

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)
the LOUISIANA DEPARTMENT OF)
ENVIRONMENTAL QUALITY)
and the STATE OF WISCONSIN,)
Plaintiffs,)
v.)
MURPHY OIL USA, Inc.,)
Defendant)
_____)

CIVIL ACTION NO. 3:10-cv-00563-bbc

CONSENT DECREE

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- B List of Heaters and Boilers (Combustion Units)
- C Predictive Emissions Monitoring Systems for Heaters and Boilers with Capacities
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- D List of Flaring Devices at the Murphy Refineries
- E Process and Factors for “Commercial Unavailability” of Low-Leaking Valve or
Packing Technology

CONSENT DECREE

WHEREAS, Plaintiff the United States of America (“United States”), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), Co-Plaintiff the Louisiana Department of Environmental Quality (“LDEQ,” “Louisiana” or “Co-Plaintiff”), and Co-Plaintiff the State of Wisconsin (“Wisconsin” or “Co-Plaintiff”) by the Wisconsin Department of Justice, have simultaneously filed a Complaint and lodged this Consent Decree against defendant Murphy Oil USA, Inc. (“Murphy” or “Defendant”) for alleged environmental violations at its refinery located in Superior, Wisconsin (the “Superior Refinery”) and its refinery located in Meraux, Louisiana (the “Meraux Refinery”);

WHEREAS, the United States alleges, upon information and belief, that Murphy has violated and/or continues to violate the following statutory and regulatory provisions:

1) Prevention of Significant Deterioration (“PSD”) requirements found at Part C of Subchapter I of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the “PSD Rules”); and “Plan Requirements for Non-Attainment Areas” at Part D of Subchapter I of the Act, 42 U.S.C. §§ 7502-7503, and the regulations promulgated thereunder at 40 C.F.R. § 51.165(a) and (b) and at Title 40, Part 51, Appendix S, and at 40 C.F.R. § 52.24 (“PSD/NSR Regulations”), for heaters and boilers and fluid catalytic cracking unit catalyst regenerators for nitrogen oxide (“NO_x”), sulfur dioxide (“SO₂”), carbon monoxide (“CO”), and particulate matter (“PM”);

2) New Source Performance Standards (“NSPS”) found at 40 C.F.R. Part 60, Subparts A and J, under Section 111 of the Act, 42 U.S.C. § 7411 (“Refinery NSPS Regulations”), for fuel gas combustion devices, and fluid catalytic cracking unit catalyst regenerators;

3) Leak Detection and Repair (“LDAR”) requirements promulgated pursuant to Sections 111 and 112 of the Act, and found at 40 C.F.R. Part 60 Subparts VV and GGG; 40 C.F.R. Part 61, Subparts J and V; and 40 C.F.R. Part 63, Subparts F, H, and CC (“LDAR Regulations”); and

be calculated from the date payment is due under the Consent Decree through the date of actual payment. For purposes of this Paragraph 234, interest pursuant to this Paragraph will cease to accrue on the amount of any stipulated penalty payment made into an interest bearing escrow account as contemplated by Paragraph 232 of the Consent Decree. Monies timely paid into escrow will not be considered to be an unpaid balance under this Part.

XII. RIGHT OF ENTRY

235. Any authorized representative of EPA or the State of Louisiana or Wisconsin (as applicable), upon presentation of credentials, will have a right of entry upon the premises of the facilities of the Murphy Refineries at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment and systems, and inspecting all records maintained by the Murphy Refineries required by this Consent Decree or deemed necessary by EPA or the Louisiana Department of Environmental Quality or the State of Wisconsin (as applicable) to verify compliance with this Consent Decree. Except where other time periods specifically are noted, the Murphy Refineries will retain such records for the period of the Consent Decree. Nothing in this Consent Decree will limit the authority of EPA or the Louisiana Department of Environmental Quality or the State of Wisconsin (as applicable) to conduct tests, inspections, or other activities under any statutory or regulatory provision.

XIII. FORCE MAJEURE

236. “*Force majeure*,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Murphy, of any entity controlled by Murphy, or of Murphy’s contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Murphy’s best efforts to fulfill the obligation. The requirement that Murphy exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “*Force*

Majeure” does not include Murphy’s financial inability to perform any obligation under this Consent Decree.

237. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a *force majeure* event, Murphy shall provide notice orally or by electronic or facsimile transmission to EPA and the applicable Co-Plaintiff within seven days of when Murphy first knew that the event might cause a delay. Within fourteen days of the seven-day notice required above, Murphy shall provide in writing to EPA and the applicable Co-Plaintiff an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Murphy’s rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Murphy, such event may cause or contribute to an endangerment to public health, welfare or the environment. Murphy shall include with any notice all available documentation supporting the claim that the delay was attributable to a *force majeure*. Failure to comply with the above requirements shall preclude Murphy from asserting any claim of *force majeure* for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Murphy shall be deemed to know of any circumstance of which Murphy, any entity controlled by Murphy, or Murphy’s contractors knew or should have known.

