

STATE OF COLORADO

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Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

February 21, 2013

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

Dear Ms. Rock:

Suncor Energy (U.S.A.), Inc. is hereby served with the enclosed Notice of Violation/Cease and Desist/Clean Up Order Number IO-130221-1 from the Colorado Department of Public Health and Environment's, Water Quality Control Division ("WQCD NOV/CDO/CUO") and the Notice of Violation, Case No. 2013-029, from the Colorado Department of Public Health and Environment, Air Pollution Control Division ("APCD NOV").

Please be advised that the Department is continuing its investigation into this matter. The Department may identify supplementary violations that warrant the issuance of additional enforcement actions. The Department has and will continue to work in a coordinated fashion to address any outstanding violations and/or to determine the appropriate corrective actions.

Should you or representatives of Suncor desire to discuss the WQCD NOV/CDO/CUO informally or if you have questions, please do not hesitate to contact Kelly Morgan of this office by phone at (303)692-3634 or by electronic mail at kelly.morgan@state.co.us, or Trisha Oeth of the Attorney General's office by phone at (720)508-6271 or by electronic mail at trisha.oeth@state.co.us. If you wish to discuss the APCD NOV, you may contact Shannon McMillan by phone at (303)692-3259 or by electronic mail at shannon.mcmillan@state.co.us, or Erin Overturf of the Attorney General's office by phone at (720)508-6262 or by electronic mail at erin.overturf@state.co.us.

Sincerely,

Steven H. Gunderson, on behalf of Martha E. Rudolph
Director of Environmental Programs
Colorado Department of Public Health and Environment

cc: Natasha Davis, EPA Region VIII
Tri-County Health Department



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER/ CLEAN-UP ORDER
NUMBER: IO-130221-1

IN THE MATTER OF: SUNCOR ENERGY (U.S.A.) INC.
ADAMS COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602, 25-8-605 and 25-8-606, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order / Clean-up Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein Suncor Energy (U.S.A.) Inc. ("Suncor") was a Delaware corporation in good standing and registered to conduct business in the state of Colorado.
2. Suncor is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. Suncor owns and/or operates a petroleum refinery located in Commerce City, Adams County, Colorado. The refinery is comprised of three parcels, Plant 1 (the refinery located approximately at 5801 Brighton Boulevard., Commerce City, CO), Plant 2 (the refinery located approximately at 5800 Brighton Boulevard., Commerce City, CO), and Plant 3 (located approximately at 3875 East 56th Ave., Commerce City, CO) (collectively, the "Facility").
4. The Facility is classified as a petroleum refinery under the Standard Industrial Code 2911. Plant 1 is the portion of the historical ConocoPhillips refinery located on the west side of Brighton Boulevard (formerly known as the West Plant). Plant 2 is the historical Colorado Refining Company refinery (formerly known as the East Plant). Plant 3 is the portion of the historical ConocoPhillips asphalt plant located on the east side of Brighton Boulevard (formerly known as the Asphalt Plant). Plants 1, 2, and 3 form an integrated petroleum refinery that produces a wide range of finished petroleum products, including gasoline, jet fuel, diesel fuel, fuel oil, liquefied petroleum gas, vacuum residue, and sulfur. Processes used at the Facility include atmospheric and vacuum distillation, desalting, reforming, catalytic cracking, catalytic polymerization, and hydrotreating. The Facility processes both

sweet and sour crude oils received via pipeline. Finished products primarily leave the Facility via rail and truck.

