



# COLORADO

## Department of Public Health & Environment



### AIR POLLUTION CONTROL DIVISION

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COMPLIANCE ORDER ON CONSENT

CASE NO. 2017-092

AIRS NO. 001-0003

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### IN THE MATTER OF SUNCOR ENERGY (U.S.A.) INC

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The Colorado Department of Public Health and Environment (“CDPHE”), through the Air Pollution Control Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under § 25-7-115(3)(b), C.R.S. of the Colorado Air Pollution and Prevention and Control Act, §§ 25-7-101 to 1309, C.R.S. (“the Act”), and its implementing regulations, 5 C.C.R. § 1001, *et seq* (“the Regulations”) with the express consent of Suncor Energy (U.S.A.) Inc (“Suncor”). The Division and Suncor may be referred to collectively as “the Parties.”

#### I. STATEMENT OF PURPOSE

The mutual objectives of the Parties in entering into this Consent Order are:

1. To establish compliance requirements and criteria for the continued operation of Suncor’s Commerce City Refinery, an integrated petroleum refinery consisting of Plant 1 (West Plant), Plant 2 (East Plant) and Plant 3 (Asphalt Unit), located at 5800 and 5801 Brighton Boulevard, Commerce City, Adams County, Colorado (“Refinery”); and
2. To resolve the violations of the Act and the Regulations cited herein and in a Compliance Advisory issued to Suncor by the Division on September 1, 2017.

#### II. DIVISION’S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

Based upon the Division’s investigation into and review of the compliance issues identified herein, and in accordance with § 25-7-115(3), C.R.S., the Division has made the following determinations regarding violations of regulatory, statutory, and/or permit requirements associated with the Refinery.

3. At all times relevant to the violations cited herein, Suncor was a Corporation in

good standing and registered to conduct business in the State of Colorado.

4. Suncor owns and operates the Refinery.

5. Suncor purchased and took over operations at the Refinery (Plant 1 and Plant 3) in 2003 and has continuously operated since that date. Suncor purchased and took over operations at the Refinery (Plant 2) in 2005 and has continuously operated since that date.

6. Plant 1 (West Plant) and Plant 3 (Asphalt Unit) are subject to the terms and conditions of the following state and federal regulatory requirements, including, but not limited to:

- a. Colorado Operating Permit Number 96OPAD120 issued to Suncor on August 1, 2004 and last revised February 1, 2016 (“Permit 96OPAD120 – Feb 2016”);
- b. Federal Consent Decree (Civil Action No. H-01-4430), lodged December 2001, entered April 2002, second amendment to Consent Decree, June 12, 2006 (“West Plant Consent Decree”);
- c. 40 C.F.R. Part 60:
  - i. Subpart J - Standards of Performance for Petroleum Refineries (“Subpart J”);
  - ii. Subpart Ja - Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (“Subpart Ja”);
  - iii. Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006 (“Subpart VV”);
  - iv. Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006 (“Subpart GGG”);
  - v. Subpart VVa - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (“Subpart VVa”);
  - vi. Subpart GGGa - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (“Subpart GGGa”); and
- d. 40 C.F.R. Part 63, Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (“Subpart UUU”).

7. Plant 1 (West Plant) and Plant 3 (Asphalt Unit) were subject to the terms and

conditions of the Colorado Operating Permit Number 96OPAD120 issued to Suncor on August 1, 2004 and last revised May 7, 2014 (“Permit 96OPAD120”).

8. Plant 2 (East Plant) is subject to the terms and conditions of the following state and federal regulatory requirements, including, but not limited to:

- a. Colorado Operating Permit Number 95OPAD108 issued to Suncor on October 1, 2006 and last revised June 15, 2009 (“Permit 95OPAD108”);
- b. Colorado Construction Permit Number 09AD0961 Final Approval issued to Suncor on February 23, 2015 (“Permit 09AD0961”);
- c. 40 C.F.R. Part 63, Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (“Subpart R”); and
- d. Federal Consent Decree (Civil Action No. SA-05-CA-0569), lodged June 16, 2005, entered November 23, 2005, non-material modification effective June 18, 2006 (“East Plant Consent Decree”).

9. The Refinery is subject to the terms and conditions of the following state and federal regulatory requirements, including, but not limited to:

- a. 40 C.F.R. Part 60:
  - i. Subpart A – General Provision (“Subpart A”);
  - ii. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems (“Subpart QQQ”);
- b. 40 C.F.R. Part 63:
  - i. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (“Subpart G”);
  - ii. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (“Subpart CC”);
- c. Colorado Air Quality Control Statutes; and
- d. Colorado Air Quality Control Commission (“AQCC”) Regulations.

10. On June 6-9, 2016, Mr. Jason Long, of the Division, conducted an inspection, pursuant to the Division's authority under § 25-7-111(2)(c), C.R.S., at the Refinery for the purpose of determining compliance with the state and federal regulatory requirements listed in Paragraphs 6 through 9 of this Consent Order (the “2016 Inspection”).

11. Based on the Division’s review of the 2016 Inspection, and a review of records related to the Refinery, the Division issued a Compliance Advisory to Suncor on September 1, 2017. On October 12, 2017, Suncor submitted additional information to the Division relating to the issues identified in the Compliance Advisory.

12. Based upon a review of the Inspection Reports (Summary Sections) for the 2016

Inspection, records related to the Refinery and the information provided by Suncor, the Division has determined the following:

**Refinery: Plant 1 (West Plant) and Plant 3 (Asphalt Unit)**

- a. Pursuant to Permit 96OPAD120, Condition 22.10.1 and the West Plant Consent Decree, Paragraph 49, Suncor is required to limit carbon monoxide (“CO”) emissions from the Plant 1 Fluidized Catalytic Cracking Unit (“FCCU”) to 500 parts per million, volumetric dry (“ppmvd”) at 0% oxygen (“O<sub>2</sub>”) on a one hour average. Pursuant to Permit 96OPAD120, Condition 55.7; Subpart J § 60.103(a); and Subpart UUU § 63.1565(a)(1) and Table 8, Item 1, Suncor shall not discharge or cause the discharge into the atmosphere from any FCCU any gases that contain CO in excess of 500 ppmvd. Pursuant to Permit 96OPAD120, Conditions 22.7.1, 35.1, 35.2 and General Permit Condition 16, Suncor shall comply with the opacity limits in AQCC Regulation 1. Pursuant to AQCC Regulation 1, § II.A.1, Suncor shall not allow or cause the emission into the atmosphere of any air pollutant that is in excess of 20% opacity based on 24 consecutive opacity readings taken at 15-second intervals for six minutes. Pursuant to AQCC Regulation 1, § II.A.4, Suncor shall not allow or cause to be emitted into the atmosphere any air pollutant resulting from the building of a new fire, cleaning of fire boxes, soot blowing, start-up, any process modification, or adjustment or occasional cleaning of control equipment, which is in excess of 30% opacity for a period or periods aggregating more than six minutes in any sixty consecutive minutes. Pursuant to Permit 96OPAD120, Conditions 22.7.2, 22.7.3, 45.1.2 and 55.1.2; Subpart J § 60.102(a)(2); and Subpart UUU § 63.1564(a)(1) and Table 1, Item 1, Suncor shall not discharge or cause the discharge into the atmosphere from any FCCU regenerator gases exhibiting greater than 30% opacity, except for one six-minute average opacity reading in any one hour period. On September 6, 2015, while the Plant 1 FCCU was increasing rate, a steam system upset occurred that resulted in a drop of steam supply pressure to the main air blower. To maintain adequate air supply to the regenerator, Suncor brought an auxiliary air blower online causing a surge event for the main air blower. This series of events caused exceedances of the Plant 1 FCCU CO and opacity limits during the periods defined below:

