

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:13-cv-3109

UNITED STATES OF AMERICA

and

THE STATE OF COLORADO, through the TRUSTEES FOR NATURAL RESOURCE
DAMAGES FOR THE STATE OF COLORADO and ATTORNEY GENERAL, JOHN
SUTHERS

Plaintiffs,

v.

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

Defendant.

CONSENT DECREE

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I. BACKGROUND

A. This Consent Decree is made and entered into by and between the United States of America (“United States”), on behalf of the Secretary of the Department of the Interior (“DOI”) acting through the U.S. Fish and Wildlife Service (“FWS”); the State of Colorado (“State”), on behalf of the Executive Directors of the Colorado Department of Public Health and Environment (“CDPHE”), the Colorado Department of Natural Resources, and the Colorado Attorney General; and Suncor Energy (U.S.A.) Inc. (“Suncor” or “Defendant”).

B. Concurrent with the lodging of this Consent Decree, the United States and the State (collectively “Plaintiffs”) filed a complaint against Suncor pursuant to the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(b)(2), seeking damages for injuries to natural resources arising from the release of Oil from a subsurface dead leg pipe, which was discovered post-release 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 Refinery in Commerce City, Colorado. Plaintiffs allege that this release led to the discharge of Oil into the groundwater under the Refinery, created a substantial threat of discharge of Oil to Sand Creek, the South Platte River and adjoining shorelines, and led to the discharge of Oil to these waters and/or adjoining shorelines on or about November 27, 2011 (collectively, the “Incident”).

C. Prior to the Incident, operations by the Defendant and prior owners and operators of the Refinery had resulted in the generation, treatment, and storage of various solid wastes at the Refinery. In the Compliance Order on Consent issued by CDPHE to the Defendant in 2007, CDPHE found that a number of these solid wastes, such as API separator sludge, slop oil emulsion solids, leaded tank bottoms, and various caustic, ignitable and reactive wastes, were listed or were characteristic hazardous wastes as defined in the Resource Conservation and

Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, and the Colorado Hazardous Waste Act, Colo. Rev. Stat. §§ 25-15-101 *et seq.* As such, these hazardous wastes are also Hazardous Substances as defined by CERCLA. In the 2007 Compliance Order on Consent, CDPHE further determined that the Defendant and its predecessors in ownership had released these hazardous wastes and/or hazardous constituents into the environment, Including the release of BTEX to soil and groundwater at or near the Refinery. BTEX derived from these hazardous waste sources also constitutes a Hazardous Substance under CERCLA.

D. Prior to the Incident, the Defendant and its predecessors investigated and performed various corrective actions to address hazardous wastes and hazardous waste constituents released at and from the Refinery, Including actions required by the Compliance Order on Consent. At the time of the Incident, hazardous wastes and hazardous waste constituents, Including BTEX, were present in groundwater beneath the Refinery. The Oil that was released as part of the Incident commingled with this pre-existing groundwater contamination, and in some instances caused it to remobilize and migrate off the Refinery property, towards Sand Creek.

E. Following discovery of the Incident on or about November 27, 2011, the Defendant took various actions pursuant to federal and State direction to limit, prevent, and remediate the discharge of Oil to Sand Creek, the South Platte River and their adjoining shorelines.

F. Plaintiffs allege in the Complaint that the Incident caused injury to the following Natural Resources: aquatic and riparian habitat at, near and downgradient of the point of discharge to Sand Creek; wetland habitat located on the Defendant's property; waterfowl associated with the former wetland on the Defendant's property; and groundwater. All of these

natural resources are under the co-trusteeship of the United States and the State, except for groundwater, which is solely a State resource.

G. As of the Date of Lodging, the Plaintiffs' understanding of the conditions at or near the Refinery are as follows:

1. The Oil that was released as a result of the Incident created a plume of contamination in area groundwater. Within the boundary of this groundwater plume, the Oil that was released as a result of the Incident commingled with preexisting groundwater contamination, Including Oil and Hazardous Substances;
2. Some of this groundwater plume is entering Sand Creek through groundwater recharge;
3. Suncor Refinery Contamination (as defined herein) is not currently discharging into Sand Creek, the South Platte River, or any other navigable water or to shorelines adjoining any of these waters, except for the quantity and concentration of Oil and Hazardous Substances, which Plaintiffs understand is limited to BTEX and methyl tertiary butyl ether (which is commonly referred to as "MTBE"), dissolved in groundwater that is currently entering Sand Creek through groundwater recharge;
4. Suncor Refinery Contamination does not currently pose a substantial threat of discharge of Oil or a Hazardous Substance to navigable waters or adjoining shorelines (other than as described in the Paragraph G(2)) because of the actions taken by Defendant as described in Paragraph E.
5. Suncor Refinery Contamination is not currently present on the land surface in any manner that could cause injury to Natural Resources.

