

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

| | | |
|---------------------------|---|------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| STATE OF WISCONSIN, |) | |
| |) | |
| Plaintiff-Intervenor, |) | |
| |) | |
| v. |) | Case Number 00-C-409-C |
| |) | |
| MURPHY OIL USA, INC., |) | |
| |) | |
| Defendant. |) | |

**NOTICE OF LODGING OF PROPOSED CONSENT DECREE PENDING
SOLICITATION OF PUBLIC COMMENT BY U.S. DEPARTMENT OF JUSTICE**

The United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“U.S. EPA”), hereby notifies the Court that the United States is lodging with the Court a proposed Consent Decree pursuant to 28 C.F.R. § 50.7. As discussed further below, the Consent Decree resolves specific allegations and claims of the United States and the State of Wisconsin against Defendant Murphy Oil USA, Inc. (“Defendant” or “Murphy Oil”), and specific violations found by this Court.

I. Overview

The United States filed a Complaint and an Amended Complaint in this Court

against Murphy Oil for injunctive relief and the assessment of civil penalties for violations of various federal statutes and applicable federal and state regulations implementing those statutes, including the Clean Air Act, as amended, 42 U.S.C. §§ 7401 to 7671q (“CAA”), the Clean Water Act, as amended, 33 U.S.C. §§ 1251 to 1387 (“CWA”), Subchapter III of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6921 to 6939e (“RCRA”), and the Emergency Planning and Community Right-To-Know Act (“EPCRA”), 42 U.S.C. §§ 11001 to 11050. Murphy Oil filed Answers to the Complaint and to the Amended Complaint contesting the alleged violations and raising several affirmative defenses.

In its Opinions and Orders issued on May 18, May 24, May 25, June 5, June 6, June 11, and July 31, 2001, as amended, the Court found Murphy Oil liable for the violations set forth in the United States’ sixth claim (“LDAR”), seventh, eighth and ninth claims (“CWA-NPDES”), and fourteenth, fifteenth (in part), seventeenth and eighteenth claims (“RCRA”), and dismissed other claims of the United States. The Court conducted a ten-day trial on most of the remaining claims and affirmative defenses during June 7-20, 2001. On August 1, 2001, the Court found Murphy liable for the violations set forth in the United States’ first, second, and third claims relating to the CAA’s Prevention of Significant Deterioration (“PSD”) program, fourth claim relating to the CAA’s New Source Performance Standards, tenth, eleventh, twelfth and thirteenth claims relating to the CWA’s Spill Prevention Control and Countermeasure requirements, and dismissed the remaining part of the fifteenth claim relating to

RCRA.

In the proposed Consent Decree, Murphy Oil specifically acknowledges the Court's findings of liability for violations of the CAA, CWA, and RCRA, and, while it disputes the Court's findings for a number of legal and factual reasons, in the interests of settlement of the litigation, it relinquishes its right to appeal the Court's Opinions and Orders issued in this case.

On June 29, 2000, the State of Wisconsin filed a related case in this Court entitled *State of Wisconsin, Dept. of Natural Resources. v. Murphy Oil USA, Inc.*, Case No. 00-C-408-C, which this Court dismissed in an Opinion and Order dated October 25, 2000. Consequently, the State of Wisconsin subsequently filed another case in the Circuit Court for Douglas County, Wisconsin entitled *State of Wisconsin v. Murphy Oil, USA, Inc.*, Case No. 00-CV-386, alleging similar CAA and RCRA violations as well as State law claims. The Circuit Court for Douglas County dismissed a number of the State's CAA claims in an Order dated May 23, 2001, and accepted the State of Wisconsin's voluntary dismissal of the remainder of its claims, without prejudice, in an Order dated July 19, 2001.

To facilitate a settlement of both the United States' and the States' claims against Murphy Oil, Plaintiff-Intervenor, State of Wisconsin, has filed a Complaint in Intervention in this case alleging violations of State law at Defendant's Refinery, which intervention the United States and the Defendant will not oppose in the interest of resolving the specific allegations, claims, and violations of environmental laws.