**CO (500 ppmvd at 0% O<sub>2</sub> 1-hour average)**

Start Date and Time: 9/6/2015 12:00 hrs

End Date and Time: 9/6/2015 14:00 hrs

**CO (500 ppmvd)**

Start Date and Time: 9/6/2015 12:00 hrs

End Date and Time: 9/6/2015 14:00 hrs

**Opacity (20% (State) 6-minute average)**

Start Date and Time: 9/6/2015 12:18 hrs

End Date and Time: 9/6/2015 12:36 hrs

**Opacity (30% (State) 6-minute average)**

Start Date and Time: 9/6/2015 12:41 hrs

End Date and Time: 9/6/2015 12:47 hrs

**Opacity (30% (Federal) 6-minute average)**

Start Date and Time: 9/6/2015 12:30 hrs

End Date and Time: 9/6/2015 12:48 hrs

Suncor exceeded the Plant 1 FCCU CO and opacity limits on September 6, 2015, violating Permit 96OPAD120, Conditions 22.7.1, 22.7.2, 22.7.3, 22.10.1, 35.1, 35.2, 45.1.2, 55.1.2, 55.7 and General Permit Condition 16; the West Plant Consent Decree, Paragraph 49; Subpart J §§ 60.102(a)(2) and 60.103(a); Subpart UUU §§ 63.1564(a)(1) (Table 1, Item 1) and 63.1565(a)(1) (Table 8, Item 1); and AQCC Regulation 1, §§ II.A.1 and II.A.4.

- b. Pursuant to Permit 96OPAD120, Condition 20.1, Suncor shall not exceed the sulfur dioxide (“SO<sub>2</sub>”) emission limits of 15.68 pounds per hour (“lbs/hr”) and 250 ppmvd SO<sub>2</sub> at 0% excess air on a 12-hour rolling average from the Tail Gas Unit (“TGU”) Incinerator (H-25). Pursuant to Permit 96OPAD120, Conditions 20.6.1 and 45.12.1; the West Plant Consent Decree, Paragraphs 169 and 171; and Subpart J § 60.104(a)(2)(i), no owner or operator shall discharge or cause the discharge of any gases into the atmosphere from any Claus sulfur recovery plant containing in excess of, for an oxidation control system or a reduction control system followed by incineration, 250 ppmvd of SO<sub>2</sub> at 0% excess air, on a 12-hour rolling average. Pursuant to Permit 96OPAD120, Conditions 20.10 and 55.28, and Subpart UUU § 63.1568(a)(1), the sulfur recovery units (“SRUs”) are subject to Subpart J § 60.104(a)(2)(i), and therefore, the hazardous air pollutant emission limit for the SRUs is 250 ppmvd of SO<sub>2</sub> at 0% excess air emission limit<sup>1</sup>. Suncor exceeded the H-25 SO<sub>2</sub> limits during the periods defined below:
- i. On September 9, 2015, at approximately 09:24 hrs, contract employees inadvertently shut off breakers within the uninterruptible power supply panel. Shutting these breakers off caused the loss of several process indicators in the SRU #1 and TGU, so Suncor shut down the units. The acid gases from these units were routed to H-25 causing the following exceedances of the SO<sub>2</sub> limits:

**15.68 lbs/hr SO<sub>2</sub>**

Start Date and Time: 9/9/2015 08:00 hrs

End Date and Time: 9/9/2015 11:00 hrs

**250 ppmvd SO<sub>2</sub> at 0% excess air 12-hr average**

Start Date and Time: 9/9/2015 09:00 hrs

<sup>1</sup> Emissions from SRUs are routed through the TGU and vented through the TGU incinerator. Therefore, emissions from the SRUs are measured at the incinerator (H-25).

End Date and Time: 9/9/2015 21:00 hrs

- ii. On November 25, 2015, at approximately 10:00 hrs, Suncor was lining Tank 4501 up to the Sour Water Stripper (“SWS”). Residual hydrocarbons were introduced into the SWS system, which caused an upset at the SWS Tower. The upset in the SWS Tower sent H<sub>2</sub>S-rich gases to H-25 causing an exceedance of the SO<sub>2</sub> limit:

**15.68 lbs/hr SO<sub>2</sub>**

Start Date and Time: 11/25/2015 09:00 hrs

End Date and Time: 11/25/2015 10:00 hrs

- iii. On December 4, 2015, a ground fault occurred that resulted in a blown fuse causing a loss of power to switches controlling the shutdown of the TGU, H-25, SRU #1 and SRU #2. Without power supply to these switches, the units automatically tripped offline. H<sub>2</sub>S-rich gases typically processed in the SRUs and TGU were routed to H-25 causing the following exceedances of the SO<sub>2</sub> limits:

**15.68 lbs/hr SO<sub>2</sub>**

Start Date and Time: 12/4/2015 10:00 hrs

End Date and Time: 12/4/2015 16:00 hrs

**250 ppmvd SO<sub>2</sub> at 0% excess air 12-hr average**

Start Date and Time: 12/4/2015 10:00 hrs

End Date and Time: 12/5/2015 03:00 hrs

Suncor exceeded the TGU Incinerator (H-25) SO<sub>2</sub> limits on September 9, 2015; November 25, 2015; and December 4-5, 2015, violating Permit 96OPAD120, Conditions 20.1, 20.6.1, 20.10, 45.12.1 and 55.28; the West Plant Consent Decree, Paragraphs 169 and 171; Subpart J § 60.104(a)(2)(i); and Subpart UUU § 63.1568(a)(1).

- c. Pursuant to Permit 96OPAD120 and Permit 96OPAD120 – Feb 2016, Conditions 2.3 and 39.1, and AQCC Regulation 7, § III.A, Suncor is required to maintain and operate Tank 1 to prevent detectable vapor loss. Pursuant to Permit 96OPAD120 and Permit 96OPAD120 – Feb 2016, Conditions 2.2, 54.6 and 54.7.3; Subpart CC § 63.646(a); and Subpart G § 63.119(c)(1)(iii), the Tank 1 external floating roof (“EFR”) seals shall completely cover the annular space between the EFR and the wall of Tank 1 in a continuous fashion.
  - i. On October 6, 2015 at 10:00 hrs, Suncor performed a secondary seal inspection on Tank 1 and identified liquid on the secondary seal and on top of the EFR. Suncor reported this event was caused by residual product sticking to the tank walls as the floating roof descends, which is then

wiped onto the seal and adjacent roof when the roof ascends. The liquid found on October 6, 2015 was stained but had the consistency of water. On October 8, 2015, maintenance entered the EFR and performed clean-up efforts to remove the product.

