

ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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In re Suncor Energy (U.S.A.) Inc.) Docket No. CAA-HQ-2023-8425
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REVISED FINAL ORDER

On August 24, 2023, the Environmental Appeals Board issued a Final Order ratifying a Consent Agreement resolving this matter. The Consent Agreement, among other things, required the Respondent to undertake a Supplemental Environmental Project (“SEP”), described in Appendix A to the Consent Agreement. On September 5, 2023, the Office of Enforcement and Compliance Assurance (“OECA”), with the consent of Respondent Suncor Energy (U.S.A.) Inc., submitted a Motion Requesting Substitution of a Revised Appendix A (“Motion”). The Motion stated that the parties had inadvertently omitted certain Denver County zip codes from the list of zip codes for determining residential eligibility for the SEP and requested that the Board substitute the revised version of Appendix A attached to the Motion for the Appendix A ratified by the Board on August 24, 2023.

The Board hereby grants the Motion and substitutes the revised Appendix A filed with the Board on September 5, 2023 for the Appendix A attached to the Consent Agreement ratified on August 24, 2023. Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the attached Consent Agreement with revised Appendix A resolving this matter is incorporated by reference into this Revised Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective September 6, 2023.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD



Kathie A. Stein
Environmental Appeals Judge

Dated: Sep 06, 2023

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges Wendy L. Blake, Mary Kay Lynch, and Kathie A. Stein.

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

IN THE MATTER OF:

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

Respondent.

Docket No. CAA-HQ-2023-8425

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This is a civil administrative penalty assessment proceeding instituted under Sections 205(c)(1) and 211(d)(1) of the Clean Air Act (CAA), 42 U.S.C. §§ 7524(c)(1) and 7545(d)(1). The issuance of this Consent Agreement and attached Final Order (CAFO) simultaneously commences and concludes this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).
2. The Complainant in this matter is the United States Environmental Protection Agency (EPA). The authority to sign consent agreements memorializing settlements between the EPA and respondents under Section 205(c) of the CAA, 42 U.S.C. § 7524(c), has been delegated to the Assistant Administrator of the Office of Enforcement and Compliance Assurance. This authority has been redelegated to the Director of the Office of Civil Enforcement, who further redelegated the authority to the Director of the Air Enforcement Division. EPA Delegation 7-6-A.
3. The Respondent in this matter is Suncor Energy (U.S.A.) Inc. (Suncor). The Respondent is a corporation organized under the laws of Delaware with its corporate headquarters located at 5455 Brighton Boulevard, Commerce City, Colorado 80022. As relevant here,

the Respondent operates two fuel manufacturing facilities located in Commerce City, Colorado that produce petroleum products, including gasoline.

4. The Complainant and Respondent (collectively, the Parties), having agreed to settle this action, consent to the issuance of the attached Final Order ratifying this Consent Agreement before taking testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this Consent Agreement and the attached Final Order.

II. JURISDICTION

5. This Consent Agreement is entered into under Sections 205(c)(1) and 211(d)(1) of the CAA, 42 U.S.C. §§ 7524(c)(1) and 7545(d)(1), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, as codified at 40 C.F.R. Part 22 (Consolidated Rules).
6. The EPA may administratively assess a civil penalty if the penalty sought is less than \$446,456. 42 U.S.C. §§ 7524(c)(1) and 7545(d)(1); 40 C.F.R. § 19.4.
7. The Environmental Appeals Board is authorized to ratify this Consent Agreement memorializing the settlement between the Parties in a Final Order. 40 C.F.R. §§ 22.4(a)(1) and 22.18(b); EPA Delegation 7-41-C.
8. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order. 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

III. GOVERNING LAW

9. This proceeding arises under Part A of Title II of the CAA, Sections 202-219, 42 U.S.C. §§ 7521–7554, and its implementing regulations (40 C.F.R. Part 1090). The CAA and its implementing regulations aim to reduce emissions from mobile sources of air pollution by, among other things, reducing emissions from fuel used in motor vehicles, nonroad vehicles, and engines, and ensuring that fuel used in motor vehicles, nonroad vehicles, and engines does not harm the emissions control technology necessary to meet emissions standards. The Alleged Violations of Law, stated below, relate to requirements aimed at reducing emissions of benzene and other volatile organic compounds (VOCs) from gasoline. A summary of the law and regulations that govern these allegations follows below.
10. Definitions:
 - (a) “Compliance period” means the calendar year (January 1 through December 31). 40 C.F.R. § 1090.80.
 - (b) “Gasoline” means any of the following: (1) Any fuel commonly or commercial known as gasoline, including gasoline before oxygenate blending (BOB); (2) Any fuel intended or used to power a vehicle or engine designed to operate on gasoline; (3) Any fuel that conforms to the specifications of ASTM D4814 (incorporated by reference in § 1090.95) and is made available for use in a vehicle or engine designed to operate on gasoline. 40 C.F.R. § 1090.80.
 - (c) “Gasoline manufacturer” means a fuel manufacturer that owns, leases, operates, controls, or supervises a fuel manufacturing facility where gasoline is produced, imported, or recertified. 40 C.F.R. § 1090.80.

