



TULANE ENVIRONMENTAL LAW CLINIC

April 3, 2012

Via E-mail (jackson.lisa@epa.gov)
and Certified Mail (No.7007 0220 0004 7786 8206)
Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Second Petition to the Administrator to Object to the Title V Operating Permit Modification No. 2500-00001-V5 Issued to Murphy Oil, USA, Meraux Refinery

THIS PETITION SUPERCEDES AND REPLACES THE APRIL 2, 2012 PETITION
SUBMITTED ON BEHALF OF CONCERNED CITIZENS AROUND MURPHY

Dear Administrator Jackson:

This Petition on behalf of Concerned Citizens Around Murphy (“Concerned Citizen”) asks the Environmental Protection Agency (“EPA”) to object to the Title V operating permit No. 2500-00001-V5 (“Permit”) that the Louisiana Department of Environmental Quality (“LDEQ”) issued on October 15, 2009 to Murphy Oil, USA for the Meraux Refinery (now owned by Valero). This Petition incorporates in full the previous petition that Concerned Citizens submitted on December 10, 2009, upon which EPA based its September 21, 2011 Order Granting in Part and Denying in Part that petition (“Order”).

Because LDEQ had already issued the Permit “prior to receipt of an objection by the Administrator,” “the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c) of [Title V].” 42 U.S.C. § 7661d(b)(3). Subsection (c) required the Administrator to issue or deny the permit if “the permitting authority fail[ed], within 90 days after the date of an objection . . . to submit a permit revised to meet the objection.” 42 U.S.C. § 7661d(c). LDEQ failed to issue a revised permit that satisfies EPA’s objections in its September 21, 2011 Order. La. Admin. Code tit. 33 III § 533.E.4 (“If the permitting authority has issued a permit prior to receipt of an EPA objection under this Subsection, the administrator will modify, terminate, or revoke such permit, and the permitting authority may thereafter issue only a revised permit that satisfies EPA’s objection.”).

Concerned Citizens files this petition within 60 days following the end of EPA’s 45-day review period following LDEQ’s response to EPA’s Objection, dated December 21, 2011

Tulane Environmental Law Clinic

6329 Freret St., Ste. 130, New Orleans, LA 70118-6231 tel/ 504.865.5789 fax 504.862.8721 www.tulane.edu/~telc

(“Response”) as authorized by Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

FACTUAL BACKGROUND

Murphy Oil¹ submitted a Significant Source Modification Application (“application”) to LDEQ in February 2009 to construct and operate a benzene saturation unit (“BenFree Unit”) at its Meraux Refinery. LDEQ submitted the Permit to the Administrator for review on or about June 1, 2009, triggering EPA’s 45-day review period as required by CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2). Subsequently, EPA restarted the clock for the 45-day review period, with the period ending October 10, 2009. On October 15, 2009, LDEQ issued the Permit to the facility.

Concerned Citizens submitted a petition to the Administrator on December 10, 2009, within the 60-day period pursuant to CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2). On September 21, 2011, the Administrator signed the Order granting in part and denying in part the Petition for objection to the Permit. Among other reasons, the Order grants Concerned Citizen’s earlier petition on the issue of emergency flaring emissions, directing LDEQ to provide an adequate explanation for its decision to exclude emissions from emergency flaring from its netting analysis. On December 20, 2011, LDEQ submitted its response to the Administrator’s objections.

OBJECTIONS

EPA must object to the Permit because LDEQ has not shown that the facility’s emissions will not trigger PSD requirements. PSD, or Prevention of Significant Deterioration, is a program within New Source Review that protects a geographic area that attains Clean Air Act air quality standards for a regulated air pollutant.² Any “significant” net increase in emissions of an attainment pollutant from a modification of an existing stationary source triggers PSD requirements.³ Because the Meraux Refinery is an existing stationary source, LDEQ is required to determine whether there will be a “significant” net increase in emissions from this modification.

In calculating whether a modification will result in a significant emissions increase, the permitting authority must determine each new and modified unit’s “potential to emit” (PTE) the regulated pollutants of concern.⁴ In Murphy Oil’s initial permit application, Murphy only

¹ On September 30, 2011, Murphy transferred ownership to Valero Refining-Meraux, LLC. The Petitioner recognizes the transfer, but will continue to refer to the facility as Murphy Oil to remain consistent with the captioning of the case.