- ii. On May 28, 2016, Suncor identified that gas oil had drained to the ground surface through the roof drain on Tank 1 indicating that product was on the roof. Suncor reported this event was caused by residual product sticking to the tank walls as the floating roof descends, which is then wiped onto the seal and adjacent roof when the roof ascends. As the ambient temperature increased, the product became less viscous and flowed to the roof drain of the floating roof. This event was reported by Suncor in the September 1, 2016 semi-annual report for Permit 96OPAD120 – Feb 2016. Suncor reported this event lasted until August 9, 2016 but did not provide details on what corrective action was taken or why the event lasted for approximately two months.

The presence of volatile organic compound (“VOC”) product observed on the secondary seal, roof or in the drain is indicative of a detectable vapor loss. Suncor failed to operate Tank 1 with a continuous seal and failed to maintain and operate Tank 1 in a manner to prevent detectable vapor loss from October 6, 2015 at 10:00 hrs to October 9, 2015 at 00:00 hrs and from May 28, 2016 at 20:00 hrs to August 9, 2016 at 12:00 hrs, violating Permit 96OPAD120 and Permit 96OPAD120 – Feb 2016, Conditions 2.2, 2.3, 39.1, 54.6 and 54.7.3; Subpart CC § 63.646(a); Subpart G § 63.119(c)(1)(iii); and AQCC Regulation 7, § III.A.

- d. Pursuant to Permit 96OPAD120, Conditions 29.8 and 58.1, and Subpart A § 60.18(c)(1), flares shall be operated with no visible emissions, except for periods not to exceed a total of five minutes during any two consecutive hours. On December 2, 2015, a truck operator failed to ensure the depressure valve from the butane loading hose to the flare header was closed prior to beginning offloading. This resulted in a portion of the butane offloaded being sent to the Main Plant Flare (F1), causing visible emissions. On December 2, 2015, Suncor failed to operate the Main Plant Flare (F1) with no visible emissions from 07:00 hrs to 07:40 hrs, violating Permit 96OPAD120, Conditions 29.8 and 58.1, and Subpart A § 60.18(c)(1).
- e. Pursuant to Permit 96OPAD120 and Permit 96OPAD120 – Feb 2016, Conditions 11.3, 12.3, 13.3, 14.3, 15.3, 16.3, 17.3, 20.6.2, 21.3, 28.3, 29.2, 38.2.1 and 46.1.1; Subpart J § 60.104(a)(1); and Subpart Ja § 60.102a(g)(1)(ii), Suncor shall not burn in any fuel gas combustion device any fuel gas that contains hydrogen sulfide (“H<sub>2</sub>S”) in excess of 162 ppmv determined hourly on a 3-hour rolling average basis. Pursuant to Permit 96OPAD120, Condition 18.3, process heaters H-33 and H-37 are subject to Subpart J. Pursuant to

Permit 96OPAD120 – Feb 2016, Condition 29.9, the Main Plant Flare (F1) is subject to Subpart Ja. The Plant 1 and 3 Fuel Gas System provides gas to all fuel burning equipment throughout the plant, including the heaters and boilers. Suncor exceeded the fuel gas H<sub>2</sub>S limit at the Fuel Gas System and F1 during the periods defined below:

- i. On December 4, 2015, a ground fault occurred that resulted in a blown fuse causing a loss of power to switches controlling the shutdown of the TGU, H-25, SRU #1 and SRU #2. Without power supply to these switches, the units automatically tripped offline. H<sub>2</sub>S-rich gases typically processed in the SRUs and TGU were routed to the Fuel Gas System and F1 causing the following exceedances of the H<sub>2</sub>S limit:

**Fuel Gas System**

**162 ppmv H<sub>2</sub>S 3-hour average**

Start Date and Time: 12/4/2015 12:00 hrs

End Date and Time: 12/4/2015 17:00 hrs

**Flare Gas**

**162 ppmv H<sub>2</sub>S 3-hour average**

Start Date and Time: 12/4/2015 12:00 hrs

End Date and Time: 12/4/2015 17:00 hrs

Start Date and Time: 12/5/2015 03:00 hrs

End Date and Time: 12/5/2015 05:00 hrs

- ii. On December 18, 2015, from approximately 09:15 hrs to 10:30 hrs, Suncor took the first stage of the Plant 1 Flare Gas Recovery System (“FGRS”) offline for maintenance. During this period, the flare gas flow rate was substantially lower than during comparable maintenance events performed historically. Suncor reported this low flow rate resulted in inadequate purging of H<sub>2</sub>S from the flare gas header. Consequently, the H<sub>2</sub>S-containing gases took longer to clear the line causing the following exceedance of the H<sub>2</sub>S limit:

**Flare Gas**

**162 ppmv H<sub>2</sub>S 3-hour average**

Start Date and Time: 12/18/2015 11:00 hrs

End Date and Time: 12/18/2015 16:00 hrs

- iii. On May 22, 2016, the vibration probe for the Plant 1 FGRS compressor malfunctioned initiating an emergency shutdown of the compressor. This caused the FGRS to trip resulting in process gases being vented to F1 and causing the following exceedance of the H<sub>2</sub>S limit:

**Flare Gas**



**162 ppmv H<sub>2</sub>S 3-hour average**

Start Date and Time: 5/22/2016 22:00 hrs

End Date and Time: 5/23/2016 00:00 hrs

- iv. On June 5, 2016, the vibration probe for the Plant 1 FGRS compressor malfunctioned initiating an emergency shutdown of the compressor. This caused the FGRS to trip resulting in process gases being vented to F1 and causing the following exceedance of the H<sub>2</sub>S limit:

**Flare Gas**

**162 ppmv H<sub>2</sub>S 3-hour average**

Start Date and Time: 6/6/2016 00:00 hrs

End Date and Time: 6/6/2016 01:00 hrs

Suncor exceeded the fuel gas H<sub>2</sub>S limit on December 4-5, 2015; December 18, 2015; May 22-23, 2016; and June 6, 2016, violating Permit 96OPAD120, Conditions 11.3, 12.3, 13.3, 14.3, 15.3, 16.3, 17.3, 18.3, 20.6.2, 21.3, 28.3, 29.2, 38.2.1 and 46.1.1; Permit 96OPAD120 – Feb 2016, Conditions 29.2, 29.9, 38.2.1 and 46.1.1; Subpart J § 60.104(a)(1); and Subpart Ja § 60.102a(g)(1)(ii).

