COLORADO
Department of Public
Health & Environment

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

December 2, 2015

Shelley Powell, Vice President
Commerce City Refinery
Suncor Energy (U.S.A.) Inc.
5801 Brighton Blvd.
Commerce City, Colorado 80022

Certified Mail Number: 7014 2870 0000 7568 7585

RE: Settlement Agreement and Compliance Order on Consent, Numbers: 2013-029; 15-09-29-01; IC-150929-1

Dear Ms. Powell:

On October 13, 2015, the Colorado Department of Public Health & Environment ("Department") executed the above-referenced Settlement Agreement and Compliance Order on Consent with Suncor Energy (U.S.A.) Inc. ("Suncor"). Public notice of the Settlement Agreement and Compliance Order on Consent was made on October 16, 2015 and a 30-day public comment period was provided. The public comment period expired on November 16, 2015. Two sets of comments were received by the Department, which were previously provided to Suncor via e-mail.

Pursuant to paragraph 46 of the Settlement Agreement and Compliance Order on Consent, the Settlement Agreement and Compliance Order on Consent shall constitute a final agency action upon the date of the Department's determination, following the public comment period, that the Settlement Agreement and Compliance Order on Consent is in the public interest. Upon a detailed review and consideration of the public comments received, the Department has determined that modifications to the Settlement Agreement and Compliance Order on Consent are not warranted. (See the enclosed Department *Evaluation of Public Notice Comments*.) **Therefore, effective today, the Settlement Agreement and Compliance Order on Consent constitutes a final agency action and is fully enforceable.** Enclosed for Suncor's records, you will find Suncor's copy, with original signatures, of the final Settlement Agreement and Compliance Order on Consent.

If you have any questions, please don't hesitate to contact Michael Harris of the Department at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Martha Rudolph
Director of Environmental Programs
Colorado Department of Public Health & Environment

Enclosure(s)

ec: Tri-County Health Department
Shannon McMillan, APCD, CDPHE
Kelly Morgan, WQCD, CDPHE
Rob Beierle, HMWMD, CDPHE
Michael Korenblat, Suncor
Emily Jackson, AGO
Dan Miller, AGO
Scott Schultz, AGO

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL DIVISION
HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION
AIR POLLUTION CONTROL DIVISION

SETTLEMENT AGREEMENT AND COMPLIANCE ORDER ON CONSENT NUMBERS: 2013-029; 15-09-29-01; IC 150929-1

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

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("WQCD"), the Hazardous Materials and Waste Management Division ("HMWMD"), and the Air Pollution Control Division ("APCD"), issues this Settlement Agreement and Compliance Order on Consent ("Consent Order"), pursuant to sections 25-8-602 and 605, C.R.S., of the Colorado Water Quality Control Act ("WQCA") sections 25-8-101 to 803, C.R.S., and its implementing regulations including 5 CCR 1002-61 ("Clean Water Regulations"); section 25-15-308(2), C.R.S., of the Colorado Hazardous Waste Act ("CHWA"), sections 25-15-101 to 515, C.R.S., and its implementing regulations 6 CCR 1007-3 ("CHWA Regulations"); sections 25-7-101 to 1309, C.R.S., of the Colorado Air Pollution Prevention and Control Act ("Clean Air Act"), and its implementing regulation 5 CCR 1001 ("Clean Air Regulations") (all collectively "the Acts" and "the Regulations"), with the express consent of Suncor Energy (U.S.A.) Inc. ("Suncor"). The Department and Suncor may be referred each individually as a "Party," and collectively as the "Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to reach a mutually acceptable settlement agreement of the following matters:

    a. The violations of the Acts and Regulations cited herein by the Department, with respect to which Suncor does not admit liability or fault.

    b. The following CDPHE enforcement actions, also with respect to which Suncor does not admit liability or fault, related to the reformate release from an underground dead leg line connected to line number 6"-HN-08-0846-N-A2-1, Circuit Number 404-002-3, that was reported to the Department on February 25, 2011:

        i. WQCD claims in Notice of Violation/ Cease and Desist Order/ Clean-Up Order, Number IO-130221-1 issued to Suncor on February 21, 2013 (the "WQCD February 21, 2013 NOV");

ii. HMWMD civil and adminstrative penalty claims arising from actions set forth in a Compliance Advisory dated May 6, 2011 (the "HMWMD May 6, 2011 CA"); and

iii. APCD claims in Notice of Violation, Case #2013-029 issued to Suncor on February 21, 2013 (the "APCD February 21, 2013 NOV").