II. Summary of Proposed Consent Decree

A. Injunctive Relief for Violations of Environmental Laws

The Parties have negotiated the proposed Consent Decree in good faith to resolve the violations alleged by the United States and the State, and as previously found by the Court, prior to the Court taking further evidence regarding the appropriate injunctive relief and civil penalties the Court should award. The Parties believe that the proposed Consent Decree is a reasonable and fair settlement of the claims alleged in the United States' and State's Complaints and the violations found by the Court, and that the proposed Consent Decree adequately protects the public interest and is in accordance with the CAA, CWA, RCRA, and all other applicable federal and State laws and regulations.

The proposed Consent Decree requires Murphy Oil to undertake the following measures at the Refinery to remedy its past violations of various environmental laws. For injunctive relief to remedy its violations of the CAA's PSD provisions, Murphy Oil will: (1) apply for and obtain a PSD permit from the Wisconsin Department of Natural Resources ("WDNR") that includes an analysis of the Best Available Control Technology ("BACT") necessary to control the sulfur dioxide ("SO₂") emissions from the sulfur recovery unit ("SRU"); (2) no later than January 1, 2003, install and operate a tail gas treatment unit on its SRU; (3) no later than March 1, 2003, comply with an SO₂ emission limitation of 150 ppmvd SO₂ at 0% oxygen, based on a 24-hour rolling average, when the sulfur input rate to the SRU meets or exceeds 5 long tons per day; (4) submit proposed and as-built plans detailing the installation of any equipment required by Sections IV.A., IV.B, and V of the proposed Consent Decree;

and (5) install a Low NOx burner in its new SRU tail gas combustor that is designed to achieve a NOx emission rate no higher than 0.05 pounds NOx/mmBTU heat input.

For injunctive relief to remedy its violations of the CAA's New Source Performance Standards for SRUs, Murphy Oil will: (1) no later than March 1, 2003, comply with 40 C.F.R. Part 60, NSPS Subparts A and J, including but not limited to the monitoring, record keeping, reporting, and operating requirements; (2) no later than January 1, 2003, install and operate the pollution control equipment/measures necessary to limit emissions of SO₂ from its SRU the level required by 40 C.F.R. § 60.104(a)(2); (3) no later than March 1, 2003, comply with the applicable SRU tail gas emission limitation for SO₂ of 250 ppmvd SO₂ at 0% oxygen, based on a 12-hour rolling average, as required by 40 C.F.R. § 60.104(a)(2); and (4) no later than January 1, 2003, submit to U.S. EPA and WDNR a plan, implemented or to be implemented no later than March 1, 2003, for good maintenance and operation of its SRU, its tail gas treatment unit, any other supplemental control devices/measures, and the appropriate process units upstream from the SRU.

For injunctive relief to remedy its violations of the CAA's LDAR requirements and to improve its LDAR program, Murphy Oil will, for a period of five years: (1) develop and implement a written refinery-wide LDAR program with the goal of minimizing volatile organic compound ("VOC") emissions from refinery valves and pumps; (2) monitor all refinery valves quarterly and specified pumps monthly; (3) repair valves with leak rates of 500 ppm and greater and repair pumps with leak rates of 2,000 ppm and greater; (4) provide LDAR training to its employees and contractors;

(5) develop and implement a procedure to ensure a quality assurance/quality control review of all data generated by LDAR monitoring technicians, including but not limited to review of the contractor's monitoring data; (6) retain an independent contractor to perform third-party audits of all refinery valves, remedy any areas of noncompliance, and submit the audit reports to U.S. EPA and WDNR; (7) initiate a first attempt at repairing valves when leaks rates are at 100 ppm; (8) undertake its "best efforts" to repair valves with leak rates of 10,000 ppm and greater; and (9) maintain records and reports of monitoring and other activities required under the LDAR program.