H. The Trustees have completed the preassessment of Natural Resource injuries and damages resulting from the Incident and determined that the information developed and analyzed in the preassessment is sufficient to support a settlement of their claims that satisfies the goals of OPA and is fair, reasonable, and in the public interest. In the judgment of the Trustees, the settlement contained in this Consent Decree meets these objectives, is adequate to restore, replace, rehabilitate, and/or acquire the equivalent of the injured natural resources and services, and therefore will compensate the public for the injuries to natural resources caused by the Incident.

I. The Parties agree, and this Court by entering this Decree finds, that settlement of this matter without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving this matter.

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the claims in this action pursuant to, *inter alia*, 28 U.S.C. §§ 1331 and 1345, and OPA, 33 U.S.C. §§ 2702(a), 2706(b)(2)(A), 2706, and 2717(b). The Court also has personal jurisdiction over the Defendant.

2. Venue is proper in this judicial district pursuant to, *inter alia*, 28 U.S.C. §§ 1391(b) and (c), and OPA, 33 U.S.C. § 2717(b), because the Incident occurred in, and Defendant conducts business in, this judicial district.

3. Solely for purposes of this Consent Decree and this action, Defendant consents to the Court's jurisdiction and venue in this judicial district and waives all objections and defenses it may have to jurisdiction of the Court or to venue in this District. Except as provided in

Paragraph 28 of Section XI (Effect of Settlement), Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the Plaintiffs and upon the Defendant, its successors and assigns. Any change in ownership or corporate status of the Defendant Including any transfer of assets or real or personal property, shall in no way alter the rights or responsibilities of the Defendant and its successors and assigns under this Consent Decree.

IV. DEFINITIONS

5. Terms used in this Consent Decree that are defined or used in OPA, or in regulations promulgated thereunder, shall have the meanings assigned to them in the statute or such regulations, unless otherwise provided in this Consent Decree.

6. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "BTEX" shall mean benzene, toluene, ethylbenzene, and xylene, whether derived from Oil or Hazardous Substances.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*
- c. "Complaint" shall mean the complaint filed by the Plaintiffs in this action, unless noted otherwise.
- d. "Compliance Order on Consent" shall mean Compliance Order on Consent No. 07-05-25-01 between the Colorado Department of Public Health and Environment and Suncor Energy (U.S.A.) Inc., executed on or about June 21, 2007, and all

orders, notices, and directives issued pursuant to this Compliance Order on Consent.

- e. “Consent Decree” or “Decree” shall mean this Consent Decree.
- f. “Date of Lodging” is the date on which this Consent Decree is lodged with the Court.
- g. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
- h. “Defendant” shall mean Suncor Energy (U.S.A.) Inc.
- i. “Discharge” shall mean “discharge” as defined by section 1001(7) of OPA, 33 U.S.C. § 2701(7).
- j. “Effective Date” shall mean the date established by Section XIV (Effective Date) in this Consent Decree.
- k. “Federal Trustee” shall mean the Secretary of the U.S. Department of the Interior, represented by the U.S. Fish and Wildlife Service, as the Federal official designated to act on behalf of the public as trustee for natural resources under OPA, 33 U.S.C. § 2706(b).
- l. “Hazardous Substance” shall mean any hazardous substance as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- m. “Incident” shall mean the occurrences described in Paragraph B of Section I (Background) of this Consent Decree.