For purposes of this Consent Order, the WQCD February 21, 2013 NOV, the HMWMD May 6, 2011 CA, and the APCD February 21, 2013 NOV may be referred to collectively as the "NOVs."

c. The matters released pursuant to paragraphs 26 and 27 of this Consent Order, subject to the reservations in paragraph 28.

INCORPORATION OF NOVS.

2. In accordance with sections 25-8-602 and 605, C.R.S, section 25-7-115(3)(b) C.R.S., and section 25-15-308(2), C.R.S., the Parties, by this reference, hereby expressly incorporate the NOVs into this Consent Order, which shall form a part hereof.

DEPARTMENT'S FINDINGS OF FACT AND CONCLUSION OF LAW

3. Suncor owns and operates the petroleum refinery located at 5801 Brighton Boulevard, Commerce City, Adams County, Colorado (COD060627189) ("Plant 1"), the petroleum refinery located at 5800 Brighton Boulevard, Commerce City, Adams County, Colorado (COD000109975) ("Plant 2"), and the asphalt plant located approximately at 3875 East 56th Avenue, Commerce City, Adams County, Colorado (COD000820415) ("Plant 3") (collectively, the "Facility" or "Refinery").

4. The Facility remains subject to the Compliance Order on Consent, No. 07-05-25-01, effective June 21, 2007, between Suncor and HMWMD (the "2007 HMWMD COC").

5. By correspondence dated April 14, 2011, Suncor provided the Department a Notification of Groundwater Sample Exceedances – April 14, 2011 (the "Notice"). According to the Notice, benzene, a hazardous constitutuent, was detected at a concentration of 3,900 ug/L in a groundwater sample collected from SSCMW-07 on March 22, 2011.

6. On November 28, 2011, Suncor became aware of a sheen on Sand Creek, and gave notice to the Department.

7. To address the matters referenced in the Notice and NOVs, including the Incident (as defined below), the Department issued a series of orders requiring interim measures and additional work pursuant to the 2007 HMWMD COC and other requests related thereto. To date, Suncor has spent in excess of $78 million dollars in response to the Incident and in complying with these orders and requests.

8. From May 12, 2011 through July 31, 2015, Suncor recovered approximately 1,450,386 gallons of petroleum products (reformate plus other petroleum related products) in connection with the Incident through liquid and vapor recovery systems installed by Suncor.

9. Based upon the Department's investigation into and review of the compliance issues identified herein, and in accordance with section 25-15-308(2), C.R.S., the Department finds that Suncor failed to operate, maintain and monitor interim measures necessary to ensure that groundwater flowing into, around, and under Sand Creek 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), in violation of Paragraph 47 of the 2007 HMWMD COC, 6 CCR 1007-3 § 265.5, and the Hazardous Waste Act, §25-15-308, C.R.S.

DEFINITIONS

10. For purposes of this Consent Order, the following capitalized terms shall have the meanings set forth below:

    a. "Effective Date" means the date of the notice from the Department pursuant to paragraph 46 of this Consent Order;

    b. "Hazardous Substance" means any hazardous substance as defined in (1) section 101(14) of Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601(14), and (2) any hazardous waste or hazardous constituent regulated under the Colorado Hazardous Waste Act, C.R.S. Sections 25-15-301 to 515;

    c. "Hydrocarbons" means oil of any kind or in any form, including petroleum or petroleum products (including reformate), but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and which is subject to the provisions of that Act;

    d. "Federal Statutes" means the Federal Clean Water Act, 33 U.S.C. § 1251 et seq.; the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Clean Air Act; the Federal Oil Pollution Act, 33 U.S.C. § 2701 et seq.; 42 U.S.C. § 9601(14); and the Emergency Planning & Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.

    e. "Suncor Refinery Contamination" means: (i) any and all Hydrocarbons and/or Hazardous Substances that were discharged or released at, on, onto, under, or from the Refinery on or before the Effective Date, including any and all Hydrocarbons and/or Hazardous substances that were released as a result of the Incident into the groundwater beneath the Refinery; and (ii) any air emissions resulting from (i) above;

    f. "Incident" means the specific release of Hydrocarbons from a subsurface dead leg pipe, which was discovered to be connected to a pipe from Tank 70 to the gasoline blending manifold and located in the vicinity of Tank 55 at Suncor's Facility in Commerce City, Colorado.

    g. "Requirements of this Consent Order" means the obligations imposed by paragraphs 14- 18 and 19 of this Consent Order.