- f. Pursuant to Permit 96OPAD120, Condition 34.2, Suncor is required to comply with the applicable equipment leak standards, including the Leak Detection and Repair (“LDAR”) monitoring requirements, contained in Permit 96OPAD120, Conditions 47.1, 51.1 and 54.14; Subpart CC § 63.648(a); Subpart GGG § 60.592(a); and Subpart GGGa § 60.592a(a). Pursuant to Permit 96OPAD120, Condition 47.1, Suncor is required to comply with the equipment leak standards and LDAR monitoring requirements of Subpart VVa § 60.482-1a to § 60.482-10a contained in Condition 56. Pursuant to Permit 96OPAD120, Conditions 51.1 and 54.14, Suncor is required to comply with the equipment leak standards and LDAR monitoring requirements of Subpart VV § 60.482-1 to § 60.482-10 contained in Condition 65. Pursuant to Permit 96OPAD120, Conditions 43.8.1 and 43.8.6, Suncor is required to comply with the equipment leak standards and LDAR monitoring requirements of AQCC Regulation 7, §§ VIII.C.2.a and VIII.C.4.a. Between July 2015 and December 2015, Suncor identified that 116 (light liquid and gas/vapor) valves, 183 (light liquid and gas/vapor) connectors and 22 other components (light liquid and gas/vapor) existed in the field and were subject to LDAR monitoring requirements but had not previously been included in the LDAR inspection program. Suncor was unable to determine the date these components were placed into service. Suncor failed to conduct LDAR monitoring on 321 components, violating Permit 96OPAD120, Conditions 34.2, 43.8.1, 43.8.6, 47.1, 51.1, 54.14, 56 and 65; Subpart CC § 63.648(a); Subpart GGG § 60.592(a); Subpart GGGa § 60.592a(a); Subpart VV § 60.482-1 to § 60.482-10; Subpart VVa § 60.482-1a to § 60.482-10a; and AQCC Regulation 7, §§ VIII.C.2.a and VIII.C.4.a.

- g. Pursuant to Permit 96OPAD120, Conditions 34.6 and 52.4, and Subpart QQQ § 60.692-2(a)(2), each drain in active service shall be checked by visual or physical inspection initially and monthly thereafter for indications of low water levels or other conditions that would reduce the effectiveness of the water seal controls. Pursuant to Permit 96OPAD120, Conditions 34.7 and 43.8.6.1, and AQCC Regulation 7, § VIII.C.4.a.(i)(A)(3), process drains shall be monitored yearly. In or around July 2015, Suncor identified that two drains existed in the field and were subject to Subpart QQQ and AQCC Regulation 7, § VIII.C.4.a monitoring requirements but had not previously been included in the applicable inspection programs. Suncor added the drains to the inspection database and inspected the drains on August 27, 2015. Suncor failed to conduct the applicable Subpart QQQ and AQCC Regulation 7, § VIII.C.4.a monitoring requirements for two drains until August 27, 2015, violating Permit 96OPAD120, Conditions 34.6, 34.7, 43.8.6.1 and 52.4; Subpart QQQ § 60.692-2(a)(2); and AQCC Regulation 7, § VIII.C.4.a.(i)(A)(3).
- h. Pursuant to Permit 96OPAD120 – Feb 2016, Conditions 1.2 and 54.8.5.1, and Subpart CC § 63.646(f)(1), if a cover or lid is installed on an opening on a floating roof, the cover or lid shall remain closed except when the cover or lid must be open for access. Pursuant to Permit 96OPAD120 – Feb 2016, Conditions 1.3.1 and 39.1, and AQCC Regulation 7, § III.A, all storage tank hatches shall be maintained and operated to prevent detectable vapor loss except when opened or used for necessary and proper activities (e.g. maintenance). On April 5, 2016, odors were identified near Tank 77 (T-77) while preparing the tank for a scheduled seal inspection. Due to high wind conditions, the T-77 roof could not be accessed at that time. On April 6, 2016, a third party contractor entered the roof of T-77 and found the gauge hatch was open. Suncor failed to ensure the T-77 gauge hatch remained closed except when it must be open for access and, therefore, failed to maintain and operate the hatch to prevent detectable vapor loss from at least April 5, 2016 at 12:00 hrs<sup>2</sup> to April 6, 2016 at 12:00 hrs, violating Permit 96OPAD120 – Feb 2016, Conditions 1.2, 1.3.1, 39.1 and 54.8.5.1; Subpart CC § 63.646(f)(1); and AQCC Regulation 7, § III.A.
- i. Pursuant to AQCC Regulation 3, Part A, § II.A, no person shall allow emission of air pollutants from, or construction, modification, or alteration of, any facility, process, or activity which constitutes a stationary source, from which air pollutants are, or are to be, emitted unless and until an Air Pollutant Emission Notice (“APEN”) and the associated APEN fee has been filed with the Division with respect to such emission. As required under Subpart UUU § 63.1571(a)(6), Suncor conducted a one-time performance test on the Plant 1 FCCU on September 2, 2015 for hydrogen cyanide (“HCN”) emissions. Based

<sup>2</sup> It is unknown when the hatch was opened.

on the test results, HCN emissions were calculated to be approximately 46.6 lb/day or 17,120 lbs/yr, which exceeds the 250 lb/yr individual non-criteria reportable pollutant threshold identified in AQCC Regulation 3, Part A, § II.B.3.b. Suncor did not submit a revised APEN including the HCN emissions for the Plant 1 FCCU until November 2, 2016, violating AQCC Regulation 3, Part A, § II.A.

- j. Pursuant to AQCC Regulation 3, Part A, § VI.C.2, every owner or operator of an air pollution source required to file an APEN shall pay a nonrefundable annual emissions fee as set forth in § VI.D.1 of this Part A. Pursuant to AQCC Regulation 3, Part A, § VI.D.1, annual emission fees for hazardous air pollutants (“HAPs”) shall be \$152.90 per ton. Based on the results from the September 2, 2015 performance test for HCN from the Plant 1 FCCU, HCN emissions were calculated to be approximately 46.6 lb/day or 17,120 lbs/yr, which exceeds the 250 lb/yr individual non-criteria reportable pollutant threshold identified in AQCC Regulation 3, Part A, § II.B.3.b. Suncor submitted a revised APEN including the HCN emissions for the Plant 1 FCCU on November 2, 2016. Suncor failed to pay the required annual emissions fee for the HAP HCN, violating AQCC Regulation 3, Part A, § VI.C.2.