- (d) “Fuel manufacturer” means any person that owns, leases, operates, controls, or supervises a fuel manufacturing facility. Fuel manufacturers include refiners, importers, blending manufacturers, and transmix processors. 40 C.F.R. § 1090.80.
- (e) “Fuel manufacturing facility” means any facility where fuels are produced, imported, or recertified. Fuel manufacturing facilities include refineries, fuel blending facilities, transmix processing facilities, import facilities, and any facility where fuel is recertified. 40 C.F.R. § 1090.80.
- (f) “Refinery” means a facility where fuels are produced from feedstocks, including crude oil or renewable feedstocks, through physical or chemical processing equipment. 40 C.F.R. § 1090.80.
- (g) “Summer gasoline” means gasoline that is subject to the Reid vapor pressure (RVP) standards in 40 C.F.R. § 1090.215. 40 C.F.R. § 1090.80.
- (h) “Summer season or high ozone season” means the period from June 1 through September 15 for retailers and wholesale purchaser-consumers, and May 1 through September 15 for all other persons, or an RVP control period specified in a State Implementation Plan if it is longer. 40 C.F.R. § 1090.80.

11. Section 211 of the CAA, 42 U.S.C. § 7545, and its implementing regulations contain numerous provisions to ensure that only compliant fuels are produced and distributed in the United States.
12. Under Section 211(c)(1) of the CAA, 42 U.S.C. § 7545(c)(1), the EPA may adopt a fuel control if: (a) the emission products of the fuel cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare; or (b) the emission

products of the fuel will significantly impair emissions control systems in general use or emissions control systems that would be in general use were the fuel control to be adopted.

13. Section 202(l)(2) of the CAA, 42 U.S.C. § 7521(l)(2), provides that the EPA shall promulgate, and from time to time revise, regulations containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels, including emissions of benzene.
14. Pursuant to its authority under Sections 202(l)(2) and 211(c)(1) of the CAA, 42 U.S.C. §§ 7521(l)(2) and 7545(c)(1), the EPA promulgated regulations that require fuel manufacturers to limit the amount of benzene contained in gasoline they produce or import. *See* 40 C.F.R. § 1090.210.
15. The gasoline benzene regulations provide, *inter alia*, that a fuel manufacturer's maximum average gasoline benzene concentration in any averaging period shall not exceed 1.30 volume percent at each fuel manufacturing facility. 40 C.F.R. §§ 1090.210(b) and 1090.700(b).
16. Compliance with the 1.30 volume percent maximum average gasoline benzene standard at 40 C.F.R. § 1090.210(b) is determined in accordance with 40 C.F.R. § 1090.700(b)(4).
17. The averaging period for determining compliance with the 1.30 volume percent maximum average gasoline benzene standard at 40 C.F.R. § 1090.210(b) is the compliance period, defined as a calendar year (January 1 through December 31) under 40 C.F.R. § 1090.80. *See* 40 C.F.R. § 1090.700(b)(4).
18. Pursuant to 40 C.F.R. § 1090.1700, it is a violation for a fuel manufacturer to produce gasoline at a fuel manufacturing facility that does not comply with the 1.30 volume

percent maximum average benzene standard at 40 C.F.R. § 1090.210(b). Pursuant to 40 C.F.R. § 1090.1715(a), any person who violates 40 C.F.R. § 1090.210(b) is liable for the violation.