ORDER AND AGREEMENT

11. Based on the foregoing factual and legal determinations, pursuant to its authority under sections 25-8-602 and 605, C.R.S., section 25-15-308(2)(a), C.R.S. and section 25-7-115(3)(b) C.R.S., the Department orders Suncor to comply with all provisions of this Consent Order.

12. Suncor agrees to the terms and conditions of this Consent Order, and that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to sections 25-8-602 and 605, C.R.S., section 25-15-308(2)(a), C.R.S., and section 25-7-115(3)(b) C.R.S., and is an enforceable requirement of the WQCA, the Clean Air Act, and CHWA. Suncor also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding to enforce, interpret or defend this Consent Order brought by the Department or by Suncor against the Department (a "Consent Order Proceeding"):

    a. The issuance of this Consent Order;

    b. The factual and legal determinations made by the Department in this Consent Order and in the NOVs;

    c. The Department's authority to bring, or the court's jurisdiction to hear, any action by the Department to enforce the terms of this Consent Order under the WQCA, the Clean Air Act, and/or CHWA.

13. Notwithstanding anything in this Consent Order to the contrary, including paragraph 12, Suncor does not admit to or concede any of the factual or legal determinations made by the Department in this Consent Order or the NOVs (collectively, the "Factual and Legal Determinations"), and neither Suncor's execution of this Consent Order nor any action undertaken by Suncor pursuant to this Consent Order shall constitute an admission or evidence of liability or fault by Suncor relating to or arising out of such Factual or Legal Determinations, the NOVs, the matters released pursuant to paragraphs 26 and 27, or the matters reserved pursuant to paragraph 28. Suncor expressly reserves, and does not waive, all rights, claims, and defenses, including the right to dispute or challenge the Factual and Legal Determinations, in any proceeding involving the Department or any other party, other than as set forth in paragraph 12 with respect to a Consent Order Proceeding and paragraph 24.

COMPLIANCE REQUIREMENTS

14. Suncor shall complete, in conformance with American Petroleum Institute 570 standards for buried piping ("API 570"), the inspection and repair, if required by API 570, of all known underground or buried pipes currently in liquid hydrocarbon service at the Facility, except and excluding the eleven (11) pipes set forth on **Attachment A** attached hereto (the "Inspection Project"). If the Inspection Project identifies that the Suncor facility does not conform to API 570, Suncor shall develop a plan that includes short term and long term measures with associated time schedules that Suncor will take to improve its facility so that it conforms to API 570 (the "Improvement Plan").

15. Within thirty (30) calendar days of the Effective Date of this Consent Order, Suncor shall retain the services of a third party individual or entity (the "Third Party Reviewer"), specifically experienced in petroleum refinery infrastructure (e.g., pipeline, tanks, gauges, valves, etc.) inspection protocols and API 570 to conduct an independent review of the Inspection Project, and if applicable, the Improvement Plan. The Third Party Reviewer shall evaluate whether Suncor performed and completed the Inspection Project in conformance with API 570, and if applicable, evaluate whether the measures in the Improvement Plan would result in Suncor's facility complying with API 570 in a timely manner. The Third Party Reviewer shall provide Suncor with a report of its findings (the "Third Party Reviewer Report"). Suncor may amend its Improvement Plan based on the Third Party Reviewer Report.

16. Within forty five (45) calendar days of the Effective Date of this Consent Order, Suncor shall provide documentation to the Department that it has retained the services of the Third Party Reviewer. This documentation shall include, at a minimum, a copy of the Third Party Reviewer'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.

17. Within one hundred eighty (180) calendar days of the effective date of this Consent Order, Suncor shall submit in writing to the Department a final report. The final report must include the original Third Party Reviewer Report, and if applicable, the Improvement Plan.

18. Within a period of thirty (30) days after Suncor submits the final report required pursuant to paragraph 17, Suncor will allow Department staff to review at Suncor's offices the information provided to the Third Party Reviewer, which is confidential business information.

ADMINISTRATIVE PENALTIES

19. The Department imposes an administrative penalty in the amount of five hundred thousand dollars ($500,000.00) (the "Administrative Penalty") against Suncor for the violations cited herein. Suncor shall pay the Adminsitrative Penalty to the Department within thirty (30) calendar days of the Effective Date of this Consent Order. Method of payment for an administrative penalty under this paragraph shall be by certified, corporate, or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Kelly Morgan
Colorado Department of Public Health and Environment
Water Quality Control Division
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

20. This Consent Order is subject to a thirty-day public comment period. Following the thirty-day period, the Department shall either:

a. withdraw this Consent Order in its entirety if, based on comments received during the comment period, it determines that that the Consent Order is not in the public interest; or

b. issue a determination that this Consent Order is in the public interest.

