc.
Attn: Legal Department
5455 Brighton Boulevard
Commerce City, CO 80022
uslegalaffairs@suncor.com

106. All documents submitted to the EPA in the course of implementing this SEP Agreement shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. part 2 subpart B and determined by the EPA to merit treatment as confidential business information in accordance with applicable law.

IX. STIPULATED PENALTIES

107. If Respondent fails to satisfactorily complete the SEP as outlined above in paragraphs 91-106 and appendix A, Respondent shall be liable for stipulated penalties in accordance with the provisions set forth below. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of the EPA.

108. If EPA determines that Respondent completely or substantially failed to implement the Purchase of Emergency Equipment SEP in accordance with this Agreement, Respondent shall pay a stipulated penalty in the amount of 110% of the estimated cost of the project, as set forth in appendix A, less the difference between the amount spent to date to implement the project.

109. After giving effect to any extensions of time granted by the EPA, Respondent shall pay a stipulated penalty in the amount of $200 for each day the following submissions are late: (a) each email message and (b) the SEP Completion Report required by paragraph 97. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with Section VI, above. Interest and late charges shall be paid as stated in Section VI, above.

X. FORCE MAJEURE AND EXCUSABLE DELAY

110. "Force majeure and excusable delay," for purposes of this CAFO, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of

Respondent's contractors, that delays or prevents the performance of any obligation under this Consent Agreement despite Respondent's best efforts to fulfill the obligation. Excusable delay in this CAFO specifically occurs in reference to supply chain issues or lack of product availability in connection with the SEP when Respondent has ordered the emergency equipment within the sixty (60) day time frame from the Effective Date specified in appendix A. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure or excusable delay event and best efforts to address the effects of any potential force majeure or excusable delay event (a) as it is occurring and (b) following the potential force majeure or excusable delay, such that the delay and any adverse effects of the delay are minimized. "Force majeure or excusable delay" does not include Respondent's financial inability to perform any obligation under this Consent Agreement.

111. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Agreement, as to which Respondent intends to assert a claim of force majeure or excusable delay, Respondent will provide notice orally or by electronic transmission to EPA within ten (10) days of when Respondent first knew, or by the exercise of due diligence should have known, that the event would cause a delay. Within thirty (30) days thereafter, Respondent will provide in writing to EPA: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to force majeure or excusable delay; and a statement as to whether, in the opinion of Respondent, the delay in performance of an obligation under this Consent Agreement resulting from such event may cause or contribute to an endangerment to public health, welfare, or the environment (30-Day Force Majeure or Excusable Delay Notice). Respondent will include with any 30-Day Force Majeure or Excusable Delay Notice documentation supporting the claim that the delay was attributable to force majeure or excusable delay. Failure to substantially comply with the above requirements will preclude Respondent from asserting any claim of force majeure or excusable delay for that event for the period in which Respondent has failed to comply with the notice requirements, and for any additional delay caused by such failure. Respondent will be deemed to know of any circumstances of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

112. If the EPA, after a reasonable opportunity for review, agrees that the delay or anticipated delay is attributable to force majeure or excusable delay, it will notify Respondent in writing, and the time for performance of the obligations under this Consent Agreement that are affected by force majeure or excusable delay will be extended by the EPA, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by force majeure or excusable delay will not, of itself, extend the time for performance of any other obligation. The EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by force majeure or excusable delay.

113. If the EPA, after a reasonable opportunity for review, does not agree that the delay or anticipated delay has been or will be caused by force majeure or excusable delay, the EPA will notify Respondent in writing of its decision. If the EPA does not provide a response within thirty (30) days after receipt of Respondent's 30-Day Force Majeure or Excusable Delay Notice, Respondent will treat the absence of a response as acceptance of the 30-Day Force Majeure or Excusable Delay Notice.

XI. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

114. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA, EPCRA, and CERCLA, or any other applicable law.

115. The effect of settlement described in paragraph 114 is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph 115.

116. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004 and 11022, and section 103(a) of CERCLA, 42 U.S.C. § 9603(a), related to the alleged violations set forth in this Consent Agreement.

117. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA, the EPCRA, and the CERCLA, and the regulations promulgated thereunder.

118. Complainant reserves the right to enforce the terms and conditions of this CAFO.

119. This CAFO shall not confer any rights or obligations upon any person other than the parties and shall not be enforceable by any other person except the parties hereto.

XII. GENERAL PROVISIONS

120. By signing this Consent Agreement, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

121. This Consent Agreement shall not dispose of the proceeding without a Final Order from the Regional Judicial Officer ratifying the terms of this Consent Agreement. This Consent Agreement shall be effective upon filing of the Final Order by the Regional Judicial Officer. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

122. The penalty specified herein shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal, state, and local taxes.

123. This CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors, and assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement.

124. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

The EPA:
weiner.marc@epa.gov
webster.daniel@epa.gov

Respondent:
uslegalaffairs@suncor.com

XIII. EFFECTIVE DATE

125. This Agreement shall become effective on the date (Effective Date) the Final Order is filed by the Regional Hearing Clerk.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Complainant.

Date: _____ By: SCOTT PATEFIELD Digitally signed by SCOTT PATEFIELD Date: 2023.08.10 09:28:27 -06'00'

Scott Patefield, Manager
Air and Toxics Branch
Enforcement and Compliance Assurance Division

Date: _____ By: CHRISTOPHER THOMPSON Digitally signed by CHRISTOPHER THOMPSON Date: 2023.08.10 11:53:30 -06'00'

Christopher Thompson, Associate Regional Counsel
for Enforcement
Office of Regional Counsel

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

Date: 8/9/2023 | 3:13:07 PM MDT By: DocuSigned by: Jeff Krafve 5350B6E1007147D...