- n. “Include,” “Includes,” and “Including” shall mean “include, but not limited to”; “includes, but not limited to”; and “including, but not limited to,” respectively.
The use of all of these terms is not limiting.
- o. “Interest” shall mean the interest rate described in Paragraph 18 of Section VII (Stipulated Penalties) of this Consent Decree.
- p. “Natural Resources” shall have the meaning set forth in section 1001(20) of OPA, 33 U.S.C. § 2701(20), and section 101(16) of CERCLA, 42 U.S.C. § 9601(16).
- q. “Natural Resource Damages” shall mean damages for injury to, destruction of, loss of, or loss of use of, Natural Resources, Including reasonable Natural Resource Damage Assessment costs, Restoration costs, and oversight and monitoring costs pursuant to section 1006 of OPA, 33 U.S.C. § 2706, and section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).
- r. “Natural Resource Damage Assessment” shall mean the process of collecting, compiling and analyzing information, statistics or data to evaluate the nature and extent of Natural Resource injuries and to determine damages for these Natural Resource injuries.
- s. “NRDAR Fund” shall mean the Natural Resource Damage Assessment and Restoration Fund managed by the U.S. Department of the Interior, Office of Restoration and Damage Assessment.
- t. “Oil” means oil of any kind or in any form, Including petroleum or petroleum products (Including reformat), 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.

u. “OPA” shall mean the Oil Pollution Act of 1990, as amended, 33 U.S.C. §§ 2701-2762.

v. “Parties” shall mean the Plaintiffs and the Defendant.

w. “Plaintiffs” shall mean the United States and the State of Colorado.

x. “Refinery” shall mean the petroleum refineries and related facilities and real property owned and/or operated by Defendant and located in Adams County, Colorado on the real property more particularly described as: (i) Lot 1, Block 1 and Tract A, Conoco Subdivision Filing No. 1, City of Commerce City, County of Adams, State of Colorado, and (ii) Lot 1, Block 1, Lot 1, Block 2, and Lot 1, Block 3, Suncor Subdivision Filing No. 2, City of Commerce City, County of Adams, State of Colorado.

y. “Release” shall mean “release” as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

z. “Restore” or “Restoration” shall mean any action or combination of actions to restore, rehabilitate, replace or acquire the equivalent of any Natural Resource and services.

aa. “Settlement Amount” shall mean \$1,887,000, plus any accrued Interest as of the day of payment.

bb. “State” shall mean the State of Colorado.

cc. “State Trustees” shall mean the Executive Director of the Colorado Department of Public Health and the Environment, the Executive Director of the Colorado

Department of Natural Resources, and the Colorado Attorney General, who serve as the State officials designated by the Governor of Colorado to act on behalf of the public as trustees for Natural Resources under section 1006(b) of OPA, 33 U.S.C. § 2706(b).

dd. “Suncor Refinery Contamination” shall mean: (i) any and all Oil that was discharged or released at, on, onto, under, or from the Refinery as a result of the Incident as of the Date of Lodging of this Consent Decree; and (ii) any and all Oil and/or Hazardous Substances that were discharged or released at, on, onto, under, or from the Refinery, Including into the groundwater beneath the Refinery, before the Incident that, as of the Date of Lodging of this Consent Decree, have commingled with Oil discharged or released as a result of the Incident.

ee. “Trustees” shall mean the Federal Trustee and State Trustees.

ff. “United States” shall mean the United States of America.

V. SETTLEMENT PAYMENT AND DISTRIBUTION

7. The Parties have agreed that the Defendant shall pay the Settlement Amount to settle the claims asserted in the Complaint. The Settlement Amount represents a settlement of claims alleging Natural Resource Damages, and is not a fine or penalty.

8. On August 2, 2013, pursuant to a July 26, 2013 letter agreement between the Federal Trustee and the Defendant, the Defendant paid \$123,000 of the Settlement Amount to the United States as partial payment for federal Natural Resource Damage Assessment costs the Federal Trustee alleges it has previously incurred.

9. Within thirty (30) Days after the Effective Date of this Consent Decree, Defendant shall pay the remainder of the Settlement Amount, \$1,764,000. This payment shall be

made and distributed as set forth in Paragraphs 10 and 11 of this Section V. Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation to the Plaintiffs in accordance with Section XIII (Notices) of this Consent Decree. This Consent Decree shall govern and apply to the entire Settlement Amount, Including the \$123,000 partial payment.

10. The sum of \$568,268, together with a proportionate share of any Interest accrued on the Settlement Amount, shall be paid to the United States. Such payment shall be used by the Federal Trustee for the purposes set forth in Section VI (Trustees' Management and Application of the Settlement). The payment required by this Paragraph shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to the Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Colorado following Entry of this Consent Decree by this Court. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, to the United States in accordance with Section XIII of this Consent Decree (Notices) and to the U.S. Department of the Interior, NRDAR Program, Attn: Fund Restoration Manager, 1849 C Street NW, Mailstop 4449, Washington, DC 20240. The transmittal letter shall state that the payment is for Natural Resource Damages in *United States v. Suncor Energy (U.S.A.) Inc.*, and shall reference the civil action number, DOJ Case Number 90-5-1-1-10821, and the NRDAR Fund Account No. 14X5198. Any payments received by the Department of Justice after 4:00 pm Eastern Standard Time shall be credited on the next business Day.