21. Any violation of the provisions of this Consent Order by Suncor shall be a violation of a final order or action of the Department and may result in the assessment of additional statutory penalties per day for each day during which such violation occurs.

22. 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 Department.

23. The Department'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 the Acts, or any subsequent violation of any requirement of this Consent Order or the Acts.

24. The violations described in, and released pursuant to, this Consent Order will constitute part of Suncor's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations, in accordance with the Acts and Regulations, against Suncor.

25. This Consent Order does not relieve Suncor from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and Suncor shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Department makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

26. Subject expressly to and limited by the terms of paragraph 28, upon the Effective Date, this Consent Order shall constitute a full and final settlement and resolution of liability and shall stand in lieu of any other enforcement action by the Department, with respect to the claims released pursuant to this paragraph and paragraph 27. The Parties each reserve the right to bring any action to enforce this Consent Order. Based on the information provided to or in the possession, custody, or control of the Department or its employees on or before the Effective Date and consistent with this Consent Order, the Department agrees to not refer any claims released in this Consent Order for any criminal proceeding. However, the Department only agrees to not refer the aforementioned matters to criminal proceeding consistent with the authority granted the Department under the relevant Colorado Revised Statutes, and this release from criminal referral should not be considered a grant of immunity from prosecution.

27. Except as specifically provided in paragraph 28 below, upon the Effective Date of this Consent Order, the Department releases, covenants not to sue, and agrees not to take further administrative action, for:

a. any and all claims for damages or civil or administrative penalties for violations of the Acts, Regulations, Federal Statutes, or the 2007 HMWMD COC that:
   i. are related to or arise from the Incident or the Suncor Refinery Contamination; and
   ii. arose, existed, or accrued, whether or not made or asserted, before the Effective Date of this Consent Order; which the Parties agree include the NOVs and the violations set forth in paragraph 9 of this Consent Order;

b. any and all claims for civil or administrative penalties under the CHWA or the 2007 HMWMD COC for violations of Colorado's Basic Standards for Groundwater in Regulation 41, 5 CCR 1002-41, due to the presence of Suncor Refinery Contamination occurring within the property boundaries of the Refinery after the Effective Date;

c. any and all claims for injunctive relief related to or arising from the Incident and Suncor Refinery Contamination before or after the Effective Date other than those arising under the CHWA and CHWA Regulations for corrective action, closure, and post-closure; such corrective action, closure and post-closure claims will be addressed through the 2007 HMWMD COC; and

d. any and all claims for civil or administrative penalties brought by the Water Quality Control Division before or after the Effective Date arising under section 501 of the WQCA regarding groundwater related to or arising from the Incident or Suncor Refinery Contamination; and

e. any and all claims for civil or administrative penalties arising under section 501 of the WQCA regarding surface water related to or arising from the Incident or Suncor Refinery Contamination for the period from the Effective Date of this Consent Order until December 31, 2017;

f. any all claims for violations of the June 25, 2012 Letter to John Gallagher from the Water Quality Control Division requesting information before or after the Effective Date.

28. Notwithstanding any other provision of this Consent Order, including paragraph 27 above, the Department reserves all rights against Suncor, including but not limited to administrative and civil penalty enforcement authority against Suncor, with respect to:

a. Any and all claims based on a failure by Suncor to satisfy any requirement of this Consent Order;

b. Any and all claims resulting from any release, discharge, or disposal of hydrocarbons, hazardous substances, pollutants, and/or contaminants by Suncor occurring after the Effective Date of this Consent Order, even if such release, discharge, or disposal commingles with Suncor Refinery Contamination;

c. Any and all claims for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. Claims for new or continuing violations of the 2007 HMWMD COC (including any notices or orders issued under paragraphs 62 or 63 of that 2007 HMWMD COC) occurring or accruing after the Effective Date of this Consent Order, regardless of whether such requirement arises from the presence of reformate or any hazardous wastes or hazardous constituents that were released at the Facility before or after the Effective Date of this Consent Order; provided that, the claims specifically released in paragraph 27.b. do not fall within this reservation;

e. Claims for violations of any plans approved or determinations regarding such plans made by the Department on or after December 16, 2014 regardless of the date on which such violations occur;

f. In addition to the preceding reservations in this paragraph 28, nothing in this Consent Order shall preclude the Department from imposing additional requirements to remediate any hazardous wastes or constituents, including any Suncor Refinery Contamination present in soil, groundwater and surface water both on the Facility and offsite pursuant to the 2007 HMWMD COC.