#### **Refinery: Plant 2 (East Plant)**

- k. Pursuant to Permit 95OPAD108, Condition 8.1 and Minor Modification #11, effective July 30, 2009, Suncor shall limit emissions of SO<sub>2</sub> from the Refinery Flare to 4.7 tpy. In January 2014 and June 2014, emissions of SO<sub>2</sub> were 14.07 tons and 7.62 tons, respectively, and were the outliers creating exceedances of the SO<sub>2</sub> limit during the rolling 12-month periods ending January 2014 through May 2015. Suncor exceeded the 4.7 tpy SO<sub>2</sub> limit for the Refinery Flare during the rolling 12-month periods ending January 2014 through May 2015, violating Permit 95OPAD108, Condition 8.1 and Minor Modification #11.
- l. Pursuant to Permit 95OPAD108, Condition 2.8, the heater (B002), regenerator (P004) and catalyst handling (P014) sources (the #2 FCCU emission units) are subject to the opacity limits set forth in Condition 19.1. Pursuant to Permit 95OPAD108, Condition 19.1; Permit 09AD0961, Condition 3; and AQCC Regulation 1, § II.A.1, Suncor shall not allow or cause the emission into the atmosphere of any air pollutant which is in excess of 20% opacity. Pursuant to Permit 95OPAD108, Condition 19.4 and AQCC Regulation 6, Part B, § II.C.3, Suncor shall not cause the discharge into the atmosphere of any particulate matter which is greater than 20% opacity. Suncor exceeded the 20% opacity limit for emissions from the #2 FCCU on the following dates:

July 2, 2015 (1 - 6 min avg)

July 10, 2015 (2 - 6 min periods)  
July 19, 2015 (2 - 6 min periods)  
July 29, 2015 (1 - 6 min avg)  
August 9, 2015 (1 - 6 min avg)  
August 15, 2015 (1 - 6 min avg)  
August 24, 2015 (1 - 6 min avg)  
September 26, 2015 (1 - 6 min avg)  
October 13, 2015 (1 - 6 min avg)

These exceedances are part of the ‘random opacity spikes’ issue that has been occurring during normal operation at the #2 FCCU since the installation of the third stage separator in 2009. Suncor exceeded the 20% opacity limit as noted above from July 2, 2015 to October 13, 2015, violating Permit 95OPAD108, Conditions 2.8, 19.1 and 19.4; Permit 09AD0961, Condition 3; AQCC Regulation 1, § II.A.1; and AQCC Regulation 6, Part B, § II.C.3.

- m. Pursuant to Permit 95OPAD108, Conditions 8.10 and 37.3, and Subpart A § 60.18(c)(3)(ii), steam-assisted or air-assisted flares shall be used only with the net heating value of the gas being combusted equal to or greater than 300 British thermal units per standard cubic feet (“Btu/scf”). On August 4, 2015, during a routine flare gas sample, Suncor discovered the Refinery Flare net heating value had dropped below 300 Btu/scf to 69 Btu/scf. Suncor determined the cause of the exception was a high volume of nitrogen that was being used to purge a reactor in the Plant 2 Polymerization Unit. Suncor reduced the nitrogen purge to the flare and took an additional flare gas sample for which the net heating value of the gas increased above the 300 Btu/scf requirement. Suncor failed to maintain the net heating value of the gas in the Refinery Flare above 300 Btu/scf on August 4, 2015 from 15:00 hrs to 16:00 hrs, violating Permit 95OPAD108, Conditions 8.10 and 37.3, and Subpart A § 60.18(c)(3)(ii).
- n. Pursuant to Permit 95OPAD108, Conditions 15.2 and 23.1, and AQCC Regulation 7, § III.A, Suncor is required to operate and maintain all storage tank accesses, seals, hatches, roof drainage systems and pressure relief valves to prevent detectable vapor loss.
  - i. On August 6, 2015, the Oil Movements Division (“OMD”) found product on the roof of Tank 26. Suncor reported that product was released from the roof leg during an overpressure event that was caused during a crude truck or vacuum truck delivery while the tank was operating at minimum level. On August 7, 2015, Suncor entered the roof and removed the product.
  - ii. On August 31, 2015, the OMD found product on the seal of Tank 53. Through a visual inspection of the tank, Suncor identified several tears

in the primary seal, gaps in gaskets and repairs necessary for the mechanical shoe and springs. Suncor removed Tank 53 from service for repairs on October 7, 2015.

The presence of VOC product observed on the roof or seal is indicative of a detectable vapor loss. Suncor failed to operate and maintain all tank accesses, seals, hatches, roof drainage systems and pressure relief valves on Tank 26 and Tank 53 to prevent detectable vapor loss, violating Permit 95OPAD108, Conditions 15.2 and 23.1, and AQCC Regulation 7, § III.A.

- o. Pursuant to Permit 95OPAD108, Conditions 15.2 and 23.1, and AQCC Regulation 7, § III.A, Suncor is required to operate and maintain all storage tank accesses, seals, hatches, roof drainage systems and pressure relief valves to prevent detectable vapor loss. Pursuant to Permit 95OPAD108, Conditions 15.9 and 32.11; Subpart CC § 63.646(a); and Subpart G § 63.119(c)(1)(iii), EFR seals shall completely cover the annular space between the EFR and the tank wall in a continuous fashion. On January 13, 2016, Suncor found product on the roof and seal of Tank 38. Suncor reported this event was caused by residual product sticking to the tank walls as the floating roof descends, which is then wiped onto the seal and adjacent roof when the roof ascends. On January 20, 2016, Suncor removed the product from the roof and seal. The presence of VOC product observed on the roof or seal is indicative of a detectable vapor loss. Suncor failed to operate Tank 38 with a continuous seal and failed to operate and maintain all tank accesses, seals, hatches, roof drainage systems and pressure relief valves on Tank 38 to prevent detectable vapor loss, violating Permit 95OPAD108, Conditions 15.2, 15.9, 23.1 and 32.11; Subpart CC § 63.646(a); Subpart G § 63.119(c)(1)(iii); and AQCC Regulation 7, § III.A.
- p. Pursuant to Permit 95OPAD108, Conditions 9.9 and 37.1, and Subpart A § 60.18(c)(1), Suncor is required to operate flares with no visible emissions as determined by Method 22. On August 18, 2015, the Plant 2 Liquefied Petroleum Gas Rail Rack Loading Flare (“Rail Rack Flare”) emitted visible emissions. Suncor found the vapor line to the Rail Rack Flare was open while loading propane into a rail car, overloading the flare. Suncor failed to operate the Rail Rack Flare with no visible emissions on August 18, 2015 from 11:15 hrs to 14:00 hrs, violating Permit 95OPAD108, Conditions 9.9 and 37.1, and Subpart A § 60.18(c)(1).
- q. Pursuant to Permit 95OPAD108, Conditions 10.2 and 31.15, and Subpart QQQ § 60.692-3(a)(4), Suncor is required to inspect the Upper API Separator (F021) and Middle API Separator (F022) Closed-Vent Systems (“CVS”) semiannually. Suncor inspected the F021 and F022 CVS at an annual frequency in 2014 and failed to inspect the F021 and F022 CVS during the first half of 2015. Suncor failed to inspect the F021 and F022 CVS as required

from January 1, 2014 through July 1, 2015, violating Permit 95OPAD108, Conditions 10.2 and 31.15, and Subpart QQQ § 60.692-3(a)(4).