11. The sum of \$1,195,732, together with a proportionate share of any Interest accrued on the Settlement Amount, shall be paid to the State. Such payment shall be used by the

State for the purposes set forth in Section VI (Trustees' Management and Application of the Settlement). Parties shall make an Electronic Funds Transfer, as follows:

Account Name:	State of Colorado Operating Account
Bank:	JP Morgan Chase Bank, Denver, Colorado
Account Type:	Checking
Account No. for ACH:	193489208
ABA Bank No. for ACH:	102001017
State of Colorado Federal:	840644739
Taxpayer ID Number:	

The notice to the State of this payment, required by Paragraph 9 of this Section V, shall identify the payment as "Settlement Amount" and include the exact dollar amount of the payment. Any payments received by the State after 4:00 pm Mountain Time shall be credited on the next business Day.

VI. TRUSTEES' MANAGEMENT AND APPLICATION OF THE SETTLEMENT

12. The total amount to be paid by Defendant to the United States pursuant to Paragraph 10 shall be managed as part of, and held in, the Suncor Refinery NRD Account, a distinct account within the NRDAR Fund. The Federal Trustee shall use any interest or investment return accrued on the Suncor Refinery NRD Account in connection with Restoration of Natural Resources the Trustees have determined were affected by the Incident, and shall not make any charge against this Account for investment or management services.

13. The total natural resource damage payment to be paid by the Defendant to the State pursuant to Paragraph 11 shall be managed by the State as follows:

- a. The State shall deposit and manage \$912,481 of the total amount received from the Defendant in the Natural Resource Damage Recovery Fund in the Colorado Treasury pursuant to Colo. Rev. Stat. § 25-16-104.7 (2013), to then be transferred

to the appropriate agencies for project costs associated with restoring, replacing, rehabilitating, or acquiring the equivalent natural resources related to the Incident.

b. The State shall deposit and manage \$166,418 of the total amount received from the Defendant in the Hazardous Substance Response Fund in the Colorado Treasury pursuant to Colo. Rev. Stat. § 25-16-104.6 (2013), to then be transferred to the appropriate agencies to reimburse previously incurred Natural Resource Damage Assessment costs related to the Incident.

c. The State shall deposit and manage \$116,833 of the total amount received from the Defendant in the Hazardous Substance Response Fund in the Colorado Treasury pursuant to Colo. Rev. Stat. § 25-16-104.6 (2013), to then be transferred to the appropriate agencies for oversight and monitoring activities associated with restoring, replacing, rehabilitating, or acquiring the equivalent natural resources related to the Incident.

14. The Trustees commit to the expenditure of the Settlement Amount (except for \$165,833 for the United States and \$166,418 for the State, which is allocated to reimburse the Trustees for Natural Resource Damage Assessment costs previously incurred in connection with the Incident) to Restore Natural Resources allegedly injured, lost, or destroyed as a result of the Incident, including the following activities: design, implementation, permitting (as necessary), NEPA analysis, monitoring and oversight of Restoration projects and compliance with the requirements of the law to conduct a Restoration planning and implementation process.

15. The allocation of funds for specific projects or categories of projects will be contained in a Restoration Plan prepared and implemented jointly by the Trustees, for which public notice, opportunity for public input, and consideration of public comment will be

provided. The Trustees jointly retain the ultimate authority and responsibility to use the Settlement Amount to Restore Natural Resources in accordance with applicable law, this Consent Decree, and any memorandum or other agreement among them. Defendant may exercise whatever rights it may have as a member of the general public concerning such decisions, but without violating any terms of this Consent Decree.

VII. STIPULATED PENALTIES

16. If the Defendant fails to pay the Settlement Amount as required by Section V (Settlement Payment and Distribution) of this Consent Decree, the Defendant shall pay to the Plaintiff to whom that payment should have been made a stipulated penalty of \$1,000 for each Day that such payment is late.

17. Payment of a stipulated penalty for failure to make a payment required under Section V (Settlement Payment and Distribution) shall be in accordance with the payment instructions to be provided to the Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Colorado and/or by the Colorado Attorney General's Office, and shall be accompanied by a reference to this Consent Decree and be identified as "Stipulated Penalties." Notice of the payment shall be sent to the Parties in the manner specified in Section XIII (Notices).