29. Upon the Effective Date of this Consent Order, Suncor releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the claims specifically released pursuant to paragraph 27 of this Consent Order, and not reserved pursuant to paragraph 28.

30. 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, consultants or attorneys 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.

AMENDMENT TO DECEMBER 16, 2014 LETTER

31. The Parties agree that Paragraph 1 of HMWMD's December 16, 2014 approval with modifications of Suncor's On-Site, Investigation Report, dated April 2014 (the "December 16, 2014 Letter") issued pursuant to the 2007 HMWMD COC is hereby amended to add that the plans with interim milestones to be submitted by Suncor shall have as an additional goal to remediate contamination from the Incident that is offsite of the Facility as of the Effective Date to be in compliance with Colorado's Basic Standards for Groundwater Regulation 41, 5 CCR 1002-41 by December 31, 2017. Suncor shall submit the plans required by Paragraph 1 of the December 16, 2014 Letter within ninety (90) days of the Effective Date of this Consent Order. All other terms and conditions of the December 16, 2014 Letter shall remain unchanged. Nothing in this Consent Order shall limit or impair the Department's authority under the December 16, 2014 letter or the 2007 HMWMD COC to require modifications to the plans described in this paragraph, or to require additional plans.

FORCE MAJEURE

32. Suncor shall perform the requirements of this Consent Order, as defined in paragraph 10.g, within the schedules and time limits set forth herein unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Suncor, and which cannot be overcome by due diligence.

33. Within seventy-two (72) hours of the time that Suncor knows or has reason to know of the occurrence of any event which Suncor has reason to believe may prevent Suncor from timely compliance with any of the requirements of this Consent Order, Suncor shall provide verbal notification to the Department. Within seven (7) calendar days of the time that Suncor knows or has reason to know of the occurrence of such event, Suncor shall submit to the Department a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

34. The burden of proving that any delay was caused by a force majeure shall at all times rest with Suncor. If the Department agrees that a force majeure has occurred, the Department will so notify Suncor. The Department will also approve or disapprove of Suncor's proposed actions for mitigating the delay. If the Department does not agree that a force majeure has occurred, or if the Department disapproves of Suncor's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Suncor. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, Suncor may file an objection.

35. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Suncor shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

36. The Parties agree that the dispute resolution provisions of this Consent Order apply only to disputes regarding:

    a. the requirements of this Consent Order, as defined in paragraph 10.g; and

    b. the Department's determination regarding Suncor's Notice of Completion under paragraph 44.

37. If the Department determines that a force majeure affecting Suncor's performance of the requirements of this Consent Order has not occurred; that the actions taken by Suncor to mitigate the delay caused by a force majeure are inadequate; or that Suncor's Notice of Completion should be rejected pursuant to paragraph 44, the Department shall provide a written explanation of its determination to Suncor. At any time, deadlines relating to the Dispute Resolution process may be extended by mutual agreement of the Parties. Within thirty (30) calendar days of receipt of the Department's determination, the

Parties shall meet to discuss the Department's determination and attempt to resolve any dispute. If the dispute remains unresolved, within fifteen (15) calendar days after the meeting, Suncor shall:

a. Submit a notice of acceptance of the determination; or

b. Submit a notice of dispute of the determination.

If Suncor fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Department's determination.

38. If the Department disapproves any original or revised submittal by Suncor pursuant to this Consent Order, the Department shall provide a written explanation of the disapproval. Within thirty (30) calendar days of receipt of the Department's written explanation, the Parties shall meet to discuss the Department's disapproval and attempt to resolve any dispute. If the dispute remains unresolved, within fifteen (15) calendar days after the meeting, Suncor shall:

a. Submit a revised submittal for Department review and approval.

b. Submit a notice of dispute of the disapproval.

39. If Suncor submits a revised submittal in response to the Department's disapproval, the submittal shall respond adequately to each of the issues raised in the Department's written explanation of the disapproval. The Department shall notify Suncor in writing of its approval or disapproval of the revised submittal. If the Department disapproves the revised submittal, Department shall provide a written explanation of the disapproval. Within thirty (30) calendar days of receipt of the Department's explanation, Suncor may submit a notice of dispute of the Department's disapproval.

