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June 19, 2013

**TANKER SAFETY EXPERT PANEL**  
c/o Tanker Safety Panel Secretariat  
330 Sparks Street, Place de Ville Tower C (AAM)  
OTTAWA, ON K1A 0N5

**Re: Review of Canada's Marine Spill Preparedness  
and Response Regime**

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Dear Sirs:

Suncor Energy Inc. is Canada's premier integrated energy company. Suncor is actively involved in the production and carriage of crude oil, feed stock and HNS cargoes in bulk, both in Canada and internationally. Suncor owns and operates oil production facilities at sea, refineries in Edmonton, Montreal and Sarnia as well as a lubricant plant in Mississauga, and imports and exports crude oil and refined product on Canada's Atlantic and Pacific coasts. Suncor was the first company to develop the immense potential of Canada's oil sands and created an industry that is now a key contributor to Canada's prosperity. Suncor also holds interests in all current producing fields off of the East Coast of Canada including Hibernia, Terra-Nova and White Rose, as well as in the Hebron field, scheduled to produce first oil in 2017.

Suncor refers to the press releases of the Tanker Safety Expert Panel ("Panel"), inviting stakeholders to make comments with regard to the review of Canada's marine spill preparedness and response regimes.

Suncor understands that the purpose of the request for submissions is to hear the views of Canadian stakeholders on preparedness, response and compensation with regard to the oil response regime that is in place. Suncor also understands that the Panel will be reviewing the same items for preparedness and response to hazardous and noxious substance spills, and takes the occasion to make comments on that aspect of the Panel's mandate as well.

**Oil Preparedness and Response**

The Panel invites stakeholder views on the sufficiency of Canada's present oil spill preparedness and response regime. Canada's current regime is a public-private response model which involves response organizations taking the lead in responding to oil spills up to 10,000 tons and, for larger spills, the additional resources of the Canadian Coast Guard would also be deployed.

Suncor is a shareholder in the two largest response organizations certified in Canada, Eastern Canada Response Corporation and Western Canada Marine Response Corporation, and is familiar with their

capacities and mandate. Suncor believes that the limit of 10,000 tons for response organizations is a reasonable figure and does not need to be increased. In fact, there has never been an oil spill in Canada of 10,000 tons and, although larger accidents can occur, improvements implemented by the oil industry have resulted in both minor spills (under 700 tons) and major spills (over 700 tons) decreasing by 99% over the last 30 years.

Much of this reduction is due to stringent vessel operation improvements now imposed by the industry, going far beyond minimum governmental standards. Industry-imposed standards include enhanced personnel training and competency, improved operating practices and vetting and inspection by the Oil Companies International Marine Forum, through the Ship Inspection Report Program ("SIRE"), and by the Chemical Distribution Institute, through the CDI-Marine program.

Suncor believes it would be wasteful to invest in increasing oil clean-up capacity when there are other spill prevention investments which might be more profitable, including, as set out below, investing in HNS preparedness. Consequently, Suncor does not believe that the present 10,000 ton limit should be increased.

With regard to the roles and responsibilities of government and industry in oil spill response, Suncor believes that the role of each is clear and is appropriate. Other countries such as the United Kingdom have gone a step further in creating a single representative for the entire country and for all governmental departments involved. In the United Kingdom, they call this the Secretary of State's Representative for Maritime Salvage and Intervention ("SOSREP"). This individual has the authority of Parliament to make all emergency decisions concerning pollution and ship salvage events. The purpose is to avoid a situation such as the one that took place when the Spanish government ordered the vessel *Prestige* to leave Spanish waters, hoping to avoid pollution to the Spanish coastline. Unfortunately, the vessel broke in two and soiled over 400 km of shore, whereas the spill might not have happened, or would have been more readily contained, had the vessel been allowed permission to enter a Spanish port.

Suncor believes that there is a need at present in Canada for a greater degree of coordination between government departments and different levels of government with respect to training, exercises and research and development. Suncor has for many years carried out exercises and offered training to its employees and has coordinated these efforts with the response organizations and with the Coast Guard and provincial authorities. However, it would appear that enhanced government participation in regular joint exercises and unified command systems would increase response effectiveness and efficiency.

#### Liability, Compensation and Funding

Suncor submits that the regime applicable in Canada, which includes the international oil pollution regime, is sufficiently and effectively funded. Strict liability is channeled to the ship owner with compulsory liability insurance and limited liability, above which international funds provide extra funding for clean up. Canada's own Ship-Source Oil Pollution Fund ("SOPF") is available to provide additional funding. The total amount of funding available in Canada for persistent oil clean up, at \$1.3 billion, is higher than in any other country including the United States of America.