- r. Pursuant to Permit 95OPAD108, Condition 32.17; Subpart CC § 63.650(a); and Subpart R § 63.422(c)(2), Suncor is required to assure that a nonvapor-tight gasoline cargo tank will not be reloaded at the Refinery until vapor tightness documentation for that gasoline cargo tank is obtained. On 105 occasions, between September 14, 2015 and November 11, 2015, Suncor did not obtain the vapor tightness documentation for the cargo tank prior to loading, violating Permit 95OPAD108, Condition 32.17; Subpart CC § 63.650(a); and Subpart R § 63.422(c)(2).
- s. Pursuant to Subpart QQQ § 60.692-3(a), Suncor shall equip and operate each oil-water separator tank, slop oil tank, storage vessel or other auxiliary equipment, subject to the requirements of Subpart QQQ, with a fixed roof. Due to an event in which Tank 29, part of the Plant 2 Wastewater Treatment System, was filled to capacity, Suncor used storage vessel Tank 19 to alleviate the level in Tank 29. Tank 19 became subject to Subpart QQQ at the time it began receiving wastewater, on March 23, 2016. Tank 19 is not equipped with a fixed roof. On April 9, 2016, Suncor finished pumping out the remaining volume of oily-water to the extent practicable and visual observations were performed to determine that oil was no longer present. Suncor failed to operate Tank 19 with a fixed roof from March 23, 2016 at 10:30 hrs to April 9, 2016 at 00:30 hrs, violating Subpart QQQ § 60.692-3(a).
- t. Pursuant to Permit 95OPAD108, Conditions 16.2 and 32.11; Subpart CC § 63.646(a); and Subpart G § 63.119(c)(1)(iii), the Tank 36 EFR seals shall completely cover the annular space between the EFR and the wall of Tank 36 in a continuous fashion. Pursuant to Permit 95OPAD108, Condition 16.3, Tank 36 is subject to the AQCC Regulation 7 requirements as set forth in Conditions 23.1 and 25.2.3. Pursuant to Permit 95OPAD108, Condition 23.1 and AQCC Regulation 7, § III.A, Suncor is required to operate and maintain Tank 36 to prevent detectable vapor loss. Pursuant to Permit 95OPAD108, Condition 25.2.3 and AQCC Regulation 7, § VI.B.2.c.(ii)(A)(2)(a), EFR seals shall be kept closed except when in actual use. On June 27, 2016, Suncor identified odors near Tank 36. Elevated Light Straight Run product temperatures and Reid vapor pressures caused the product to vaporize and breach the Tank 36 roof seal. Suncor failed to operate Tank 36 with a continuous seal that was kept closed except when in actual use and, therefore, failed to maintain and operate Tank 36 in a manner to prevent detectable vapor loss from June 26, 2015 at 22:00 hrs to June 27, 2016 at 01:30 hrs, violating Permit 95OPAD108, Conditions 16.2, 16.3, 23.1, 25.2.3 and 32.11; Subpart CC § 63.646(a); Subpart G § 63.119(c)(1)(iii); and AQCC Regulation 7, §§ III.A and VI.B.2.c.(ii)(A)(2)(a).

- u. Pursuant to AQCC Regulation 3, Part A, § II.A, no person shall allow emission of air pollutants from, or construction, modification, or alteration of, any facility, process, or activity which constitutes a stationary source, from which air pollutants are, or are to be, emitted unless and until an APEN and the associated APEN fee has been filed with the Division with respect to such emission. As required under Subpart UUU § 63.1571(a)(6), Suncor conducted a one-time performance test on the Plant 2 FCCU on October 11, 2016 for HCN emissions. Based on the test results, HCN emissions were calculated to be approximately 6.49 lb/day or 2,600 lbs/yr, which exceeds the 250 lb/yr individual non-criteria reportable pollutant threshold identified in AQCC Regulation 3, Part A, § II.B.3.b. Suncor did not submit a revised APEN including the HCN emissions for the Plant 2 FCCU until November 22, 2016, violating AQCC Regulation 3, Part A, § II.A.
- v. Pursuant to AQCC Regulation 3, Part A, § VI.C.2, every owner or operator of an air pollution source required to file an APEN shall pay a nonrefundable annual emissions fee as set forth in § VI.D.1 of this Part A. Pursuant to AQCC Regulation 3, Part A, § VI.D.1, annual emission fees for HAPs shall be \$152.90 per ton. Based on the results from the October 11, 2016 performance test for HCN from the Plant 2 FCCU, HCN emissions were calculated to be approximately 6.49 lb/day or 2,600 lbs/yr, which exceeds the 250 lb/yr individual non-criteria reportable pollutant threshold identified in AQCC Regulation 3, Part A, § II.B.3.b. Suncor submitted a revised APEN including the HCN emissions for the Plant 2 FCCU on November 22, 2016. Suncor failed to pay the required annual emissions fee for the HAP HCN, violating AQCC Regulation 3, Part A, § VI.C.2.

13. The Division and Suncor entered into settlement discussions for the violations as determined by the Division in Paragraph 12 or as specifically identified as alleged violations or violations in the September 1, 2017 Compliance Advisory and the Inspection Reports (Summary Sections) for the 2016 Inspection (referred to herein collectively as the “Violations Addressed Herein”). The Parties reached a settlement that is detailed in this Consent Order.

### **III. ORDER and AGREEMENT**

Based on the foregoing factual and legal determinations, pursuant to its authority under § 25-7-115, C.R.S., and as a result of the Violations Addressed Herein, the Division orders Suncor to comply with all provisions of this Consent Order, including all requirements set forth below.

14. Suncor agrees to the terms and conditions of this Consent Order. Suncor agrees that this Consent Order constitutes an order issued pursuant to § 25-7-115, C.R.S., and is an enforceable requirement of Part 1 of the Act. Suncor also agrees not to challenge, in any judicial or administrative proceeding brought by the Division to enforce this Consent Order or by Suncor against the Division:

- a. the issuance of this Consent Order;
- b. the factual and legal determinations made by the Division herein; and
- c. the Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

15. Notwithstanding the above, Suncor does not admit to any of the factual or legal determinations made by the Division herein, and neither Suncor's execution of this Consent Order, nor any action undertaken by Suncor pursuant to this Consent Order shall constitute an admission of liability by Suncor with respect to the Violations Addressed Herein or the condition of Refinery.

### Compliance Requirements

16. Effective immediately, and without limitation, Suncor shall comply with its permits, the West Plant Consent Decree, the East Plant Consent Decree and the applicable provisions of the Act and the Regulations in the regulation and control of air pollutants from the Refinery.

17. Suncor shall calculate the outstanding annual emission back fees for HCN emissions from the Plant 1 FCCU (AIRS Point 025) and Plant 2 FCCU (AIRS Point 217) for calendar years 2011-2015. Within thirty (30) calendar days of the effective date of this Consent Order, Suncor shall submit the calculation to the Division for review and approval. Payment is due within thirty (30) calendar days of the Division's approval of the calculation and fee amount and shall be paid by certified, corporate or cashier's check drawn to the order of "Colorado Department of Public Health and Environment" and delivered to the attention of the Enforcement Unit Supervisor, Air Pollution Control Division, 4300 Cherry Creek Drive South, APCD-SS-B1, Denver, Colorado 80246-1530. Payment of outstanding annual emissions back fees must be made separate from the Administrative Penalty in Paragraph 18 below.