19. Section 211(h) of the CAA, 42 U.S.C. § 7545(h), required the EPA to promulgate regulations that prohibit any person from selling, offering for sale, dispensing, supplying, offering for supply, transporting, or introducing into commerce gasoline that has an RVP greater than 9 pounds per square inch (psi) during the high ozone season and authorized the EPA to impose an RVP standard lower than 9.0 psi in certain areas.
20. Pursuant to its authority under Section 211(c)(1) and (h) of the CAA, 42 U.S.C. §§ 7545(c)(1) and (h), the EPA promulgated the regulations at 40 C.F.R. § 1090.215 that include requirements for controls and prohibitions on gasoline volatility. *See* 40 C.F.R. § 1090.215.
21. Pursuant to 40 C.F.R. § 1090.215(a)(2), gasoline designated as 7.8 psi summer gasoline, or located in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and portions of Larimer and Weld Counties in Colorado, must meet the Federal 7.8 psi RVP standard during the summer season.
22. Any person who, after November 2, 2015, where penalties are assessed on or after January 6, 2023, violates the regulations prescribed under Section 211(c) of the CAA, 42 U.S.C. § 7545(c), including the gasoline benzene and RVP regulations at 40 C.F.R. Part 1090, Subpart C, is subject to a civil penalty up to \$55,808 per day per violation, plus the economic benefit or savings resulting from each violation. 42 U.S.C. § 7545(d)(1); 40 C.F.R. § 19.4. Such penalties are assessed in accordance with Sections 205(b) and (c) of the CAA, 42 U.S.C. §§ 7524(b) and (c). 42 U.S.C. § 7545(d)(1).

IV. STIPULATED FACTS

23. Suncor owns and operates two “fuel manufacturing facilities,” as defined in 40 C.F.R. § 1090.80, in Commerce City, Colorado that produce gasoline.
24. Respondent is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
25. Respondent is a “fuel manufacturer” as defined in 40 C.F.R. § 1090.80.
26. On March 31, 2022, Suncor notified the EPA that its Commerce City, Colorado East Refinery (Facility ID 00544) (East Refinery) was not in compliance with Section 211 of the CAA, 42 U.S.C. § 7545, and the 1.30 volume percent maximum average gasoline benzene standard at 40 C.F.R. § 1090.210(b) for the January 1 through December 31, 2021 averaging period.
27. For the January 1 through December 31, 2021 averaging period, Suncor reported that its East Refinery produced 32,101,398 gallons of gasoline with an average benzene concentration of 1.77 volume percent.
28. For the January 1 through December 31, 2021 averaging period, Suncor reported that its Commerce City West Refinery (Facility ID 01352) (West Refinery) produced 621,725,533 gallons of gasoline.
29. On January 7, 2023, Suncor notified the EPA that its West Refinery produced approximately 1,162,762 gallons of gasoline between June 22 and 23, 2022, that had an RVP of 7.9 psi.
30. The fuel produced at Suncor’s East and West Refineries was sold in Adams County, Colorado.

V. ALLEGED VIOLATIONS OF LAW

31. By producing 32,101,398 gallons of gasoline with an average benzene concentration exceeding 1.30 volume percent at its East Refinery, Suncor violated the requirement at 40 C.F.R. § 1090.210(b) that a fuel manufacturer's maximum average gasoline benzene concentration in any averaging period shall not exceed 1.30 volume percent.
32. By producing 1,162,762 gallons of summer gasoline with an RVP above the Federal 7.8 psi RVP standard at its West Refinery and introducing the gasoline into commerce during the summer season, Suncor violated the requirement at 40 C.F.R. § 1090.215(a)(2) that gasoline located in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and portions of Larimer and Weld Counties in Colorado must meet the Federal 7.8 psi RVP standard during the summer season.

VI. TERMS OF AGREEMENT

33. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent: admits that the EPA has jurisdiction over this matter as stated above; admits to the stipulated facts stated above; neither admits nor denies the alleged violations of law stated above; consents to the assessment of a civil penalty as stated below; consents to any conditions specified in this Consent Agreement; waives any right to contest the alleged violations of law; and waives its rights to appeal the Final Order ratifying this Consent Agreement.
34. For the purpose of this proceeding, Respondent:
 - (a) Agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;

- (b) Waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement;
- (c) Waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to enforce this Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law will govern in any such civil action;
- (d) Consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Columbia;
- (e) Agrees that it may not delegate duties under this Consent Agreement to any other party without the written consent of the EPA, which may be granted or withheld at the EPA's unfettered discretion. If the EPA so consents, the Consent Agreement is binding on the party or parties to whom the duties are delegated;
- (f) Acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (g) Acknowledges that this Consent Agreement and attached Final Order will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;