40. If Suncor files any notice of dispute, the notice shall specify the particular matters in the Department's determination that Suncor seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Suncor. The Department and Suncor shall have thirty (30) calendar days from the receipt by the Department of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Department shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with applicable law.

NOTICES

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

For the Department:

Colorado Department of Public Health and Environment
Shannon McMillan, APCD, (303) 692-3259, shannon.mcmillan@state.co.us

Kelly Morgan, WQCD, (303) 692-3634, kelly.morgan@state.co.us
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

For Suncor:

Suncor Energy (U.S.A.) Inc.
Attn: Senior Remediation Advisor
5801 Brighton Blvd.
Commerce City, CO 80022
gfletcher@suncor.com

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

42. The obligations set forth herein are based on the Department'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 to achieve and maintain compliance with State law.

MODIFICATIONS

43. This Consent Order constitutes the final and complete agreement and understanding among the Parties with respect to the settlement embodied in the Consent Order, and superceeds all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. This Consent Order may be modified only upon mutual written agreement of the Parties.

COMPLETION OF REQUIRED ACTIONS

44. Suncor shall submit a Notice of Completion to the Department upon satisfactory completion of all Requirements of this Consent Order, as defined in paragraph 10.g. The Department shall either accept or reject Suncor's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Department rejects Suncor's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Department considers incomplete or not satisfactorily performed and a schedule for completion. Within thirty (30) calendar days of receipt of the Department's notice, the Parties shall meet to discuss the Department's determination and attempt to resolve any dispute. If the dispute remains unresolved, within fifteen (15) calendar days after the meeting, Suncor shall either:

    a. Submit a notice of acceptance of the determination; or

    b. Submit a notice of dispute pursuant to the dispute resolution provisions of this Consent Order.

    If Suncor fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Department's determination.

45. The Parties agree that the paragraphs 26 through 31 of this Consent Order shall continue to survive after acceptance of the Notice of Completion.

NOTICE OF EFFECTIVE DATE

46. This Consent Order shall be fully effective and enforceable, and shall constitute a final agency action upon the date of the Department's determination, following closure of the public comment period, that this Consent Order is in the public interest.

MISCELLANEOUS

47. The NOVs and **Attachment A** hereto are all, by this reference, expressly incorporated into and form a part of this Consent Order. This Consent Order shall be construed fairly as to both Parties and shall not be construed in favor of or against either Party in the event of an ambiguity or other form of dispute as to its interpretation. The words "include," "includes" and "including" in this Consent Order mean "include/includes/including with out limation." The use of "or" is not intended to be exclusive.

48. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. Each of the Parties expressly reserves any and all rights, defenses, claims, demands, and causes of action that each Party may have against any party or person not a Party to this Consent Order.

BINDING EFFECT AND AUTHORIZATION TO SIGN

49. This Consent Order is binding upon Suncor and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Suncor agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. 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.

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

S Powell Date: October 12, 2015

Shelley Powell
Vice President, Commerce City Refinery

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Date: Oct. 7, 2015

Martha Rudolph
Director of Environmental Programs

Date: 7 Oct 15

Patrick Pfaltzgraff, Director
Water Quality Control Division

Date: 10/7/2015

Gary Baughman, Division Director
Hazardous Materials and Waste Management Division

Date: 13 Oct 2015

William Allison V, Division Director
Air Pollution Control Division

ATTACHMENT A

LINES NOT SUBJECT TO INSPECTION PROJECT

Product	P&ID #	Location	Line #	Line ID	Circuit #
Amine	750	Plant 1 Amine Drain (P&ID 750)	0356	6"-DA-17-0356-U-A2-16	017-187
Amine	750	Plant 1 Amine Drain (P&ID 750)	0357	4"-DA-17-0357-U-A2-16	017-187
Amine	120	Plant 1 TGU Amine Drain (P&ID's 120,140)	0220	4-XA-77-0220-U-A2-16	077-184
Amine	140	Plant 1 TGU Amine Drain	0336	4-XA-77-0336-U-A2-16	077-184
Amine	140	Plant 1 TGU Amine Drain	0337	4-XA-77-0337-U-A2-16	077-184
Amine	140	Plant 1 TGU Amine Drain	0338	4-XA-77-0338-U-A2-16	077-184