5. The Facility is subject to the Compliance Order on Consent Number 07-05-25-01, effective June 21, 2007, and subsequent Notices of Additional Work, executed between Suncor and the Hazardous Materials and Waste Management Division (“HMWMD”) of the Department (the “COC”). The parties’ mutual objectives of the COC are to (among others): establish requirements and schedules for the continuing investigation into the nature and extent of any hazardous waste or hazardous constituent contamination at, from, or relating to the Facility; to establish requirements and schedules for any necessary remediation of any hazardous waste or hazardous contamination at, from, or relating to the Facility; and to establish requirements and schedules for post-closure care for the interim status units at or relating to Plant 1.
6. The Facility has an on-site wastewater treatment system that treats process waters generated during the processing and production of petroleum related products, which includes wastewater from the desalters, asphalt unit, tank water draws, hydrostatic test water, loading terminal runoff and truckwash water, process area, steam generation, cooling tower blowdown, and stormwater runoff. The Facility also has an on-site wastewater treatment system that treats groundwater pumped from the groundwater recovery system located along an east-west line south of Sand Creek (also known as the Dual-phase Extraction / Sand Creek Interim Measures or “SCIM” system, herein the “SCIM” system.) (Collectively, the “Wastewater Treatment Facility”).
7. The Wastewater Treatment Facility is the subject of the Colorado Discharge Permit System, Permit No. CO-0001147 (the “Permit”). The current Permit became effective on November 1, 2012 and is due to expire on October 31, 2017.
8. The Permit authorizes Suncor to discharge treated wastewater from the Facility through the following outfalls: Outfall 002, located at 39°48’51”N, 104°56’85”W, following process wastewater treatment into Sand Creek; Outfall 003, located at 39°48’51”N, 104°56’85”W, following the SCIM groundwater treatment system into Sand Creek; Outfall 010, a calculated characterization of the combined effluent from Outfalls 002 and 003; and Outfall 020, the proposed future discharge point after Outfalls 002 and 003 are physically combined and discharge into Sand Creek. Outfalls 002, 003, 010, and 020 are the only outfalls permitted to Suncor.

Discharging Without a Permit

9. Pursuant to §25-8-501(1), C.R.S., and 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
10. Division records establish that on February 15, 2011, Suncor reported a release to the Department’s Environmental Release and Incident Line (the “Incident Line”). Suncor reported that on February 14, 2011, hydrocarbon material was discovered on the surface of the on-site containment pond. Suncor reported that the cause of the release of hydrocarbon material was still under investigation and was possibly coming from a subsurface containment (Spill Report Number 2011-0086). In response to the

release, Suncor utilized a vac-truck to recover the released hydrocarbon material, conducted air monitoring, mobilized an oil-removing emergency response contractor, and established wildlife deterrent measures.

11. Division records establish that on February 25, 2011, Suncor contacted a representative from the Department's HMWMD via telephone and reported that a line near Tank 55 had failed a pressure test and light non-aqueous phase liquid ("LNAPL") was recovered from the trench that was excavated near the line, and the line was isolated.
12. Division records establish that on February 28, 2011, Suncor contacted the Department's HMWMD via electronic mail and reported that at about 1:30pm on February 25, 2011, Suncor discovered that a line in Plant 1, near Tank 55 and north and west of the west end of the rail loading lines was being pressure tested and did not hold pressure. Suncor reported that the line was exposed by a hydrovac excavator and the leak in the line was discovered. Suncor reported that the line was immediately isolated and the liquid in the excavated trench was removed by a vac-truck. Suncor reported that the material released was a petroleum product known as reformat.
13. Division records establish that on April 14, 2011, Suncor submitted laboratory data obtained from an analysis of a groundwater sample taken on March 22, 2011 from monitoring well SSCMW-07, located on the Metro Wastewater Reclamation District's ("Metro") property. The benzene concentration of the sample was 3,900 µg/l.
14. Division records establish that groundwater monitoring conducted by Suncor within the Facility property boundary and near the Facility during 2011, 2012, and 2013 establish benzene groundwater contamination in exceedance of the benzene standard of 5 µg/l as set forth in the Colorado Department of Public Health and Environment, Water Quality Control Commission's Basic Standards for Groundwater, Regulation No. 41 (5 CCR 1002-41).
15. Division records establish that surface water monitoring conducted by Suncor during 2011, 2012, and 2013 establish benzene surface water contamination in Sand Creek and the South Platte River in the vicinity of the Facility that is in exceedance of the benzene standard of 5 µg/l as set forth in the Colorado Department of Public Health and Environment, Water Quality Control Commission's Basic Standards for and Methodologies for Surface Water, Regulation No. 31 (5 CCR 1002-31).
16. Division records establish that from May 12, 2011 through October 1, 2012, Suncor recovered a cumulative total of approximately 1,062,000 gallons of product (reformat plus other petroleum related product) from liquid and vapor hydrocarbon recovery systems at several locations in Sand Creek adjacent to and downstream of the Facility, within the Metro property, and within the Suncor Facility property.
17. Division records establish that the release of reformat from the line in Plant 1, near Tank 55, as identified above in paragraphs 11 and 12, discharged into groundwater near or beneath the Facility and migrated to Sand Creek and the South Platte River.
18. Division records establish that, in addition to the releases identified in paragraphs 10, 11, 12, and 17 above, Suncor has reported the following five (5) releases to the Department's Incident Line or the Department's HMWMD between February 1, 2011 and February 1, 2013:

SUNCOR RELEASE NOTIFICATIONS

FEBRUARY 1, 2011 through FEBRUARY 1, 2013

RELEASE DATE	NOTIFICATION DATE	LOCATION	TYPE OF MATERIAL/ REPORTED QUANTITY RELEASED	RECEIVING WATER
7-July-2011	8-July-2011/ Release Line, report # 2011-0443	Plant 1	Waste Oil/ 30 gallons	Sand Creek
22-August-2011	22-August-2011/ Release Line, report # 2011-0585	Shoreline of Sand Creek near Plant 1, sheen on Sand Creek	Oily Substance/ 1 gallon	Sand Creek
28-November-2011	28-November-2011/ Release Line, report #2011-0849	CDPS Outfall, sheen on Sand Creek	Scum on Outfall/ Unknown volume	Sand Creek
1-May-2012 (date pipeline release confirmed)	2- May-2012/ Reported via email to HMWMD	Plant 1 area of Tank 777 and well GW-15, below ground pipeline to Tank 777	Naptha/Keroses/ Unknown volume	Groundwater
8-May-2012 (date pipeline release confirmed)	10- May-2012/ Reported via email to HMWMD	Plant 2, area of Tank 9 and wells CRMW-311, CRMW- 10, and AL-01, below ground pipeline	Gasoline type material/ Unknown volume	Groundwater

19. The releases identified above in paragraphs 10, 11, 12, 17, and 18 contain, among other substances, petroleum related chemicals, benzene, toluene, ethylbenzene, and xylene ("BTEX"), which are "pollutants" as defined by §25-8-103(15), C.R.S., and its implementing permit regulation 5 CCR 1002-61, §61.2 (76).
20. Sand Creek and the South Platte River are "state waters" as defined by §25-8-103(19), C.R.S., and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
21. Groundwater near or beneath the Facility is "state waters" as defined by §25-8-103(19), C.R.S., and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
22. The Facility and its ancillary equipment (including but not limited to Facility infrastructure, lines, pipelines, tanks, gauges, and valves), as they relate to the discharge events identified in paragraphs 10, 11, 12, 17, and 18 above, are each a "point source" as defined by §25-8-103(14), C.R.S., and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
23. Pursuant to Part II.A.8. of the Permit, any discharge to state waters from a point source other than those specifically authorized by the Permit is prohibited.
24. Division records establish that Suncor does not have any other permits authorizing the discharge of pollutants from Facility and its ancillary equipment (including but not limited to Facility infrastructure, pipelines, tanks, gauges, and valves) into groundwater, Sand Creek, and/or the South Platte River.

25. Suncor's discharge of petroleum related chemicals and BTEX into groundwater, Sand Creek, and the South Platte River constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
26. Suncor's discharge of petroleum related chemicals and BTEX into groundwater, Sand Creek, and the South Platte River constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S., 5 CCR 1002-61, §61.3(1)(a), and Part II.A.8. of the Permit.