- (h) Acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Consent Agreement (*see* 31 U.S.C. § 7701);
 - (i) Certifies the information it has supplied concerning this matter was at the time of submission and to the best of its knowledge, true, accurate, and complete; and
 - (j) Acknowledges there are significant penalties for knowingly submitting false, fictitious, or fraudulent information, including the possibility of fines and imprisonment (*see* 18 U.S.C. § 1001).
35. For purposes of this proceeding, the Parties each agree that:
- (a) This Consent Agreement constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings, whether written or oral, among the Parties with respect to the subject matter of this Consent Agreement;
 - (b) Nothing in this Consent Agreement shall be construed to reflect the EPA's interpretation or implementation of the Renewable Fuel Standard (RFS), 42 U.S.C. § 7545(o), 40 C.F.R. Part 80, Subpart M, at Suncor's East and West Refineries.
 - (c) This Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the Parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any

copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement;

- (d) Its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Consent Agreement and to execute it on behalf of that Party;
 - (e) Each Party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other Party's obligations under this Consent Agreement and attached Final Order; and
 - (f) Each Party will bear its own costs and attorney fees in the action resolved by this Consent Agreement and attached Final Order.
36. Respondent agrees to pay to the United States a civil penalty of \$160,660 (Civil Penalty).
37. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the issuance of the attached Final Order (i.e., the effective date of this Consent Agreement and attached Final Order).
38. Respondent agrees to pay the Civil Penalty in the manner specified below:
- (a) Pay the Civil Penalty using any method provided on the following website:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>;
 - (b) Identify each and every payment with "Docket No. CAA-HQ-2023-8425"; and
 - (c) Within 24 hours of payment, email proof of payment to Taylor Waanders at Waanders.Taylor@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to

demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. CAA-HQ-2023-8425”).

39. As a condition of settlement, Respondent agrees that it will be liable for stipulated penalties to the EPA for failure to pay the Civil Penalty, or any portion thereof, when due, or provide proof of such payment: \$1,000 per day for each day during the first 15 days; and \$2,000 per day thereafter. All stipulated penalties must be paid in the manner specified in Paragraph 38 of this Agreement.
40. Respondent agrees that the time period from the date of Respondent’s signature on this Consent Agreement until the payment of the Civil Penalty as stated in Paragraphs 36 through 38 (the Tolling Period) will not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the Tolled Claims) set forth in the Alleged Violations of Law section of this Consent Agreement. Respondent will not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

41. In response to the alleged violations of the CAA and in settlement of this matter, although not required by the CAA or any other federal, state, or local law, Respondent agrees to implement a Supplemental Environmental Project (SEP), as described below and in Appendix A.
42. Respondent shall implement the Electric Lawn and Garden Equipment SEP as defined below and in Appendix A to replace gasoline- or diesel-powered lawn and garden

equipment with electric equipment. Respondent shall: (a) purchase or subsidize the purchase of electric lawn and garden equipment, which may include zero-emission residential and commercial lawn mowers, leaf blowers, trimmers, edgers, cutters, and chainsaws, as well as battery-packs, chargers, and accessories that are necessary to support use of the electric equipment (collectively, “electric lawn and garden equipment”), (b) distribute the electric lawn and garden equipment to qualified participants, which may include residents that live near Suncor’s East and West Refineries and local governments and schools located in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld Counties in Colorado, and (c) scrap or destroy each piece of gasoline- or diesel-powered lawn and garden equipment that is replaced by the electric lawn and garden equipment purchased or subsidized by Suncor. The SEP is more specifically described in Appendix A, which is incorporated herein by reference.

43. Respondent shall spend no less than \$600,000 on implementing the SEP. No more than ten percent (10%) of the Project Dollars may go towards administrative support and outreach costs associated with implementation of the Electric Lawn and Garden Equipment SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
44. Respondent shall complete the SEP no later than one year (365 calendar days) from the effective date of this CAFO.
45. Use of a SEP Implementer
 - (a) SEP Implementer: Respondent has selected the Regional Air Quality Council (RAQC) as a contractor to assist with implementation of the SEP.