Amine	140	Plant 1 TGU Amine Drain	0339	4-XA-77-0339-U-A2-16	077-184
Amine	140	Plant 1 TGU Amine Drain	0340	4,2-XA-77-0340-U-A2-16	077-184
Diesel	025	Odyssey line	0072	6”-HD-08-0072-N-A2-1	303-002-2,6
Diesel	025	Odyssey line	1505	6”-HD-08-1505-N-A2-1	303-002-2,6
Diesel	134	Diesel from Unit 16 to TK-3801	0618	HD-08-0618 / HD-16-0618	008 309-001

COLORADO

Department of Public Health & Environment

EVALUATION OF PUBLIC NOTICE COMMENTS **November 27, 2015**

REGARDING: **SETTLEMENT AGREEMENT AND COMPLIANCE ORDER ON CONSENT NUMBERS: 2013-029; 15-09-29-1; IC-150929-1**

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

On October 13, 2015, the Colorado Department of Public Health & Environment ("Department") entered into a Settlement Agreement and Compliance Order on Consent, Numbers: 2013-029; 15-09-29-1; IC-150929-1 (the "COC" or "Settlement Agreement"), with Suncor Energy (U.S.A.) Inc. ("Suncor") to resolve violations of various environmental statutes and regulations that occurred when hydrocarbons from a subsurface dead leg pipe were released into the environment. On October 16, 2015, the Department published notice of the COC in the Denver Post, a newspaper publication of statewide distribution. Upon publication, a 30-day public comment period was initiated. The public comment period expired on November 16, 2015.

During the 30-day public comment period, the Department received comments from the following individuals and/organizations:

- Metro Wastewater Reclamation District, through Temkin & Hardt LLP (Denver, CO)
- The Farmers Reservoir and Irrigation Company (Brighton, CO)

The Department has summarized the comments received into three categories and offers the following response to each category:

I. The COC requires Suncor to perform an inspection project of all underground or buried pipes in liquid hydrocarbon service and then engage the services of a third party reviewer to conduct an independent review of Suncor's inspection project. However, it is not clear the required inspection work includes a review of the adequacy of Suncor's stormwater collection, storage and treatment system. Suncor discharged pollutants into the Burlington Ditch via stormwater runoff (floodwaters) in September 2013, which likely reached Barr Lake. The Department should require Suncor to provide sufficient capacity in its detention ponds to prevent surface runoff from leaving Suncor's site and flowing into state waters, specifically the Burlington Ditch.

The discharge into Burlington Ditch that this comment refers to was the result of significant and historic precipitation events during September 2013. Given the unprecedented nature of those storm events, the Department did not bring formal enforcement actions against permittees across the affected area of the State for violations of their stormwater permits.

Because a formal enforcement action was not taken, and because the discharge of floodwaters from Suncor's refinery in September 2013 was not the subject of this current COC, the Department has not established the enforcement authority to impose a third party evaluation of Suncor's stormwater control measures. Nevertheless, the Department agrees that as a permittee with stormwater discharge authorization, Suncor is responsible for maintaining a functional and effective stormwater management system. The Department plans to perform an inspection of Suncor's stormwater management system in the near future. This inspection will include a review of the adequacy of the Stormwater Management Plan and self-inspection procedures for the facility, as well as an inspection of the control measures in place to reduce and/or eliminate pollutant discharges during rain and snowmelt events. These control measures include but are not limited to: minimization of pollutant exposure to stormwater; good housekeeping practices; maintenance of structural and nonstructural controls; spill prevention and response procedures; erosion and sediment controls; management of runoff through diversion, infiltration, reuse, containment and/or treatment; and employee training.

II. Given the covenants and releases contained in the Settlement Agreement, it is not clear what authority the Department retains to require Suncor to remediate off-site hydrocarbon contamination.

Remediating offsite contamination has been, and will continue to be, a requirement of Suncor since the Hazardous Materials and Waste Management Division ("HMWMD") issued the October 26, 2011 Notice of Additional Work, pursuant to Paragraph 63 of the 2007 COC. Paragraph 6 of this Notice required Suncor to propose offsite corrective measures related to the Incident (as defined in the Settlement Agreement). To date, Suncor has complied with this requirement by implementing numerous work activities to begin remediation offsite, but their obligation to complete remediation offsite is still outstanding, through the 2007 COC, and is not modified by the Settlement Agreement.

a. Specific Concern (1) – The Settlement Agreement doesn't acknowledge or carry forward Suncor's current work obligations.