Unauthorized Land Disposal

27. Pursuant to 5 CCR 1002-61, §61.14(1)(a), Suncor is required to obtain a permit for all land application discharges.
28. Division records establish that Suncor has reported the following eight (8) releases to land or soil to the Department between February 1, 2011 and February 1, 2013:

SUNCOR RELEASE NOTIFICATIONS			
FEBRUARY 1, 2011 through FEBRUARY 1, 2013			
RELEASE DATE	NOTIFICATION DATE/ DEPARTMENT PARTY NOTIFIED	LOCATION	TYPE OF MATERIAL/ REPORTED QUANTITY RELEASED
22-April-2011 *	26-April-2011	Plant 1, Tank 80	Gasoline type material (Debut material)/ approximately 5 barrels
24-April-2011	26-April-2011	Plant 1, west side of Tank 4501 Sewer Release	Gasoline type material (light straight run with propane and butane)/ unknown volume
16-June-2011	16-June-2011/ Release Line, report # 2011-0375	Plant 1, south of Tank 775	Sewage / 300 gallons
7-October-2011	10-October-2011	Plant 2, area of Tank 4 and 5	Locomotive/ marine dyed diesel/ approximately 2-5 barrels
13-December-2011	15-December-2011	Plant 1, north of Tank 776	Diesel fuel and wash water/ approximately 2 barrels
18-February-2012	22-February-2012	Plant 1, area of Tank 777	Sour jet naphtha/ approximately 2-4 barrels
16-November-2012 (date release confirmed)	16-November-2012	Crude Offloading Station, south of 56 th Avenue	Crude oil/ approximately 1-2 barrels
17-November-2012	19-November-2012	Plant 2, Tank 40	Gasoline/ approximately 200 barrels

**Subsequent information as provided by Suncor in a June 21, 2011 Corrective Action Plan and in Suncor's 2011 Annual RCAP Report states that the release from Plant 1, Tank 80 occurred on or about March 26, 2011.*

29. The releases identified in paragraph 28 above contain, among other substances, petroleum related chemicals, BTEX, and sewage which are "pollutants" as defined by §25-8-103(15), C.R.S., and its implementing permit regulation 5 CCR 1002-61, §61.2(76).

30. The Permit does not authorize the discharges from the Facility to land identified above in paragraph 28, and Suncor does not have any other permits authorizing the land application of petroleum related chemicals, BTEX, and sewage from its Facility as identified above in paragraph 28.
31. Suncor's discharges of petroleum related chemicals, BTEX, and sewage from the Facility to land or soil, as identified in paragraph 28 above, constitutes "Land Application" as defined by 5 CCR 1002-61, §61.2(48).
32. Suncor's land applications, as identified in paragraph 28 above, do not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a), and therefore are subject to the land application permit requirements.
33. Suncor's discharges of petroleum related chemicals, BTEX, and sewage from its Facility to the land, as identified in paragraph 28 above, constitute unauthorized land application in violation of 5 CCR 1002-61, §61.14(1)(a).

NOTICE OF VIOLATION

34. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Suncor has violated the following sections of the Colorado Water Quality Control Act, its implementing permit regulations and the Permit.

Section 25-8-501(1), C.R.S., which states in part, "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article..."

5 CCR 1002-61, §61.3(1)(a), which states in part, "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge..."

5 CCR 1002-61, §61.14(1)(a), which states in part, "Pursuant to this section a permit shall be required for all land application discharges..."

Part II.A.8. of the Permit, which states "Any discharge to waters of the State from a point source other than specifically authorized by this permit is prohibited."

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-306, §25-8-308, §25-8-601, §25-8-602, §25-8-605 and 25-8-606, C.R.S., and Part II.B.2. of the Permit, Suncor is hereby ordered to:

35. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S., its implementing regulations promulgated thereto, and the Permit.

Furthermore, the Division hereby orders Suncor to comply with the following specific terms and conditions of this Order:

36. Within thirty (30) calendar days of receipt of this Order, Suncor shall provide a detailed report on the release of reformate in Plant 1, near Tank 55. This report shall include, but is not limited to the following:
- a. An estimate of the date and time that the release began or the actual date and time that the release began. This estimated or actual date shall be supported by inspection reports, field reports, work orders, management of change forms, notification/ action items, incident results/ investigation cause records, cause codes and cause hierarchy records, and “unusual imbalance” records and subsequent investigations of the tank(s) that were found to be leaking reformate and of the blender tank(s) associated with the reformate tank(s) that occurred between January 1, 2009 and January 1, 2012. For the purposes of this item, the term “unusual imbalance” shall be any daily imbalance that is greater than 100 bbl;
 - b. The estimated volume of the release or the actual volume of the release. The estimated or actual volume of the release shall be supported by tank gauging and level records of the tank(s) that were found to be leaking reformate and tank gauging and level record(s) of the blender tank(s) associated with the reformate tank(s);
 - c. The date that the repair of the dead leg line perpendicular to the line from Tank 70 to the blender in the area of Plant 1, Tank 55 was initiated. This date shall be supported by field reports, work orders, management of change forms, and notification/action items.
 - d. The date that the repair of the dead leg line perpendicular to the line from Tank 70 to the blender in the area of Plant 1, Tank 55 was completed. This date shall be supported by field reports, work orders, management of change forms, and notification/action items.
 - e. The date and time the release from the dead leg line perpendicular to the line from Tank 70 to the blender in the area of Plant 1, Tank 55 was fully controlled and stopped. This date shall be supported by field reports, work orders, management of change forms, and notification/action items.
37. Within thirty (30) calendar days of receipt of this Order, Suncor shall retain the services of a qualified individual or entity, specifically experienced in wastewater treatment related to the remediation of groundwater that is contaminated with petroleum products, to evaluate and recommend improvements to the Facility’s groundwater recovery and treatment process (the SCIM system). The evaluation shall be conducted consistent with the goals of: 1) expediting the removal and treatment of contaminated groundwater to ensure that groundwater at the property boundary (measured at Well SSCMW-07), at a minimum, meets the benzene standard of 5 µg/l as set forth in the Colorado Department of Public Health and Environment, Water Quality Control Commission’s Basic Standards for Groundwater, Regulation No. 41 (5 CCR 1002-41); 2) to ensure that the South Platte River, at a minimum, is in attainment of the benzene water quality standard of 5 µg/l (measured at SPRSW-02, SPRSW-03, SPRSW-04, SPRSW-05, SPRSW-06, and SPRSW-07); 3) to ensure compliance with the benzene effluent limitations set forth in the Permit; and 4) to ensure compliance with all of the terms and conditions of the Permit. The evaluation must consider in detail the following:

- a. An evaluation of all contributing pollutant sources and pollutant concentrations for all parameters/pollutants that could influence the Facility's groundwater treatment process when the SCIM system is operated at the designed maximum groundwater extraction rate (approximately 1,200 gpm);
 - b. An evaluation of what techniques or technologies may be utilized to produce effluent that consistently complies with the effluent limitations of the Permit when the Facility's SCIM system is operated at the designed maximum groundwater extraction rate (approximately 1,200 gpm);
 - c. A detailed evaluation of treatment, recovery, and containment technology alternatives that can be utilized to enhance the SCIM system and expedite the removal and treatment of contaminated groundwater. This evaluation shall include bench scale tests to determine the effectiveness, implementability, and cost of each alternative (or combination of alternatives).
38. Within forty five (45) calendar days of receipt of this Order, Suncor shall provide documentation to the Division that it has retained the services of the qualified individual or entity identified in paragraph 37. This documentation shall include at, a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.
39. Within ninety (90) calendar days of receipt of this Order, Suncor shall submit in writing to the Division a final report on the findings of the evaluation identified and outlined in paragraph 37 above. Along with the findings of the evaluation, the report must include a final plan and aggressive time schedule for the implementation of enhancements, modifications, and upgrades to the Facility's SCIM system necessary to expedite the removal and treatment of contaminated groundwater to ensure that groundwater at the property boundary (measured at Well SSCMW-07), at a minimum, meets the benzene standard of 5 µg/l as set forth in the Colorado Department of Public Health and Environment, Water Quality Control Commission's Basic Standards for Groundwater, Regulation No. 41 (5 CCR 1002-41), to ensure that the South Platte River, at a minimum, is in attainment of the benzene water quality standard of 5 µg/l (measured at SPRSW-02, SPRSW-03, SPRSW-04, SPRSW-05, SPRSW-06, and SPRSW-07), to ensure that the Facility can reliably and consistently produce effluent in compliance with the benzene effluent limitations set forth in the Permit, and to ensure compliance with all of the terms and conditions of the Permit. The final plan and time schedule submitted shall become a condition of this Order, and Suncor shall implement the final plan and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.
40. Within forty five (45) calendar days of receipt of this Order, Suncor shall submit in writing to the Division, documentation of any and all releases of liquid substances from refinery infrastructure (pipelines, tanks, sanitary sewers, etc.) to soil, groundwater, or surface water that occurred between February 1, 2011 and February 24, 2013. This documentation shall include: an estimate of the date and time that the release began or the actual date and time that the release began, if known; the date and time that the release was noticed and identified by Suncor personnel; the location of the release; the source of the release (e.g., pipeline, tank, sanitary sewer, etc.); identification of the type of material released; identification of all environmental media impacted by the release (e.g., soil, groundwater, surface water); the estimated volume of the release or the actual volume of the release, if