- (b) The EPA had no role in the selection of the SEP implementer or specific equipment identified in the SEP, nor shall this CAFO be construed to constitute the EPA's approval or endorsement of any SEP implementer or specific equipment identified in this CAFO.
- 46. The SEP is consistent with applicable EPA policy and guidelines, specifically the EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy (March 10, 2015). The SEP advances at least one of the objectives of the CAA by reducing the emissions of ozone precursors from gasoline- and diesel-powered lawn and garden equipment, and also reduces greenhouse gas emissions. The SEP is not inconsistent with any provision of the CAA. The SEP has a nexus to the alleged violations and is designed to reduce the adverse impact to public health and the environment to which the alleged violations contributed, specifically by reducing the emissions of volatile organic compounds (VOCs), including benzene, as well as nitrogen oxides, carbon monoxide, and greenhouse gases.
- 47. Respondent certifies the truth and accuracy of the following:
 - (a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is \$600,000;
 - (b) That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- (c) That the SEP is not a project that Respondent was planning or intending to perform or implement other than in settlement of the claims resolved in this CAFO;
 - (d) The Respondent has not received and will not have received credit for the SEP in any other enforcement action;
 - (e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - (f) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
 - (g) That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Appendix A; and
 - (h) That Respondent has inquired of the RAQC whether it is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the RAQC that it is not a party to such transaction.
48. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this CAFO from the date of execution of this CAFO shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of federal laws.”
49. SEP Reports

- (a) Respondent shall submit a SEP Completion Report to the EPA no later than sixty (60) days from the date the SEP is completed. The SEP Completion Report shall contain the following information, with supporting documentation:
- (1) A detailed description of the SEP as implemented;
 - (2) An itemized list of all electric lawn and garden equipment, including battery-packs, chargers, and other accessories, purchased and distributed to residents, local governments, and schools, along with the percentage of the cost of the equipment that was funded from the SEP on an item-by-item or category basis;
 - (3) A description of how Suncor verified that the residents that received electric lawn and garden equipment resided in a qualifying area and the total the number of residents that received electric lawn and garden equipment by zip code;
 - (4) A list of schools and local governments that received the electric lawn and garden equipment from Suncor and a description of the electric lawn and garden equipment supplied to each;
 - (5) For electric lawn and garden equipment supplied to residents, evidence (e.g., photos, scrap receipts) demonstrating that a comparable piece of gasoline- or diesel-powered lawn and garden equipment was scrapped or destroyed for each piece of electric lawn and garden equipment purchased or subsidized from the SEP;
 - (6) For electric lawn and garden equipment supplied to schools and local governments, evidence (e.g., photos, scrap receipts) demonstrating that a

comparable amount of gasoline- or diesel-powered lawn and garden equipment was scrapped or destroyed in relation to the total amount of electric lawn and garden equipment purchased or subsidized from the SEP that was provided to schools and local governments;

- (7) Itemized costs, including administrative costs;
 - (8) A description of any issues encountered while implementing the SEP and the solutions thereto;
 - (9) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
 - (10) A description of the environmental and public health benefits resulting from implementation of the SEP, with quantification of the benefits and pollutant reductions expressed in annual pounds of pollution reduced on a pollutant-by-pollutant basis.
- (b) Respondent agrees that failure to submit the SEP Completion Report required by subsection (a) of this Paragraph shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 50 below.
- (c) Respondent shall submit all notices and reports required by this CAFO to Ryan Bickmore at bickmore.ryan@epa.gov and Karen Nelson at nelson.karen@epa.gov.
- (d) In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs

must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and services for which payment is being made.

50. Stipulated Penalties

- (a) Except as provided in Subparagraphs (b) and (c) below, if Respondent fails to submit a SEP Completion Report by the deadline specified in Paragraph 49(a), Respondent agrees to pay, in addition to the civil penalty in Paragraph 36, the following stipulated penalty for each day the Respondent is late submitting its SEP Completion Report.
 - (1) \$250 per day for days 1-30;
 - (2) \$300 per day for days 31-60; and
 - (3) \$500 per day for days 61 and after.
- (b) If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 43, Respondent agrees to pay, after receiving written notice from EPA and failing to cure any alleged violations within sixty (60) days, a stipulated penalty to the United States in the amount of \$10,000 per day the SEP remains incomplete, not to exceed a total of \$700,000. “Satisfactory completion” of the SEP is defined as Respondent spending no less than \$600,000 to purchase or subsidize the purchase of electric-powered lawn and garden equipment and distribute that equipment within Adams, Arapahoe,

Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld Counties to replace gasoline- or diesel-powered lawn and garden equipment no later than one year (365 calendar days) from the effective date of this CAFO. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of the EPA.

- (c) The EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.
- (d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by the EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 38. Interest and late charges shall be paid as stated in Paragraph 53.

