



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

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FILED
EPA REGION VIII
HEARING CLERK

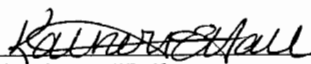
DOCKET NO.: RCRA-08-2019-0003

IN THE MATTER OF:)
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SUNCOR ENERGY (U.S.A.) INC.) FINAL ORDER
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)
)
RESPONDENT)

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 14th DAY OF August, 2019.



Katherin E. Hall
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

Suncor Energy (U.S.A.) Inc.
Commerce City, Colorado,

Respondent.

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Docket No. **RCRA-08-2019-0003**

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency Region 8, and Respondent, Suncor Energy (U.S.A.) Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows.

I. PRELIMINARY STATEMENT

1. This administrative enforcement proceeding is governed by Part 22 of Title 40 of the Code of Federal Regulations (40 C.F.R. Part 22).
2. This consent agreement (Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
3. EPA has jurisdiction over this matter pursuant to sections 3008(a) and 3008(g) of the Solid Waste Disposal Act, as amended by, *inter alia*, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6928(a) and 6928(g).
4. Pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), notification of this action has been given to the Colorado Department of Public Health and Environment (CDPIE).
5. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations or legal conclusions contained herein.

6. Complainant has concluded that settlement of this matter is in the public interest.
7. Complainant and Respondent agree that entry of this Agreement and its incorporation into a final order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and potentially complicated litigation between the parties.
8. Upon incorporation into a final order by the Regional Judicial Officer for EPA Region 8 (Final Order), this Agreement applies to and is binding upon Complainant and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Any change in ownership of, or corporate organization, structure or status of Respondent as such change may relate to Respondent's ownership or operation of the Facility (as defined below), shall not alter Respondent's responsibilities under this Agreement, unless EPA, Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities.
9. Respondent shall notify EPA at the address specified below as soon as practicable, prior to any transfer described in or contemplated under the paragraph immediately above.
10. This Agreement contains all civil penalty and compliance settlement terms agreed to by the parties.
11. Respondent waives its rights to a hearing before any tribunal to contest any issue of law or fact set forth in this Agreement in any proceeding to enforce this Agreement and Final Order.

II. GENERAL ALLEGATIONS

12. Respondent is organized under the laws of the State of Delaware and authorized to do business in the State of Colorado (State).

13. Pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State hazardous waste program has been authorized to operate in lieu of the Federal hazardous waste program in Colorado, and CDPHE is the State Agency charged with implementing the State and Federal hazardous waste programs in Colorado.
14. The requirements of the State's authorized program are found at 6 Code of Colorado Regulations (CCR) 1007-3. Citations herein, therefore, are to the CCR, and are followed by the federal analog in the C.F.R. in parenthesis, except where EPA is directly implementing a provision of the federal hazardous waste program that is not yet effective in the State.
15. Respondent is a "person" as defined in 6 CCR 1007-3 § 260.10 [40 C.F.R. § 260.10].
16. Respondent owns and operates a petroleum refinery located at 5801 Brighton Boulevard, Commerce City, Colorado (Facility). The Facility is a "facility" as defined at 6 CCR 1007-3 § 260.10 [40 C.F.R. § 260.10].
17. Respondent has notified CDPHE that it is a Large Quantity Generator (LQG) of hazardous waste at the Facility.
18. On July 19, 2017, EPA inspected a Heritage Crystal Clean facility located at 5221 Monroe Street, Denver, CO (HCC facility). During the inspection the inspectors collected samples from five containers, each of which held spent parts cleaning solvent generated solely by Respondent.
19. Analytical results for the five samples demonstrated that three of the five containers of spent parts cleaning solvent met the toxicity characteristic for hazardous waste for tetrachloroethylene (D039) 6 CCR 1007-3 § 261.24 [40 C.F.R. § 261.24].

20. The five containers were transported from the Facility to the HCC facility prior to July 19, 2017, as non-hazardous secondary materials.

21. Respondent is required to properly determine whether each waste it generates, including the solvents in the five containers, is a hazardous waste, pursuant to 6 CCR 1007-3 § 262.11 [40 C.F.R. § 262.11].

22. Generators shipping hazardous waste offsite must, among other things, properly prepare, execute, and use, a manifest on EPA form 8700-22, and if necessary, EPA form 8700-22A, for each shipment of hazardous waste. 6 CCR 1007-3 § 262.20 (40 C.F.R. § 262.20).

III. DESCRIPTION OF ALLEGED VIOLATIONS

23. Respondent failed to make a hazardous waste determination for each of the three containers of waste found at the HCC facility on July 19, 2017, which were later determined to be hazardous waste.

24. Respondent did not prepare, sign, or use, a hazardous waste manifest for the shipment or shipments of the 3 containers of hazardous waste found at the HCC facility on July 19, 2017.

25. Respondent's failures to make a hazardous waste determination and complete, sign and use hazardous waste manifests for the container and shipments of hazardous waste described above constitute up to six violations of RCRA.