known; the actual date and time the release was fully controlled/ stopped; and the measures that are being or have been taken to contain, reduce, and/or clean up the release. The documentation shall be summarized in an Excel or similar format and shall be clear and understandable.

41. Within thirty (30) calendar days of receipt of this Order, Suncor shall retain the services of a third party individual or entity, specifically experienced in petroleum refinery infrastructure (pipeline, tanks, gauges, valves, etc.) inspection protocols and risk based assessments, that is certified as an API authorized piping inspector (or an individual with equivalent certification/ expertise) to conduct an independent audit on Suncor's pipeline and tank inspection program. This audit shall be conducted consistent with the goal of identifying specific infrastructure (pipelines, tanks, gauges, valves, etc.) with compromised integrity that is at risk of failure or has the potential to fail, and shall evaluate and recommend improvements to Suncor's infrastructure inspection and maintenance program to ensure that the program is capable of eliminating or significantly minimizing the risk of infrastructure failure and/or future releases to the environment. The audit must evaluate in detail the following:
 - a. An evaluation of the personnel requirements and qualifications of any and all personnel responsible for conducting infrastructure inspections, reviewing the infrastructure reports, and/or executing and issuing work orders and Management of Change ("MOC") orders, including an evaluation of each individual's role, duties, certifications/ training, and responsibilities in relation to the infrastructure inspection program;
 - b. An evaluation of whether Suncor's inspection program as a whole is adequate to identify, address, and repair damaged infrastructure or infrastructure with compromised integrity;
 - c. An identification of potential damage mechanisms, identification of the current infrastructure conditions (pipelines, tanks, gauges, valves, etc.), evaluation of the effectiveness of past inspections, and an evaluation of the effectiveness of past repairs;
 - d. A systematic assessment of the risk, probability, and the associated consequence of failure of the Suncor's infrastructure (pipelines, tanks, gauges, etc). The risk assessment results shall be categorized in three tiers based on risk of failure and consequence of failure.
42. Within forty five (45) calendar days of receipt of this Order, Suncor shall provide documentation to the Division that it has retained the services of the qualified individual or entity identified in paragraph 41. This documentation shall include at, a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.
43. Within one hundred eighty (180) calendar days of receipt of this Order, Suncor shall submit in writing to the Division a final report on the findings of the audit identified and outlined in paragraph 41 above. Along with the findings of the evaluation, the report must identify, for each criterion, specific short-term and long-term measures that will be taken by Suncor to rectify deficiencies identified by the audit and to implement corrective measures to address the outcome of the risk assessment identified in paragraph 41(d) above. For each short-term and long-term measure identified, Suncor shall also submit an aggressive time schedule for completion of each measure. The measures and time schedule submitted shall become a condition of this Order, and Suncor shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.

44. Suncor shall submit monthly progress reports to the Division outlining efforts taken to achieve and maintain compliance with this Order. The first report shall be submitted to the Division on or before March 31, 2013. At a minimum, each report shall outline activities completed in the previous thirty calendar (30) days and planned activities for the next thirty calendar (30) days to remain in compliance with this Order. The monthly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary.
45. If Suncor becomes aware of any situation or circumstances that cause Suncor to become unable to comply with any condition or time schedules set forth by this Order, Suncor shall provide written notice to the Division within five (5) calendar days of Suncor becoming aware of such circumstances. Suncor's notice shall describe what, if any, impacts will occur on Suncor's ability to comply with the Colorado Water Quality Control Act and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
46. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, Suncor shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order/Clean-up Order, Suncor shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CWE-B2
Attention: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-3634
Email: kelly.morgan@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order / Clean-up Order, that person shall make the following certification with each submittal:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order / Clean-up Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 21st day of February, 2013.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION



**COLORADO DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT
AIR POLLUTION CONTROL DIVISION
STATIONARY SOURCES PROGRAM**

NOTICE OF VIOLATION

Case No. 2013-029

In the Matter of Suncor Energy (U.S.A.) Inc.