18. In addition to the stipulated penalties set forth in this Section VII, in the event Defendant fails to make timely payments of any amount required under Section V (Settlement Payment and Distribution) of this Consent Decree, Defendant shall pay interest on the unpaid balance to the Plaintiff to whom the balance is due. Interest for late payments of any unpaid balance shall be at the rate specified in section 1005 of OPA, 33 U.S.C. § 2705.

19. Plaintiffs shall give Defendant written notification in accordance with Section XIII (Notices) that Defendant has failed to make a timely payment pursuant to this Consent Decree; however, the stipulated penalties provided for in this Section VII shall accrue, as provided in Paragraph 16 above, and shall be owed regardless of whether or not Defendant has been notified of a violation. Defendant shall pay any stipulated penalty within thirty (30) Days of receiving the United States' and/or State's written demand.

20. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

21. Subject to the provisions of Section VIII of this Consent Decree (Covenants Not to Sue by Plaintiffs), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and/or the State for Defendant's violation of this Consent Decree or applicable law.

22. Defendant shall not deduct any stipulated penalties paid under this Consent Decree pursuant to this Section VII in calculating its Federal or state income tax.

23. Notwithstanding any other provision of this Section VII, the United States and the State, in their unreviewable discretion, may waive any portion of stipulated penalties owed them that have accrued pursuant to this Consent Decree.

VIII. COVENANTS NOT TO SUE BY PLAINTIFFS

24. In consideration of the payments that will be made by the Defendant pursuant to this Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by

Plaintiffs), the Plaintiffs covenant not to sue or to take administrative action against the Defendant for Natural Resource Damages caused by or otherwise relating to or arising from Suncor Refinery Contamination pursuant to section 1002(a) and (b)(2)(A) of OPA, 33 U.S.C. §§ 2702(a) and (b)(2)(A); section 311 of the Clean Water Act, 33 U.S.C. § 1321; CERCLA section 107, 42 U.S.C. § 9607; or other federal, State or common law. This covenant not to sue shall take effect upon the Effective Date and is conditioned on the Defendant's satisfactory performance of its obligations under this Consent Decree.

IX. RESERVATION OF RIGHTS BY PLAINTIFFS

25. General Reservations. Notwithstanding any other provision of this Consent Decree, the covenant not to sue by Plaintiffs in Section VIII shall apply only to matters addressed in Section VIII and specifically shall not apply to the following:

- a. Claims based on a failure by the Defendant to satisfy any requirement of this Consent Decree.
- b. The authority of the United States and/or the State under OPA, CERCLA, the Clean Water Act, 33 U.S.C. §§ 1251-1387, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-7000, the Colorado Hazardous Waste Act, Colo. Rev. Stat. §§ 25-15-101 to -515, or other applicable statutory or common law to seek or obtain relief other than Natural Resource Damages from Defendant, including to the actions required by the Compliance Order on Consent and recovery of response costs or other costs incurred or to be incurred by the United States or the State that are not within the definition of Natural Resource Damages;

- c. Liability for damages for injury to, destruction of, or loss of natural resources resulting from any event or release or threatened release of Oil or Hazardous Substances other than Suncor Refinery Contamination; and
- d. Any and all criminal liability.

26. Special Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree:

- a. Plaintiffs reserve the right to institute proceedings against the Defendant in a new action for recovery of Natural Resource Damages with respect to any claim based on injury to, destruction of, or loss of Natural Resources resulting from conditions that were not known to Plaintiffs as of the Date of Lodging of this Consent Decree or that materially change after the Date of Lodging of this Consent Decree ("Unknown or Changed Conditions"). Defendant reserves any defenses it may have in any such proceeding.
- b. Notwithstanding anything in the Consent Decree to the contrary, the Parties agree that the reservations of rights in Paragraph 26(a) shall not apply to:
 - (1) Any new action for Natural Resource Damages for injuries to groundwater that results from the following: the groundwater plume of contamination that formed as a result of the Incident and that, on or before the Date of Lodging, had comingled with pre-existing contamination attributable to the Refinery as described in Paragraphs C and D in Section I (Background) of this Consent Decree, Including Oil and Hazardous Substances. Such claims have been fully and finally resolved by the Parties pursuant to this Consent Decree.