² See LAC 33:III.509 (included in Louisiana State Implementation Plan (“SIP”), which is a set of Louisiana statutes and regulations implementing the Clean Air Act).

³ *Id.*

⁴ For existing emissions units, the Louisiana SIP allows a source to use “projected actual emissions” (defined in LAC 33:III.509.B) rather than PTE. Because Murphy Oil opted to use PTE, see Final Permit p. 9.

included routine releases to the North Flare, which are part of its normal operations. However, the netting calculations should have included emergency emissions, unless these emergency emissions are subject to legally and practically enforceable limits.

EPA objected to the Permit in part because “LDEQ did not provide an adequate permit record concerning whether the [BenFree Unit] project would result in a significant increase in emissions of a regulated NSR pollutant.” Order at 7. EPA explained that because the record did not “point specifically to any prohibition or limit that LDEQ believes applies to the emergency flaring emissions,” it found that the record failed “to provide an adequate basis and rationale for LDEQ’s determination that PSD did not apply to this project.” *Id.* Thus, EPA ordered LDEQ to review its determination and the record and “better explain its determination” that PSD did not apply. *Id.*

In its response, LDEQ maintained that PSD was inapplicable, but contrary to EPA’s order, failed to provide an “adequate basis and rationale” for its determination. LDEQ stated that emissions from the North Flare were “limited . . . by ‘legally and federally enforceable’ means,” but failed to identify any “legally and federally enforceable means” by which these emissions could be limited. Response at 11. Rather, LDEQ pointed to criteria pollutant limitations in tons per year and noted that “emissions in excess of the limitations set forth in [the Permit] are prohibited.” *Id.* at 11-12. *Id.* Blanket emissions limitations, however, do not limit these emergency flaring emissions by “legally and federally enforceable” means. *See United States v. Louisiana Pacific Corporation*, 682 F. Supp. 1122, 1133 (D. Colo. 1987) (finding blanket restrictions of emissions do not properly limit a source’s potential to emit).⁵ However, LDEQ has done just that. It provided a blanket restriction on actual emissions.

As here, EPA has previously objected to operating permits that omit emissions from flares. EPA objected to a Title V permit for the BP Whiting Refinery because the state permitting agency did not include flaring emissions in its potential to emit calculation.⁷ EPA noted that “the State intended to prohibit all emissions from the new and existing flares . . . to obviate the need to account for such emissions in the potential to emit (PTE) calculation.”⁸ However, EPA objected to this omission because the permitting agency did not show that it “placed a prohibition on such emissions that is legally and practically enforceable.”⁹

In 2002, EPA clarified its definition of what constitutes legal and practical enforceability.¹⁰ A permit is practically enforceable if the permit provides “(1) A technically-accurate limitation

⁵ *See also Limiting Potential to Emit (PTE) In New Source Review (NSR) Permitting*, EPA, (Feb. 11, 2011), <http://www.epa.gov/reg3artd/permitting/limitPTEmmo.htm> (citing the *Louisiana-Pacific Corp.* case and its reasoning).

⁷ *In re BP Products North America, Inc.*, Order Responding to Petitioner's Request that the Administrator Object to Issuance of State Operating Permit, Permit No. 089-254880-453, at 7 (Oct. 16, 2009).

⁸ *Id.*

⁹ *Id.*

¹⁰ Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide

and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting.”¹¹ EPA also explained that a permit must be federally enforceable, which requires that it not only be practically enforceable, but also, “EPA must have a direct right to enforce restrictions and limitations imposed on a source.”¹² Finally, EPA explained that when calculating baseline actual emissions to determine NSR applicability, the permitting agency “must consider ‘legally enforceable’ requirements.”¹³ A legally enforceable requirement is one in which “the Administrator, State, local or tribal air pollution control agency has the authority to enforce the requirement irrespective of its practical enforceability.”¹⁴

LDEQ further contends that “all terms and conditions in a Part 70 permit are enforceable by EPA and citizens under the Act,” and that “noncompliance constitutes a violation . . . and is grounds for enforcement action.” Response at 11. LDEQ explained in a footnote that it would consider in an enforcement action

the good faith efforts of the permittee to minimize emissions . . . [and] whether the source’s failure to comply with the emission limitation was, in fact, due to a ‘sudden and unavoidable failure’ or was instead ‘caused entirely or in part by poor maintenance, careless operation, or any preventable upset condition or preventable equipment breakdown.’