Jeff Krafve, Vice President, Commerce City Refinery

APPENDIX A
SUNCOR ENERGY (U.S.A.) INC.
SUPPLEMENTAL ENVIRONMENTAL PROJECT

This Supplemental Environmental Project (SEP) proposal consists of emergency response equipment to be purchased and donated by Suncor Energy (U.S.A.) Inc. (Suncor) to emergency response organizations local to Suncor's Commerce City, Colorado refinery. Suncor has selected the South Adams County Fire Department to own and use the donated equipment.

Suncor will expend no less than Two Hundred Forty Thousand dollars ($240,000) associated with implementing the SEP that Suncor has chosen, and costs incurred by contractors and other third parties selected by Suncor to develop, implement, maintain and administer the SEP. Suncor will order the equipment described below within sixty (60) days following the Effective Date of the Consent Agreement and Final Order (CAFO) entered into by Suncor and the U.S. Environmental Protection Agency (EPA). Dependent on supplier capabilities, Suncor expects delivery within a reasonable time after the orders are placed. The SEP will be considered complete when each piece of equipment described below, or similar equipment in the event the equipment listed below is not available, is delivered to the South Adams County Fire Department. If necessary due to product availability or supply chain issues, substantially similar equipment will be purchased by Suncor after consultation with the South Adams County Fire Department. Suncor shall complete this SEP no later than six (6) months after the Effective Date.

Suncor alone selected the SEP recipient and specific equipment identified herein. This SEP shall not be construed to constitute EPA approval or endorsement of the equipment or technology donated by Suncor in connection with the SEP.

A. Nexus to the section 112(r) of the Clean Air Act (CAA), sections 304 and 312 of the Emergency Planning and Community Right-to- Know Act (EPCRA), section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

This SEP enhances the capabilities of emergency responders, facilitates quick and efficient responses to actual and threatened releases associated with emergency events, and provides tangible environmental and public health benefits primarily for local communities located near Suncor's Commerce City, Colorado refinery. An adequate nexus exists between this SEP and alleged violations of section 112(r) of the CAA, sections 304 and 312 of EPCRA, and section 103 of CERCLA as set forth in the Consent Agreement in accordance with Category G (Emergency Planning and Preparedness) of EPA's SEP Policy (2015 Update to the 1998 SEP Policy). SEP Category G furthers the ability of emergency response organizations to assess the dangers of hazardous chemicals that are present, develop emergency response plans to better respond to chemical incidents, and fulfill their obligations under the CAA, the EPCRA, and the CERCLA within the same emergency planning district or state affected by the alleged violations and for which no federal financial assistance is available for the purchased materials funded by this SEP.

B. Nexus to Communities with Environmental Justice Concerns

The EPA has identified Colorado's Commerce City – North Denver area as an environmental justice community whose residents are overburdened by environmental pollution. The community is located next to major highways, large numbers of regulated facilities, and areas with legacy pollution, leading community members to express continued concerns about their health, environment, and community.

Data from the EPA 's Environmental Justice (EJ) screening and mapping tool EJScreen suggest a significant potential for EJ concerns in the area due to a combination of high pollution burden and population vulnerability. This SEP will mitigate potential damage or reduce potential risks to local communities with environmental justice concerns in the Commerce City – North Denver area.

C. Planned Purchases

The following chart lists the emergency response equipment Suncor has chosen, in consultation with the South Adams County Fire Department, to purchase for the South Adams County Fire Department.[1]

Description	Quantity	Unit Cost	Total
Blackline Safety G7 multi-gas detector	5	$6,266	$31,330
Blackline Safety G7 Dock (calibration, bump testing, and charging)	2	$900	$1,800
RedWave Technology XplorIR handheld portable fourier-transform infrared spectroscopy (FTIR) gas detection system with extended warranty and one day of training	1	$57,000	$57,000
RedWave Technology ThreatID portable FTIR gas, solid, and liquid detection system with extended warranty and one day of training	1	$82,000	$82,000
Calibration gas set (various gases)	1	$2,000	$2,000
Williams Direct Dryers Mobile Dryer for two hazmat suits (Model PC2)	1	$3,500	$3,500
Flexible Containment Pool	16	$150	$2,400
RAE Colorimetric Gas Detection Kit	1	$1,000	$1000
Ford F250 or 2500 pickup truck (to be outfitted with multiple mobile emergency response radios, emergency lights and sirens, and equipment to utilize the truck as a quick-moving, initial incident-response command vehicle)	1	$59,000	$59,000
Grand Total			**$240,030**

GRAND TOTAL SEP EQUIPMENT COST (EXCLUDING TAX): Approximately $240,030.

D. Documentation

Suncor will send a confirmation email to EPA within ten (10) days of completing the purchase of the emergency equipment for the SEP recipient. Within sixty (60) days after completion of the SEP, Suncor will submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP as implemented,

b. a description of any material problems encountered in completing the SEP and the solutions thereto;

c. itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, and/or wire transfer records that specifically identify and itemize the individual costs associated with the SEP. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified;

[1] Any applicable tax to be paid will be in addition to the amounts noted in this chart.

d. certification that the SEP has been fully implemented pursuant to the provisions of the CAFO;

e. a description of the environmental and public health benefits resulting from the implementation of the SEP;

f. a statement that no tax returns filed or to be filed by Suncor will contain deductions or depreciations for any expense associated with the SEPs; and

g. the following statement, signed by Suncor's authorized representative with knowledge of the SEP, under penalty of law, attesting that the information contained in the SEP Completion Report is true, accurate, and not misleading:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.