- (2) Any new action for Natural Resource Damages relating to or arising from the following: (1) a discharge to Sand Creek, the South Platte River, or any other navigable water or to shorelines adjoining any of these waters, (2) of Oil or a Hazardous Substance that is dissolved in groundwater, (3) that was known to the Plaintiffs on or before the Date of Lodging, and (4) that contains Oil or Hazardous Substances at or below the quantity and concentration of any such Oil or Hazardous Substance present in the groundwater discharge to Sand Creek, the South Platte River, or any other navigable water or to shorelines adjoining any of these waters on or before the Date of Lodging.

- c. For the purposes of this Paragraph 26, the information and conditions “known to Plaintiffs” shall mean any of following on or before the Date of Lodging: information, documents, data, records, reports, or analyses (Including relating to the Refinery or Suncor Refinery Contamination) provided to, generated or gathered by, in the possession of, under the control of, or otherwise known by any of the Plaintiffs or their employees (Including the Colorado Department of Public Health and the Environment and the Environmental Protection Agency and their employees), which shall Include all such information generated or produced pursuant to the Compliance Order on Consent.

X. COVENANTS NOT TO SUE BY DEFENDANT

27. Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the Plaintiffs (Including all employees, agents, contractors, departments, agencies, administrations and bureaus thereof) related to Natural Resource Damages arising out

of or related to Suncor Refinery Contamination, Including any potential or pending claims against the Oil Spill Liability Trust Fund relating to the Incident, except to the extent any of the Plaintiffs exercises its right to sue or take administrative action against Defendant pursuant to Section IX (Reservation of Rights by Plaintiffs). This covenant not to sue shall take effect upon the Effective Date.

XI. EFFECT OF SETTLEMENT

28. Defendant does not admit any liability arising out of the Incident, Suncor Refinery Contamination, or any other transactions or occurrences alleged in this action, Including as a result of entering into this Consent Decree and agreeing to pay the Settlement Amount. Defendant does not admit or concede any allegation or understanding of any of the Plaintiffs that are contained in the Complaint or in this Consent Decree, Including Section I (Background).

29. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights, defenses, claims, demands, and causes of action that each Party may have against any person not a Party to this Consent Decree.

30. In any subsequent administrative or judicial proceeding initiated by one or both of the Plaintiffs for injunctive relief, recovery of response costs, or other appropriate relief other than Natural Resource Damages, the Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent proceeding were or should have been brought in the instant case;

provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Sections VIII and X.

31. The Parties agree, and by entering into this Consent Decree this Court finds, that the Defendant is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions and claims as provided by CERCLA section 113, 42 U.S.C. § 9613, for Natural Resource Damages.

XII. COSTS

32. The Parties shall bear their own costs of this action, Including attorneys fees, except that the Plaintiffs shall be entitled to collect the costs (Including attorneys fees) incurred in any action necessary to collect any portion of the Settlement Amount, stipulated penalties or interest not paid by Defendants as required by the Consent Decree.

XIII. NOTICES

33. Unless otherwise specified herein, whenever notifications, submissions, reports or communications are required by this Consent Decree, they shall be made in writing by certified mail (return receipt requested), postage prepaid, and addressed to all parties as follows:

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-10821

As to the Federal Trustee:

Regional Director, Region 6
As the DOI Authorized Official
U.S. Fish and Wildlife Service
P.O. Box 25486-DFC
Denver, CO 80225

Re: Suncor Natural Resource Damages

As to the State of Colorado:

As to Colorado Department of Public Health and Environment:

Colorado Department of Public Health & Environment
Hazardous Materials & Waste Management Division
Monica D. Sheets or Remediation Program Manager
4300 Cherry Creek Drive South
Denver, CO 80246-1530
Re: Suncor Natural Resource Damages

As to Department of Natural Resources:

Colorado Department of Natural Resources
Executive Director's Office
1313 Sherman Street, Room 718
Denver, CO 80203
Re: Suncor Natural Resource Damages

As to the Attorney General:

Colorado Department of Law
Natural Resources and Environment Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203
Re: Suncor Natural Resource Damages

As to Defendant:

Suncor Energy (U.S.A.) Inc.
Attn: Legal Department
717 17th Street, Suite 2900
Denver, CO 80202
Re: Suncor Natural Resource Damages

34. Any Party may, by written notice to the other Parties in accordance with Paragraph 33, change its designated notice recipient or notice address provided above.