VIII. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

- 51. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this Consent Agreement will only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
- 52. Failure to pay the full amount of the Civil Penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed Civil Penalty and interest. In order to avoid the assessment of interest, administrative costs, and a late payment penalty in connection with such Civil Penalty, as described in the following Paragraph of this Consent Agreement, Respondent must timely pay the Civil Penalty.
- 53. If Respondent fails to timely pay any portion of the Civil Penalty assessed by the attached Final Order, the EPA may:

- (a) Request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10-percent quarterly nonpayment penalty (42 U.S.C. § 7524(c)(6));
 - (b) Refer the debt to a credit reporting agency or a collection agency (40 C.F.R. §§ 13.13, 13.14, and 13.33);
 - (c) Collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H); and
 - (d) Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (40 C.F.R. § 13.17).
54. Penalties paid pursuant to this Consent Agreement and attached Final Order are not deductible for federal tax purposes. 28 U.S.C. § 162(f).
55. This Consent Agreement and attached Final Order apply to and are binding on the Parties. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the Complainant under applicable law to assert successor or assignee liability against Respondent's successor or assignee.

56. This Consent Agreement shall not confer any rights or obligations upon any person other than the Parties and shall not be enforceable by any other person except the Parties hereto.
57. Nothing in this Consent Agreement relieves Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, or restricts the EPA's authority to seek compliance with any applicable laws or regulations, nor will it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
58. Nothing in this Consent Agreement shall be construed to limit the power of the Complainant to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.
59. Any violation of the Final Order issued by the Environmental Appeals Board in this matter may result in a civil judicial action to collect the civil penalty as provided in Section 205(c)(6) of the CAA, 42 U.S.C. § 7524(c)(6). The EPA may use any information submitted under the Consent Agreement and attached Final Order in an administrative, civil judicial, or criminal action.
60. The EPA reserves the right to revoke this Consent Agreement and accompanying Civil Penalty if, and to the extent the EPA finds, after signing this Consent Agreement that any information provided by Respondent was or is materially false or inaccurate, and the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA will give Respondent written notice of such termination, which will be effective upon mailing.

61. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be ratified and incorporated into the attached Final Order.
62. The Parties agree to issuance of the attached Final Order. Upon filing of the Consent Agreement and attached Final Order with the Environmental Appeals Board, the EPA will transmit a copy of the filed Consent Agreement and Final Order to the Respondent. This Consent Agreement and attached Final Order will become effective after issuance of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

The foregoing Consent Agreement, In the Matter of: Suncor Energy (U.S.A.) Inc., Docket No. CAA-HQ-2023-8425, is Hereby Stipulated, Agreed, and Approved for Ratification.

For Suncor Energy (U.S.A.) Inc.:



Jeff Krafve
VP, Commerce City Refinery

7/12/23

Date


Respondent's Federal Tax Identification Number: 51-0403125

The foregoing Consent Agreement, In the Matter of: Suncor Energy (U.S.A.) Inc., Docket No. CAA-HQ-2023-8425, is Hereby Stipulated, Agreed, and Approved for Ratification.

For Complainant:

**Greene,
Mary E**  Digitally signed by
Greene, Mary E
Date: 2023.07.20
18:24:02 -04'00'

Mary E. Greene
Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC-2242A)
Washington, D.C. 20460

**RYAN
BICKMORE**  Digitally signed by RYAN
BICKMORE
Date: 2023.07.20 15:24:23
-06'00'

Ryan Bickmore
Attorney-Adviser
Fuels Enforcement Branch
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

APPENDIX A
Supplemental Environmental Project Description

APPENDIX A
ELECTRIC LAWN AND GARDEN EQUIPMENT SUPPLEMENTAL
ENVIRONMENTAL PROJECT (SEP)

I. SEP Purpose

The electric lawn and garden equipment Supplemental Environmental Project (Electric Lawn and Garden Equipment SEP) shall be for the purpose of replacing gasoline- or diesel-powered lawn and garden equipment with cleaner electric-powered lawn and garden equipment that will be purchased or subsidized by Respondent and distributed within Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld Counties in Colorado; the replaced gasoline- or diesel-powered lawn and garden equipment shall be scrapped or destroyed, which will reduce emissions of volatile organic compounds (VOCs), including benzene, as well as nitrogen oxides, carbon monoxide, and greenhouse gases.