The Colorado Department of Public Health and Environment (“CDPHE”), through the Air Pollution Control Division (“Division”), issues this Notice of Violation to Suncor Energy (U.S.A.) Inc. (“Suncor”) pursuant to the Division’s authority under § 25-7-115(2), C.R.S.

I. ALLEGED FINDINGS OF FACT

1. The Division issues this Notice of Violation following an investigation of a reformate spill(s) and remediation activities at and adjacent to Suncor’s petroleum refinery located at 5801 Brighton Boulevard, Commerce City, Adams County, Colorado (“Facility”). The Facility is subject to statutes and regulations including, but not limited to, the terms and conditions of Colorado Operating Permit Number 96OPAD120 issued to Suncor August 1, 2004 and renewed October 1, 2012, Colorado Air Quality Control Statutes, and Colorado Air Quality Control Commission (“AQCC”) Regulations.

2. On February 25, 2011, Suncor personnel notified the CDPHE Hazardous Materials and Waste Management Division (“HMWMD”) via phone and in a subsequent email on February 28, 2011, that a portion of pipeline carrying reformate failed a pressure test and was found to be leaking reformate. The location of the pipeline was reported to be in the area of Tank 55 and was later determined to be associated with a number of tanks, including but not limited to Tank 70 and an unidentified blender tank. On August 22, 2011, Suncor reported an oily sheen on Sand Creek to the CDPHE Spill Line. On November 27 and 28, 2011 notifications of an oily sheen on Sand Creek were reported to the CDPHE spill line. The August 2011 and November 2011 events were determined to be the result of petroleum products, originating on Suncor’s property, migrating to Sand Creek.

3. The release of petroleum product, reformate, from the pipeline in the area of Tank 55 resulted in reformate entering the groundwater on Suncor’s property and migrating to Sand Creek, whereupon evaporation of VOCs occurred.

4. On June 25, 2012, the Division and the CDPHE Water Quality Control Division

("WQCD") sent a joint request for information to Suncor related to the cause of the release in the area of Tank 55, the actions taken by Suncor to stop the release, and actions taken to prevent future similar releases. Suncor submitted a response on August 27, 2012. The Division, along with the WQCD, determined that the response was incomplete and attempted several follow-up meetings and phone calls with Suncor in November 2012, December 2012, and January 2013.

5. In light of the incomplete information provided by Suncor in response to the Division's June 25, 2012 request, the Division issued a Request for Information pursuant to 25-7-111(2)(i), C.R.S ("§ 111 Request") to Suncor, dated January 29, 2013. The §111 Request contained requests for information related to emissions from Suncor, including information that Suncor failed to provide in response to the Division's June 25, 2012 information request. The §111 Request was delivered and signed for by a Suncor representative on January 31, 2013. The §111 Request directed Suncor to respond within fourteen calendar days of receipt (February 14, 2013). Suncor submitted a response letter to the Division on February 19, 2013, objecting to the §111 Request. The information requested by the Division in the §111 Request was not provided in Suncor's February 19, 2013 response.

6. Based upon an investigation into the events identified above, the Division has identified the following alleged violation(s):

II. PROVISIONS OF THE LAW ALLEGED TO HAVE BEEN VIOLATED

7. Suncor allowed disposal of VOCs by spillage and evaporation from Sand Creek without utilizing reasonably available control technology ("RACT"), starting on or after August 22, 2011 and continuing through present, violating AQCC Regulation No. 7 Section V.A. and Operating Permit Number 96OPAD120 Section IV General Permit Condition 29(c).

8. Suncor failed to maintain the tank(s) associated with the reformate leak in the area of Tank 55 in a manner consistent with good air pollution control practices for minimizing emissions, violating 40 CFR Part 60.11(d).