### Administrative Penalty Requirements

18. Based upon the factors set forth in § 25-7-122, C.R.S., the Division has determined an administrative penalty in the amount of **Two Hundred Three Thousand Eight Hundred Fifty Dollars (\$203,850.00)** (the "Administrative Penalty") against Suncor is appropriate and consistent with the Division's policies for violations of the Act and the Regulations cited in Section II of this Consent Order. Suncor agrees to pay the sum of \$203,850.00, comprised of \$40,770.00 in administrative penalties (the "Cash Administrative Penalty"), and \$163,080.00 in Supplemental Environmental Projects ("SEPs") as provided for in Paragraphs 23 through 29, below. Payment of the Cash Administrative Penalty is due within thirty (30) calendar days of the effective date of this Consent Order by certified, corporate or cashier's check drawn to the order of "Colorado Department of Public Health and Environment" and delivered to the attention of the Enforcement Unit Supervisor, Air Pollution Control Division, 4300 Cherry Creek Drive South, APCD-SS-B1, Denver, Colorado 80246-1530.



**Stipulated Penalty Requirements**

19. Certain of the Violations Addressed Herein are subject to the stipulated penalty provisions in the West Plant Consent Decree. In addition to the Administrative Penalty, Suncor agrees to the payment of stipulated penalties under the West Plant Consent Decree in an amount equal to **Thirteen Thousand Six Hundred Fifty Dollars (\$13,650.00)** (the “West Plant Stipulated Penalties”), which is payable under the West Plant Consent Decree, described as follows:

WEST PLANT CONSENT DECREE				
Consent Order Paragraph	Violation Description	CD Citation Supporting Violation	CD Citation Supporting Stipulated Penalty Assessment and Calculation	Stipulated Penalty for Violation
12.a.	FCCU CO Limit Exceedance (500 ppmvd at 0% O <sub>2</sub> , 1-hr avg)	49	256(d)(1)	\$1,500.00
12.b.(i) and 12.(b).(iii)	SRU SO <sub>2</sub> Limit Exceedance (250 ppmvd at 0% O <sub>2</sub> , 12-hr rolling avg)	169	256(i)(1)	\$12,150.00
			<b>TOTAL:</b>	<b>\$ 13,650.00</b>
			<b>TOTAL TO EPA:</b>	<b>\$ 6,825.00</b>
			<b>TOTAL TO CO:</b>	<b>\$ 6,825.00</b>

20. Consistent with West Plant Consent Decree Paragraph 257, Suncor shall pay one-half of the West Plant Stipulated Penalties in the amount of **Six Thousand Eight Hundred Twenty-Five Dollars (\$6,825.00)** (the “United States West Plant Stipulated Penalty”) to the United States of America. Payment shall be made in accordance with the current procedures provided by the Financial Litigation Unit for the United State Attorney’s Office for the Southern District of Texas, referencing United States of America v. Conoco, Inc. (Civil Action No. H-01-4430) (S.D. Tex.), USAO File Number 2001 V 01872, and DOJ Case Number 90-5-2-1-07295/1. Suncor shall provide notice of payment to the Department of Justice and to United States Environmental Protection Agency (“EPA”), as provided in Paragraph 296 of the West Plant Consent Decree and referencing United States of America v. Conoco, Inc. (Civil Action No. H-01-4430) (S.D. Tex.), USAO File Number 2001 V 01872, and DOJ Case Number 90-5-2-1-07295/1.

21. Consistent with West Plant Consent Decree Paragraph 257, Suncor shall pay one-half of the Stipulated Penalties in the amount of **Six Thousand Eight Hundred Twenty-Five Dollars (\$6,825.00)** (the “Colorado Stipulated Penalties”) to the Division. Suncor shall pay \$6,825.00 to the Division by certified, corporate or cashier's check drawn to the order of "Colorado Department of Public Health and Environment" and delivered to the attention of the Enforcement Unit Supervisor, Air Pollution Control Division, 4300 Cherry Creek Drive South, APCD-SS-B1, Denver, Colorado 80246-1530.

22. Notwithstanding any contrary provision in the West Plant Consent Decree, the

Parties agree that Suncor shall pay the amounts required to be paid by Suncor under Paragraphs 19 through 21 above within thirty (30) days of the effective date of this Consent Order.

### **Supplemental Environmental Project Requirements**

23. In order to settle the Violations Addressed Herein, and in addition to payment of the Cash Administrative Penalty, Suncor anticipates performing a SEP, which the Parties agree is intended to secure significant environmental or public health protection and improvements. Suncor's total expenditure for the SEP shall be not less than \$163,080.00 (the "SEP Funds"). Suncor's total expenditure for the SEP may exceed \$163,080.00 following the application of the multiplier to the base penalty. The multiplier shall be determined, consistent with CDPHE SEP guidelines, after Suncor, the Division, and Energy Outreach Colorado reach a SEP agreement.

24. Suncor and CDPHE have selected Energy Outreach Colorado to perform the SEP. Suncor shall include with its donation of the SEP Funds to Energy Outreach Colorado a cover letter (the "SEP Cover Letter") identifying the SEP Funds as being for the purpose of the SEP, and informing Energy Outreach Colorado of the following conditions of the donation of the SEP Funds:

- a. Energy Outreach Colorado shall expend the SEP Funds consistent with the SEP Agreement.
- b. Energy Outreach Colorado shall submit a SEP completion report to the Division within thirty (30) days following SEP completion.
- c. The SEP completion report shall contain the following information:
  - i. A detailed description of the SEP as implemented;
  - ii. A description of any operating problems encountered and the solutions thereto;
  - iii. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
  - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
  - v. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).
- d. Energy Outreach Colorado's acceptance of the SEP Funds shall constitute acceptance of these conditions.

25. Suncor shall attach a copy of the SEP Agreement to the SEP Cover Letter. Suncor shall provide the Division with a copy of the SEP Cover Letter, including a copy of the SEP Agreement and check for the SEP Funds, within seventy-five (75) days of the effective date of this Consent Order.

26. In the event that CDPHE and Energy Outreach Colorado do not enter into a SEP

Agreement within thirty (30) days of the effective date of this Consent Order, Suncor shall deliver the SEP Funds to the Division as an additional Administrative Penalty within sixty (60) days of the effective date of this Consent Order. The payment shall be made in accordance with Paragraph 18.

27. In the event that Suncor does not make payment of any portion of the SEP Funds to Energy Outreach Colorado within sixty (60) days of the effective date of this Consent Order, Suncor shall deliver the unpaid amount of the SEP Funds to the Division as an additional Administrative Penalty within seventy-five (75) days of the effective date of this Consent Order. The payment shall be made in accordance with Paragraph 18.