IV. COMPLIANCE ORDER

26. Suncor has developed a hazardous waste determination plan (Plan) to ensure compliance with the requirement to make accurate hazardous waste determinations pursuant to 6 CCR 1007-3 § 262.11 [40 C.F.R. § 262.11], and the requirement to ship hazardous waste using a manifest at 6 CCR 1007-3 § 262.20 [40 C.F.R. § 262.20], for all waste generated at its Commerce City, Colorado facility.

27. Suncor has developed a written waste sampling procedure and written sampling plan that ensures analytical analysis is performed following EPA-approved methods. The sampling plan includes, but is not limited to, the following items:

- a) Standard Operating Procedures for Collecting Samples,
- b) Sampling Test Methods and the Analytical Method Selection Process,
- c) Data Quality Activities

28. Suncor has shared the following elements of the plan for EPA review and has incorporated EPA's comments on these elements of Suncor's plan: the process for making an accurate hazardous waste determination when a solid waste is generated for the first time; the process for determining when and how to reevaluate a routinely generated hazardous waste stream; the process Suncor undertakes to review a new chemical before use at the Facility for the first time; waste management while laboratory analyses are being conducted on waste streams; preparation of documentation accompanying each shipment of hazardous waste; and training for personnel at the Facility who may manage hazardous waste.

29. Suncor shall make accurate hazardous waste determinations pursuant to 6 CCR 1007-3 § 262.11 [40 C.F.R. § 262.11], and ship hazardous waste using a manifest pursuant to 6 CCR 1007-3 § 262.20 [40 C.F.R. § 262.20], for all waste generated at its Commerce City, Colorado facility.

30. The EPA contact for implementation of this Order is:

Cindy Schafer (8ENF-ROR)
Office of Enforcement, Compliance,
& Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

V. CIVIL PENALTY

31. Pursuant to sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and after consideration of the facts known to the EPA, including that Suncor has confirmed to the EPA that it recalled the five containers sampled by the EPA on July 19, 2017, and shipped them to an authorized hazardous waste treatment, storage and disposal facility under hazardous waste manifest, EPA has determined that a civil penalty of \$10,000.00 is appropriate to settle this matter.

32. Respondent consents and agrees to:

a) pay the civil penalty using any method provided on the following website

<https://www.epa.gov/financial/makepayment>;

b) identify each payment with the docket number that appears on the final order in this matter; and

c) within 24 hours of payment email proof of payment to Ms. Schafer at

schafer.cynthia@epa.gov and Charles Figur at figur.charles@epa.gov. Proof of payment means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order.

VI. OTHER TERMS AND CONDITIONS

33. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in the initiation of an administrative enforcement

action, or referral of the matter to the U.S. Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

34. Nothing in this Agreement shall be construed as a waiver by Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

35. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Agreement and to execute and legally bind that party to this Agreement.

36. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Agreement.

37. This Agreement resolves Respondent's liability for Federal civil penalties and injunctive relief under sections 3008(a) and (g) of the Act, 42 U.S.C. §§ 3008(a) and (g), for the violations alleged in this Agreement.

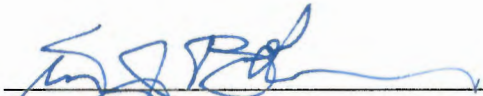
38. Each party shall bear its own costs and attorneys' fees in connection with all issues associated with this Agreement.

39. Respondent may request in writing that EPA terminate this Agreement at any time beginning one year after the date of the Final Order in this matter. EPA may terminate this Agreement at its sole discretion depending on the totality of the circumstances at that time. EPA's agreement to terminate this Agreement shall not be unreasonably withheld and EPA will determine whether to agree to termination and communicate its decision to Respondent as expeditiously as possible.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
Complainant.

Date:

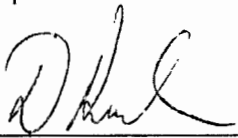
8/13/19


Suzanne J. Bohan, Director
Enforcement and Compliance Assurance
Division

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

Date:

7/25/19


Donald Austin
VP Commerce City Refinery

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT** in the matter of **SUNCOR ENERGY (U.S.A) INC.; DOCKET NO.: RCRA-08-2019-0003** was filed with the Regional Hearing Clerk on August 13, 2019, and the **FINAL ORDER** was filed on August 15, 2019.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Charles Figur, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on August 15, 2019, to:

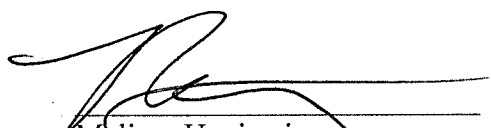
Respondent

Jacy Rock, Esq.
Suncor Energy (U.S.A.) Inc.
717 17th Street, Suite 2900
Denver, Colorado 80202

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 15, 2019



Melissa Haniewicz
Regional Hearing Clerk