Id. at n. 37. LDEQ skipped a step. In order to enforce a source’s emissions violation, there must be an enforceable limit on that emissions source.

Additionally, LDEQ stated that emissions from the North Flare “will be eliminated by the flare gas recovery system required by” an earlier consent decree. Response at 11, n. 36. However, LDEQ is addressing a future installation. LDEQ must account for emissions that the plant has the potential to emit at the time that it issues the permit. It cannot rationalize that one day those emissions will be controlled and therefore need not be counted.

Furthermore, LDEQ offers no explanation as to how the flare gas recovery system will eliminate these emergency emissions, nor is there any evidence that this system has been installed. Furthermore, LDEQ fails to address the fact that “by definition, some emergency releases are ‘unavoidable’ and ‘beyond the control of the owner and operator.’” Petition at 13. A flare gas recovery system is able to control, but not eliminate, emergency releases. A recovery system is designed to capture and compress gases, and then send the compressed gases to the fuel gas system, where they are mixed with natural gases and used for fuel.

Applicability Limitations, Clean Units, Pollution Control Projects, 40 CFR 51 & 52 (Dec. 31, 2002).

¹¹ *Id.*

¹² *Id.* (internal quotations and citations omitted).

¹³ *Id.*

¹⁴ *Id.*

Moreover, a recovery system typically is only able to reduce emergency releases by sending some of the released gas back to the refinery, where it will be converted into fuel gas to be used in heaters and boilers. Unless the recovery system is large enough, it will be unable to completely eliminate these releases. Additionally, in the event of an emergency requiring a complete shutdown of the refinery, the recovered releases will have no place to go, thereby forcing the release of the gases.

Reliance on a hypothetical flare gas recovery system is not a “federally enforceable or legally and practicably enforceable”¹⁹ means to limit emissions. As the United States Court of Appeals for the Second Circuit explained, “[e]mission limits must be ‘federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.’”²⁰ No federal, state, or local air pollution control agency is able to enforce a hypothetical flare gas recovery system.

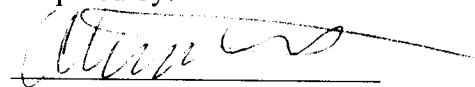
LDEQ fails to address any of these realities in its response. Rather, LDEQ’s response focuses on the legal *ends*, not the legal *means*, and a hypothetical flare gas recovery system that, even if it were in existence, would be unable to eliminate these emissions. Thus, LDEQ failed to provide legally and practicably enforceable means justifying its belief that emergency emissions should not be included in the netting analysis.

Because there are no legally and practicably enforceable means to limit the emissions releases from the North Flare, the Permit is unlawful because it excludes these emissions from its netting analysis. Without a complete netting analysis, LDEQ cannot make the determination that the BFU project does not trigger PSD review. Thus, EPA must object to this Permit.

CONCLUSION

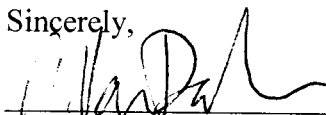
For the reasons set forth above, Concerned Citizens asks that the Administrator deny the Title V operating Permit No. 2500-00001-V5 for Murphy Oil.

Prepared by:



Abigail Legge, Law Student
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118
E-mail: alegge@tulane.edu

Sincerely,



Corinne Van Dalen, La. Bar No. 21175
Staff Attorney
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118
Phone: (504) 865-8814
Fax: (504) 862-8721
E-mail: cvandale@tulane.edu
Counsel for Concerned Citizens Around Murphy

¹⁹ *Weiler v. Chatham Forest Prod., Inc.*, 392 F.3d 532, 535 (2d Cir. 2004).

²⁰ *Id.*

Cc:

Peggy Hatch, Secretary
Louisiana Department of Environmental Quality
P.O. Box 4301
Baton Rouge, LA 70821-4301

Mark F. Scobel, Refinery Manager
Valero Refining – Meraux LLC
1615 E. Judge Perez Dr.
Chalmette, LA 70043-5660