Suncor submits that the regime applicable in Canada is world-class and the limits of funding are designed under the international conventions to increase as the cost of leaving and clean-up increases. Suncor does not believe that Canada should withdraw from the international regime, as it has proven itself over the years as being quick and efficient with regard to the clean-up of large spills. Smaller spills are handled by the ship owner and liability insurers. Suncor does not believe that the United States system of having a trust fund of \$1 billion available for clean-up is any more effective or efficient than the international regime.

### HNS Preparedness and Response

Bill C-57 has recently been tabled before Parliament. The bill would give effect to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 ("HNS Convention"). Suncor understands that the Panel has also been asked to look at HNS preparedness and response.

It would appear that the best way to prepare for a response to an HNS incident would be to integrate HNS into the existing oil pollution preparedness regime. This would include requiring response organizations to prepare for HNS events. At present, there is some confusion with regard to HNS products and with regard to the application of the HNS Convention. The HNS Convention does not only cover chemical products. It also covers spills of liquefied natural gas, liquefied petroleum gas as well as oil when not covered by the existing oil pollution regime. The international oil pollution regime applies only to the cleanup of persistent oil and thus the oil provisions of the HNS Convention cover the clean-up of non-persistent oil as well as personal injury and property loss incurred following an oil spill. At present, if any oil spill causes a fire injuring individuals, the international oil pollution regime does not cover such damage.

Although the HNS Convention applies to a multitude of chemical products, both carried in packages and in bulk, in reality there are very few HNS cargoes carried in bulk to or from Canada and it is for these products that preparation and response is required. Suncor submits that a phased-in approach would permit existing response organizations to obtain the equipment and training necessary to respond to the principal HNS cargoes carried in bulk in Canada. An HNS response program should reflect the oil response program with private response organizations accompanied by public funding and Coast Guard involvement for larger spills.

In order for Canada to be able to ratify the 2000 HNS Protocol to the Oil Pollution Preparedness, Response and Cooperation Convention and to implement an HNS response regime in Canada, the existing response organizations could be adapted to extend incident response to those HNS cargoes regularly carried in bulk. This would allow for economies of scale as much of the equipment required for an oil spill can also serve in case there is an HNS spill. In fact, responding to an HNS spill will often require more training but less equipment than responding to a persistent oil spill.

### The Ship-Source Oil Pollution Fund and HNS

The SOPF was designed to play an important role in funding oil spill response and in making Canada's contributions to the International Oil Pollution Compensation Fund and to the Supplementary Fund.

Suncor submits that the SOPF could play a similar role for HNS cargoes. This is all the more so since the HNS Convention restricts contributions to the HNS Fund to the receivers of bulk HNS cargoes in convention member states. The new legislation will extend the role of the SOPF in directing payments to be made to the HNS Fund as concerns oil cargoes covered by the HNS Convention. Suncor submits that this provision could be further enlarged to include all of Canada's contributions to the HNS Fund. This way, the SOPF could become the Ship-Source Pollution Fund, a fund for ship-sourced spills and fund contributions in general, both under the oil regime and under the HNS Convention.

One major Canadian oil company has in the past resisted the application of SOPF funds to HNS cargoes other than oil, by arguing that the SOPF was originally constituted through contributions from the oil industry and should therefore be restricted to oil spills. Suncor does not share this view and in fact contributions to the SOPF have not been made since the 1970s. Rather, the SOPF has been growing due to interest payments and expanding such resources to both oil and HNS would allow Canada to have an integrated system applicable to all ship-sourced pollutions.

#### Oil Handling Facilities

Suncor owns and operates oil handling facilities across Canada from which ships are loaded or discharged and has noted the new requirements for facility response capacity and planning in Bill C-57. Suncor is proud to confirm that it already meets or exceeds these standards and thus supports the legislative implementation of these new requirements.

Suncor would like to thank the Panel for providing this opportunity to express its opinion with regard to preparedness and response to ship-sourced pollutions. Suncor was unfortunately not able to attend before the Panel this year, but hopes that the opinions expressed in this submission will find favour with the Panel.

We are available, should you require further information and, in the meantime, remain,

Yours truly,



G.A. Fraser  
Director Legal Affairs  
R&M Canada