238. With respect to any compliance obligation under this Consent Decree that requires Murphy to obtain a federal, state, or local permit or approval, a delay in the performance of such obligation by Murphy resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, may form the basis for a claim of *force majeure*, provided that Murphy has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

239. If EPA, after consultation with the applicable Co-Plaintiff, agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Consent Decree that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those

obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. Within 45 days of receipt of the written *force majeure* notice and the receipt of any additional information (if necessary) regarding the notice of a *force majeure* event, EPA will notify Murphy in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

240. If EPA, after consultation with the applicable Co-Plaintiff, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Murphy in writing of its decision within 45 days of receipt of the written force majeure notice.

241. If Murphy elects to invoke the dispute resolution procedures set forth in Section XIV (Retention of Jurisdiction/Dispute Resolution), it shall do so no later than 14 days after receipt of EPA's notice. In any such proceeding, Murphy shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Murphy complied with the requirements of Paragraphs 236 and 237. If Murphy carries this burden, the delay at issue shall be deemed not to be a violation by Murphy of the affected obligation of this Consent Decree identified to EPA and the Court.

XIV. RETENTION OF JURISDICTION/DISPUTE RESOLUTION

242. This Court will retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of the Consent Decree and for the purpose of adjudicating all disputes of the Consent Decree between the United States and the Co-Plaintiffs, and Murphy that may arise under the provisions of the Consent Decree, until the Consent Decree terminates in accordance with Part XVII of this Consent Decree.

243. The dispute resolution procedure set forth in this Part XIV will be available to resolve any and all disputes arising under this Consent Decree, provided that the Party making such application has made a good faith attempt to resolve the matter with the other Party.

244. The dispute resolution procedure required herein will be invoked upon the giving of written notice by one of the Parties to this Consent Decree to another advising the other appropriate Party(ies) of a dispute pursuant to this Part XIV. The notice will describe the nature of the dispute, and will state the noticing Party's position with regard to such dispute. The Party or Parties receiving such notice will acknowledge receipt of the notice and the Parties will expeditiously schedule a meeting to discuss the dispute informally.

245. Disputes submitted to dispute resolution will, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations will not extend beyond ninety (90) calendar days from the date of the first meeting between representatives of the Parties, unless the Parties agree in writing that this period should be extended. Failure by the parties to extend the informal negotiation period in writing will not terminate the informal negotiation period provided that the parties are continuing to negotiate in good faith.

246. Informal negotiations will cease upon either:

- a. Murphy's submission of a request to the United States and the applicable Co-Plaintiff of a written summary of its/their position regarding the dispute; or
- b. the United States' and/or the applicable Co-Plaintiff's submission to Murphy of a written summary of its/their position.

247. Under the circumstances of Paragraph 246.a, if the United States and/or the applicable Co-Plaintiff responds to Murphy's request within sixty (60) days of receipt, then the position advanced by the United States and/or the applicable Co-Plaintiff will be considered binding unless, within sixty (60) calendar days of Murphy's receipt of the written summary, Murphy files with the Court a petition which describes the nature of the dispute. The United States or the applicable Co-Plaintiff will respond to the petition within sixty (60) days of filing. In resolving a dispute between the Parties under these circumstances, the position of the United States and the applicable Co-Plaintiff will be upheld if supported by substantial evidence in the administrative record, which may be supplemented for good cause shown.

248. Under the circumstances of Paragraph 246.a, if the United States and/or the applicable Co-Plaintiff do not respond to Murphy's request for a written summary within sixty (60) days of receipt, then Murphy will file with the Court a petition which describes the nature of the dispute within one-hundred five (105) days after submitting the initial request to the United States and the applicable Co-Plaintiff. Applicable principles of law will govern the resolution of the dispute.

249. Under the circumstances of Paragraph 246.b, the position advanced by the United States and/or the applicable Co-Plaintiff will be considered binding unless, within sixty (60) calendar days of Murphy's receipt of the written summary, Murphy files with the Court a petition which describes the nature of the dispute. The United States or the applicable Co-Plaintiff will respond to the petition within sixty (60) days of filing. In resolving a dispute between the Parties under these circumstances, the position of the United States and the applicable Co-Plaintiff will be upheld if supported by substantial evidence in the administrative record, which may be supplemented for good cause shown.

250. In the event that the United States and the applicable Co-Plaintiff make differing determinations or take differing actions that affect Murphy's rights or obligations under this Consent Decree, the final decisions of the United States will take precedence.

251. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set forth in this Part XIV may be shortened upon motion of one of the Parties to the dispute.

252. The Parties do not intend that the invocation of this Part XIV by a Party cause the Court to draw any inferences nor establish any presumptions adverse to either Party as a result of invocation of this Part.

253. As part of the resolution of any dispute submitted to dispute resolution, the Parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. Murphy will be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.