35. Notices submitted pursuant to this Section XIII shall be deemed delivered upon the earlier of: (a) actual receipt; or (b) confirmation of receipt or, in the case of certified mail, upon confirmation of delivery, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

36. The Effective Date of this Consent Decree shall be the date this Consent Decree is entered by the Court.

XV. TERMINATION

37. Upon completion of all obligations required under this Consent Decree, Defendant may serve upon the United States and State a request for termination (“Request for Termination”), stating that Defendant has satisfied the requirements of the Consent Decree, together with all necessary supporting documentation. Following receipt by the United States and State of Defendant’s Request for Termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Defendant has satisfactorily completed its obligations under this Consent Decree. If the United States and State agree that the Decree may be terminated, the United States and State shall submit, for the Court’s approval, an unopposed motion to terminate the Decree. If the United States or State does not agree that the Decree may be terminated, Defendant may move to terminate the Consent Decree and the United States or State may oppose that motion. Notwithstanding the foregoing, the covenants and reservations set forth in Sections VIII, IX, X, and XI shall survive termination of this Consent Decree.

XVI. RETENTION OF JURISDICTION

38. Except with respect to those non-surviving provisions of the Consent Decree upon the Consent Decree’s termination pursuant to Section XV, the Court shall retain jurisdiction over both the subject matter of this Consent Decree and the Parties for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, and relief as may be necessary or appropriate to enforce compliance with terms of the Consent Decree or to enable all of the

Parties to apply to the Court for the material modification of the Consent Decree pursuant to Section XVII (Modification) below. Subject to Section XV and the foregoing, nothing in this Consent Decree shall be deemed to limit or alter the Court's power to enforce it.

XVII. MODIFICATION

39. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

XVIII. PUBLIC PARTICIPATION

40. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The Plaintiffs each reserve the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice. If, for any reason, the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, this Consent Decree is voidable at the discretion of any Party and the terms of this Consent Decree may not be used as evidence in any litigation.

XIX. SIGNATORIES AND SERVICE

41. The Deputy Section Chief of the Environmental Enforcement Section of the United States Department of Justice and each of the undersigned representatives of the State of Colorado and the Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents

to this document. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

42. Defendant agrees to accept service of process by mail with respect to all matters arising under this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court, including service of a summons.

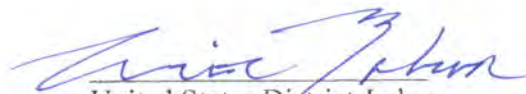
XX. INTEGRATION

43. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXI. FINAL JUDGMENT

44. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State and Defendant.

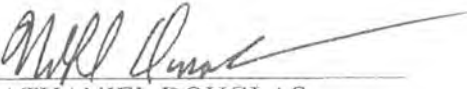
IT IS SO ORDERED this 27th day of Feb, ~~2013~~ 2014


United States District Judge

We hereby consent to the entry of the foregoing Consent Decree, subject to the Notice and Comment provisions of Section XVIII of this Consent Decree:

FOR THE UNITED STATES:

DATED: _____


NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
United States Department of Justice

DATED: 11/14/13


JAMES D. FREEMAN
Senior Attorney
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Telephone: (303) 844-1489
Facsimile: (303) 844-1350
james.freeman2@usdoj.gov

We hereby consent to the entry of the foregoing Consent Decree, subject to the Notice and Comment provisions of Section XVIII of this Consent Decree:

FOR THE STATE OF COLORADO:

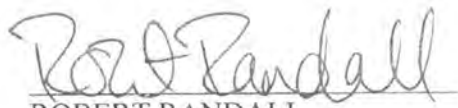
DATED: 8/8/2013


JOHN W. SUTHERS
Colorado Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203

DATED: 8/13/13


MARTHA RUDOLPH
Director of Environmental Programs
Colorado Department of Public Health and
Environment
4300 Cherry Creek Drive South
Denver, CO 80246

DATED: 8.13.13


ROBERT RANDALL
Deputy Director
Division of Reclamation, Mining and Safety
Colorado Department of Natural Resources
1313 Sherman Street
Denver, CO 80203

I hereby consent to the entry of the foregoing Consent Decree, subject to the Notice and
Comment provisions of Section XVIII of this Consent Decree:

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

DATED: NOV. 14, 2013



JOHN GALLAGHER
Vice President, Commerce City Refinery
Suncor Energy (U.S.A.) Inc.
5801 Brighton Boulevard
Commerce City, CO 80022