II. SEP Implementation, Project Dollars, and Scope

Suncor Energy (U.S.A.) Inc. (Suncor) has selected the Regional Air Quality Council (RAQC) as the SEP Implementer for the Electric Lawn and Garden Equipment SEP, but Suncor is ultimately responsible for ensuring that the Electric Lawn and Garden Equipment SEP is implemented satisfactorily.

Suncor must initiate implementation of the project by providing \$600,000 to the RAQC within thirty (30) days of the effective date of this CAFO (Project Dollars). No more than ten percent (10%) of the Project Dollars may go towards administrative support and outreach costs associated with implementation of the Electric Lawn and Garden Equipment SEP.

Project Dollars, except those going towards administrative support and outreach costs, must be used to purchase or subsidize the purchase of the following types of electric lawn and garden equipment: lawn mowers, trimmers, edgers, cutters, leaf-blowers, chainsaws, utility carts, and other similar devices, as well as battery-packs, chargers, and other accessories that are necessary to support use of the electric equipment.

Residents that receive electric lawn and garden equipment purchased or subsidized with the Project Dollars must reside in one of the following ZIP Codes:

Adams County ZIP Codes

- 80022 – Commerce City
- 80024 – Dupont and Derby
- 80221 – Sherrelwood, Western Hills, Twin Lakes, Zuni
- 80640 – Henderson
- 80229 – Welby, and parts of Thornton
- 80260 – Federal Heights, and parts of Thornton

Denver County ZIP Codes

- 80216 – Globeville, Elyria, Swansea, North Washington
- 80205 – Clayton, North Denver
- 80211 – North Denver
- 80207 – Park Hill
- 80238 – Central Park, Northfield
- 80239 – Montbello
- 80249 – Green Valley Ranch

At least \$50,000 of the Project Dollars must be used to purchase or subsidize the purchase of electric lawn and garden equipment for residents residing in the above-listed ZIP Codes.

Local governments or schools that receive electric lawn and garden equipment purchased or subsidized with the Project Dollars must be located within Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld Counties in Colorado.

III. Environmental Benefit

Use of electric-powered lawn and garden equipment instead of gasoline- or diesel-powered equipment will reduce emissions of VOCs, including benzene in the area impacted by the alleged violations.

VOCs are a precursor to the formation of ground-level ozone. Depending on the level and duration of exposure, ground-level ozone can contribute to certain health effects (*see* <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>). Benzene is a known human carcinogen.

In addition, as a co-benefit of these reductions, use of electric-powered lawn and garden equipment instead of gasoline- or diesel-powered equipment will result in significant reductions of greenhouse gas emissions. Greenhouse gases from human activities are a primary cause of climate change and global warming.

IV. Implementation Requirements

In order to ensure that the environmental benefit anticipated from the Electric Lawn and Garden Equipment SEP will be achieved, Suncor shall collect gasoline- or diesel-powered lawn and garden equipment from residents, local governments, and schools that receive electric lawn and garden equipment from the Project Dollars and scrap or destroy the gasoline- or diesel-powered equipment. Suncor must keep an itemized list of all gasoline- or diesel-powered lawn and garden equipment that was collected and records demonstrating that the gasoline- or diesel-powered equipment was scrapped or destroyed.

MJ
MEK

V. Schedule

Suncor shall provide the funds for the Electric Lawn and Garden Equipment SEP within thirty (30) days of the effective date of this CAFO to the RAQC.

Suncor shall complete the Electric Lawn and Garden Equipment SEP no later than one year (365 calendar days) after the effective date of this CAFO.

Within 60 days of the completion of the Electric Lawn and Garden Equipment SEP, Suncor shall submit a SEP Completion Report to:

Ryan Bickmore
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202
E-mail: Bickmore.Ryan@epa.gov

CERTIFICATE OF SERVICE

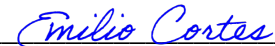
I certify that copies of the foregoing “Consent Agreement” and “Revised Final Order,” in the matter of Suncor Energy (U.S.A.) Inc., Docket No. CAA-HQ-2023-8425, were sent to the following persons in the manner indicated:

By E-mail:

Michael Korenblat
Suncor Energy (U.S.A.) Inc.
5455 Brighton Blvd
Commerce City, Colorado 80022
Email: MKorenblat@Suncor.com

Ryan Bickmore
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202
E-mail: Bickmore.Ryan@epa.gov

Dated: Sep 06, 2023



Emilio Cortes
Clerk of the Board