The primary purpose of the Settlement Agreement is to resolve specific violations related to the release of reformate to the shallow alluvial aquifer beneath the refinery and Sand Creek with the assessment of a penalty. It was intentionally written to defer Suncor's current and future remedial obligations into the 2007 COC. Suncor's current work activities have been required by the 2007 COC and they will continue to be required by the 2007 COC, along with any additional future work activities. The 2007 COC is an enforceable order under the Colorado Hazardous Waste Act, and requirements that the Department imposes pursuant to the order are enforceable as well.

b. Specific Concern (2) - Suncor's only clear obligation in the Settlement Agreement is to develop new plans and goals.

Again, the Settlement Agreement was intentionally written to defer Suncor's remedial obligations into the 2007 COC. The 2007 COC is very clear regarding Suncor's broad "obligations" regarding their activities at the facility, including corrective measure objectives and goals which they have yet to attain. Further details regarding specific remedial actions are contained in the various plans that Suncor submits and the HMWMD approves in accordance with the procedures set forth in the 2007 COC.

In Paragraph 31 of the Settlement Agreement, the HMWMD modifies the December 16, 2014 letter to include a Target Date to complete offsite cleanup. The December 16, 2014 letter was written, in accordance with the 2007 COC, in response to Suncor's "Onsite Investigation Report." The letter gave Suncor a Target Date to meet applicable standards at their property boundary by the end of 2017. A Target Date was put into place to gauge the speed with which work should be progressing to contain the site. The letter was written by the HMWMD only in response to onsite contamination, because it was Suncor's "Onsite Investigation Report" and it intentionally did not address offsite contamination. Investigation and remediation of offsite contamination is the subject of other enforceable plans that have been approved by the HMWMD under the 2007 COC. At the time the letter was written, Suncor had no Target Date to meet standards offsite. The modification of the December 16, 2014 letter in the Settlement Agreement simply clarifies that Suncor has the same Target Date to contain their site as well as to complete cleanup offsite.

In Paragraph 31 of the Settlement Agreement, the HMWMD also puts a submission date on when an "overall project schedule" will be submitted to identify basic work processes that will need to be accomplished to meet the 2017 deadline. A specific submission date was not required by the December 16, 2014 letter, so the Settlement Agreement adds a specific submission date.

c. **Specific Concern (3) – If conditions worsen for some reason, the ability of the Department to require action offsite is compromised by the releases granted in the Settlement Agreement.**

The HMWMD continues to have full authority under Paragraph 62 of the 2007 COC to require Suncor to "expeditiously" initiate interim measures to protect human health and the environment. The HMWMD also continues to have the authority to require additional work, pursuant to Paragraph 63 of the 2007 COC, directly related to the subject matter of the order. The subject matter being the purposes of the order itself, which are to investigate the nature and extent of contamination related to Suncor's facility and remediate this contamination until all corrective measure objectives and goals are attained. Nothing in the Settlement Agreement hinders the HMWMD's ability to respond to current and future conditions related to historical or future releases at or from the site.

III. What has and hasn't been agreed to is hard to decipher. The Settlement Agreement relies heavily on the prior 2007 COC which was designed to address problems that pre-date the Incident, and on a December 16, 2014 letter, which may not be enforceable, but the Settlement Agreement amends. Enforcement of the 2007 COC involves a myriad of correspondence and other documents that purport to amend the agreement or impose additional obligations on Suncor.

The 2007 COC was in place actively addressing Suncor's historical contamination, prior to the Incident, and it has also been used by the HMWMD to require response and remediation activities since the Incident. It is an Order on Consent and therefore has specific processes that the HMWMD and Suncor have agreed to follow to resolve issues, make decisions, and progressively move forward on remediating the site.

The 2007 COC is the one integrated and concise document governing the HMWMD's authority, and Suncor's obligations, at the facility. The "… myriad of correspondence and other documents …" that have been generated since the Incident are a direct reflection of the broad authority and flexibility the HMWMD has pursuant to the 2007 COC and the relentless dedication that the HMWMD has had in responding to the Incident. The 2007 COC is actually fairly typical of the HMWMD's corrective action orders in that it provides a broad outline of what must be accomplished, and leaves the details to plans that the regulated entity submits and the HMWMD approves. Documents received pursuant to those orders and approved through correspondence define the specific action that must be completed, activities that require periodic modification as work progresses. The Suncor site is large, and there is significant contamination there, so there are more plans and approvals than is typical for smaller corrective action sites.

Upon detailed review and consideration of the public comments, the Department has determined that modifications to the COC are not warranted. The Department is committed to ensuring that Suncor implements the requirements of the COC and that Suncor establishes and maintains a functional and effective stormwater management system at its refinery.