28. Suncor hereby certifies that, as of the date of this Consent Order, it is not required to perform or develop the SEP by any federal, state or local law or regulation and it is not required to perform or develop the SEP by any agreement, grant or as injunctive relief in this or any other case. Suncor further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

29. Suncor shall include in any public statement, oral or written making reference to the SEP the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment, Air Pollution Control Division, for violations of air quality laws and regulations."

#### **IV. SCOPE AND EFFECT OF CONSENT ORDER**

29. The Parties agree and acknowledge that this Consent Order constitutes a full and final resolution of liability for the Violations Addressed Herein and further agree not to challenge the terms and conditions of this Consent Order in any proceeding before any administrative body or any judicial forum, whether by way of direct judicial review or collateral challenge.

30. This Consent Order constitutes a final agency order upon execution by Suncor and the Division and shall be enforceable by either party in the same manner as if the Division had entered this Consent Order without agreement by Suncor. The Parties agree that any violation of the provisions of this Consent Order by Suncor concerning the Act, or the Regulations, shall be a violation of a final order of the Division for the purposes of §§ 25-7-115, 121, and 122, C.R.S., and may result in the assessment of civil penalties of up to Fifteen Thousand Dollars (\$15,000.00) per day for each day of such violation.

31. With respect to the Stipulated Penalties payable hereunder, Suncor hereby waives any right to a demand or notice under Paragraph 257 of the West Plant Consent Decree or Paragraph 321 of the East Plant Consent Decree, and in the alternative, the Parties agree that this Consent Order, including the Stipulated Penalties described in the "Stipulated Penalty Requirements" above, constitutes a written demand for payment of stipulated penalties on behalf of the Division, which has consulted with the EPA. The Division, by signing this Consent Order, represents that EPA has agreed to the amount of Stipulated Penalties payable by Suncor and has stated that the amount satisfies any stipulated penalty demand that EPA would make in

connection with any failure by Suncor to comply with the West Plant Consent Decree and the East Plant Consent Decree with respect to the Violations Addressed Herein. Payment of the Stipulated Penalties due under this Consent Order is a full and final resolution of Suncor's stipulated penalty liability to the Division under the Consent Decrees for Civil Action H-01-4430 and Civil Action No. SA-05-CA-0569 for the Violations Addressed Herein. Suncor, by signing this Consent Order, waives any and all rights under West Plant Consent Decree Paragraph 258, West Plant Consent Decree Part XXII, East Plant Consent Decree Paragraph 322, or otherwise, to dispute the imposition of any of the Stipulated Penalties reflected in this Consent Order, provided that Suncor's payment of the Stipulated Penalties constitutes a full and final resolution of Suncor's stipulated penalty liability to the Division for the Violations Addressed Herein, and no additional stipulated penalties are demanded or payable by or to the Division for the Violations Addressed Herein.

32. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.

33. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of any requirement under the Act, the Regulations, or any subsequent violation of any requirement of this Consent Order, the Act, or the Regulations.

34. Entering into this settlement shall not constitute an admission of violation of the air quality laws by Suncor, nor shall the Division or any third party infer it to be such an admission by Suncor in any administrative or judicial proceeding. The described violation will constitute part of Suncor's compliance history for any purpose for which such history is relevant, including considering the violation described above in assessing a penalty for any subsequent violations, in accordance with the provisions of § 25-7-122, C.R.S., against Suncor.

35. Suncor shall comply with all applicable Federal, State, and/or local laws and regulations and shall obtain all necessary approvals or permits to conduct the investigation and remedial activities required by this Consent Order and perform its obligations required hereunder. The Division makes no representation with respect to approval and permits required by Federal, State, or local laws or regulations other than those specifically referred to herein.

36. Nothing herein shall be construed as prohibiting, altering, or in any way limiting the ability of the Division to seek any other remedies or sanctions available by virtue of Suncor's violation of this Consent Order or of the statutes and regulations upon which this Consent Order is based, or for Suncor's violation of any applicable provision of law, if such violations are not Violations Addressed Herein.

## **V. LIMITATION RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

37. Upon the effective date of this Consent Order, and during its term, this Consent

Order shall preclude any other enforcement action by the Division with respect to the Violations Addressed Herein. This Consent Order does not grant any release of liability for any violations that are not Violations Addressed Herein. The Division reserves the right to bring any action it deems necessary to enforce this Consent Order.

38. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment pursuant to its authority under §§ 25-7-112, 113, C.R.S.

39. Suncor reserves its rights and defenses regarding liability in any proceedings regarding the Refinery other than proceedings to enforce this Consent Order.

40. Upon the effective date of this Consent Order, Suncor releases and covenants not to sue the State of Colorado as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act or the Regulations specifically addressed herein.

41. Suncor shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Suncor, or those acting for or on behalf of Suncor, including its officers, employees, agents, successors, representatives, contractors or consultants in carrying out activities pursuant to this Consent Order. Suncor shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Suncor in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents, or representatives.

42. The Division reserves the right to bring any action or to seek civil or administrative penalties for any past, present, or future violations of the Act and the Regulations, other than with respect to the Violations Addressed Herein. Further, the Division has the right to bring any action to enforce this Consent Order and to seek authorized penalties for any violation of this Consent Order.

## **VI. NOTICES**

43. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division: Enforcement Unit Supervisor  
Colorado Department of Public Health and Environment  
APCD-SS-B1-1400  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

For Suncor: Manager – Environmental, Health and Safety  
Suncor Energy (U.S.A.) Inc.

5801 Brighton Blvd.  
Commerce City, CO 80022

With copy to: Director, Legal Affairs  
Suncor Energy (U.S.A.) Inc.  
717 17<sup>th</sup> Street, 29<sup>th</sup> Floor  
Denver, CO 80202

**VII. OBLIGATIONS UNAFFECTED BY BANKRUPTCY**

44. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Suncor of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Suncor agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Suncor and the Facility to achieve and maintain compliance with State law.


**VIII. MODIFICATIONS**

45. This Consent Order may be modified only upon mutual written agreement of the Parties.

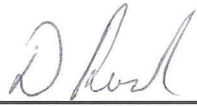
**IX. BINDING EFFECT, AUTHORIZATION TO SIGN  
AND EFFECTIVE DATE**

46. This Consent Order is binding upon the Parties to this Consent Order and their corporate subsidiaries or parents, their officers, directors, agents, attorneys, employees, contractors, successors in interest, affiliates and assigns. The undersigned warrant that they are authorized to bind legally their respective principals to this Consent Order, and that the Parties have the authority to enter into this Consent Order. This Consent Order shall be effective upon the date signed by the last party. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

By:  Date: 4/19/18  
Shannon McMillan  
Compliance and Enforcement Program Manager  
Air Pollution Control Division

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

By:  Date: 4/10/18  
**NAME: Donald Austin**  
**TITLE: Vice President, Refining**

cc: Shannon McMillan, APCD                      Jason Long, APCD  
Paul Carr, APCD                                  Beth Pilson, APCD  
Tom Roan, Office of Attorney General      Heather Wuollet, APCD  
Michael Stovern, US EPA                      File