For injunctive relief to remedy its violations of the CWA's Spill Prevention and Control and Countermeasure ("SPCC") requirements, Murphy Oil will: (1) submit to U.S. EPA and WDNR accurate measurements from an independent, registered surveyor or registered professional engineer that measure the actual capacity of the secondary containment areas for Tanks 21, 22, 23 and 57; (2) revise its SPCC Plan to reflect the actual secondary containment capacities if the Tank secondary containment areas are different from the measurements in Murphy Oil's SPCC Plan; (3) no later than May 1, 2002, increase the secondary containment capacity for any Tank that is less than that required by 40 C.F.R. § 112.7(e)(2)(ii); and (4) have any revision to its SPCC Plan certified by an independent, registered professional engineer pursuant to 40 C.F.R. § 112.3(d).

As Murphy Oil's RCRA violations were not continuing in nature and/or the company appears to have remedied the RCRA violations found by the Court, no

injunctive relief is currently necessary. Similarly, Murphy Oil's CWA-NPDES violations for its expired NPDES permit were not continuing; and consequently, no injunctive relief is necessary.

B. Civil Penalties for Violations of Environmental Laws

The proposed consent decree also requires Murphy Oil to pay a civil penalty of \$5.5 million to the United States and the State of Wisconsin within thirty days from the entry date of the proposed Consent Decree. To partially mitigate the civil penalty for the CAA violations found by the Court, Murphy Oil has also agreed to perform, for a period of five years, the following two supplemental environmental projects ("SEPs")¹: (1) reduce the burning of fuel oil in the refinery's process heaters and boilers; and (2) use a sulfur oxide ("SO_x ") transfer catalyst at the refinery's Fluid Catalytic Cracking Unit ("FCCU"). Based on Murphy Oil's specific representations, U.S. EPA has determined that the proposed SEPs satisfy the criteria set forth in U.S. EPA's SEP Policy.

For the reduction in fuel oil burning SEP, Murphy Oil will reduce its use of high sulfur fuel oil in the refinery's process heaters and boilers to meet an SO₂ emission limitation of 33.3 tons per month, averaged over a rolling 12-month period. This will reduce Murphy Oil's actual SO₂ emissions from its process heaters and boilers by 400 tons per year beyond legal requirements.

¹ A SEP is an environmentally beneficial project which a defendant agrees to undertake in settlement of an enforcement action, but which the defendant is not otherwise legally required to perform. The criteria for permissible SEPs are set forth in *EPA's Revised Supplemental Environmental Projects Policy* issued May 1, 1998 ("SEP Policy").

For the FCCU SEP, Murphy Oil will use a SO_x transfer catalyst at its FCCU to reduce SO₂ emissions from the FCCU to no greater than 34.7 tons per month, averaged over a rolling 12-month period. This will result in further reductions of SO₂ emissions from the refinery of approximately 180 tons per year beyond legal requirements.

III. Conclusion

The Court should not yet sign the proposed Consent Decree; rather, the proposed Consent Decree should remain lodged with the Court while the United States provides an opportunity for public comment. *See* 28 C.F.R. § 50.7. The Department of Justice will publish in the Federal Register a Notice informing the public that the proposed Consent Decree has been lodged with the Court, and solicit public comment for a period of thirty days. During the comment period, no action is required of the Court. After the close of the comment period, the United States will evaluate the comments received, if any, and advise the Court whether the United States requests entry of the Consent Decree.

Dated this ____ day of January, 2002.

Respectfully submitted,

GRANT C. JOHNSON
United States Attorney
Western District of Wisconsin

By:

LESLIE K. HERJE
Assistant United States Attorney
660 W. Washington Ave., Suite 200
P.O. Box 1585
Madison, WI 53701-1585
(608) 264-5158

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

DRENAYE HOUSTON
Senior Trial Attorney
ESPERANZA ANDERSON
KEVIN LYSKOWSKI
Trial Attorneys
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 514-5415

OF COUNSEL:

JOSE DELEON
Assistant Regional Counsel
US EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60604