9. Pursuant to 25-7-111(2)(i), C.R.S., the Division may require any source to furnish information which the Division may reasonably require relating to emissions of the source. On January 31, 2013 the Division sent, via certified mail, a Request for Information pursuant to 25-7-111(2)(i), C.R.S. ("§111 Request") to Suncor. The §111 Request contained requests for information related to emissions from Suncor, including information that Suncor failed to provide in response to the Division's June 25, 2012 information request. The §111 Request was delivered and signed for by a Suncor representative on January 31, 2013. The §111 Request directed Suncor to respond within fourteen calendar days of receipt (February 14, 2013). Suncor did not respond to the §111 Request until February 19, 2013 and Suncor's response failed to provide the information requested by the Division, in violation of 25-7-111(2)(i), C.R.S

III. STANDARD PENALTY PROVISION AND ADDITIONAL RELIEF FOR THE VIOLATIONS AS ALLEGED

10. Sections 25-7-115(3)(b) and 25-7-122(1)(b), C.R.S., provide that any person who violates any requirement of a construction permit or a regulation of the Commission shall be subject to a civil penalty of not more than \$15,000.00 per day for each day of such violation.

11. Section 25-7-111(2)(i), C.R.S. empowers the Division to obtain from the district or county court for the district or county in which the source is located a subpoena to compel production of information relating to emissions of the source or to any investigation authorized by Article 7 (Air Quality Control) of C.R.S. Title 25, as reasonably required by the Division under 25-7-111(2)(i), C.R.S.

12. Section 25-7-115(5), C.R.S., requires the Division to determine if a noncompliance penalty is applicable. If the Division finds a noncompliance penalty is applicable, the Division may assess the penalty for any period of violation from the date that non-compliance began until the date on which the emission source is brought into compliance. The Division will review, and have the opportunity to independently verify, any noncompliance penalty calculations submitted in accordance with the provisions of § 25-7-115(5)(b), C.R.S.

IV. CONFERENCE REGARDING THE ALLEGED VIOLATIONS

13. In accordance with the requirements of § 25-7-115(3)(a), C.R.S., the Division has scheduled a conference regarding the violations described above at 1:00pm on March 12, 2013, at the Air Pollution Control Division offices, located at 4300 Cherry Creek Drive South, Denver, Colorado 80246. This conference will provide Suncor an opportunity to submit data, views, and arguments concerning the alleged violations and whether assessment of civil and noncompliance penalties is appropriate. The conference is an informal proceeding; however, you may have legal counsel attend with you. Following the conference and upon completion of our investigation, the Division will determine whether a Compliance Order should be issued and whether a civil penalty and noncompliance penalty must be assessed. The Division may provide further opportunity for you to respond after the conference if circumstances warrant.

14. If the scheduled conference date and time is not convenient for you, please contact Ms. Shannon McMillan, at 303-692-3259, to reschedule the conference. If you have any other questions concerning the conference or other matters prior to the scheduled conference, contact Ms. Erin Overturf at 720-508-6262.

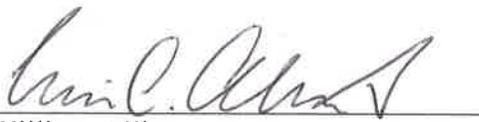
V. ADDITIONAL ACTION BY THE DIVISION

15. If Suncor fails to attend the conference, the Division will issue a Compliance Order and possibly assess penalties against Suncor. The Division may also obtain from the applicable district or county court a subpoena to compel production of requested information related to Suncor's emissions. Subsequent violation of the Compliance Order may subject Suncor to further enforcement action under § 25-7-121, C.R.S. and/or § 25-7-122, C.R.S.

VI. ISSUE DATE OF NOTICE

16. This Notice of Violation shall be considered issued upon personal service in accordance with § 25-7-103 (15), C.R.S.

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



William Allison
Director
Air Pollution Control Division



Shannon McMillan
Field Services Program Manager
Stationary Sources Program
Air Pollution Control Division

cc: William Allison, APCD
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Erin Overturf, Office of Attorney General