

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
 Plaintiff,)
)
 and the STATES OF LOUISIANA;)
 INDIANA; ILLINOIS; KANSAS; OHIO;)
 MISSISSIPPI; IOWA; ALABAMA;)
)
 Plaintiff-Intervenors,)
)
 v.)
)
 BUNGE NORTH AMERICA, INC.,)
 BUNGE NORTH AMERICA (EAST), L.L.C.,)
 BUNGE NORTH AMERICA (OPD WEST),)
 INC., AND)
 BUNGE MILLING, INC.)
)
 Defendants.)
)

CIVIL ACTION NO.
 2:06-CV-02209-MPM-DGB
 The Honorable
 Michael P. McCuskey

FIRST MATERIAL MODIFICATION TO CONSENT DECREE

General Background

A. The United States of America, on behalf of the U.S. Environmental Protection Agency ("EPA"), the States of Louisiana, Indiana, Illinois, Kansas, Ohio, Mississippi, Iowa and Alabama, and the Defendants, Bunge North America, Inc. ("Bunge"), Bunge North America (East), L.L.C. ("Bunge East"), Bunge North America (OPD West), Inc. and Bunge Milling, Inc., are parties to a Consent Decree entered by the United States District Court for

the Central District of Illinois on January 16, 2007, Civil Action Number 2:06-CV-02209 (hereinafter "the Consent Decree").

B. Paragraph 103 of the Consent Decree provides as follows: "There shall be no modification of this Consent Decree without written agreement of the Appropriate Plaintiffs and the Appropriate Defendant(s). There shall be no material modification of this Consent Decree without the written agreement of the Appropriate Plaintiffs and the Appropriate Defendant(s) and by Order of the Court."

C. This First Material Modification to Consent Decree (the "First Decree Modification") affects compliance obligations at Bunge's Cairo, Illinois and Destrehan, Louisiana solvent extraction plants and Bunge East's Decatur, Indiana and Delphos, Ohio soybean solvent extraction plants, so the Appropriate Plaintiffs for purposes of this modification are the United States, the State of Illinois, the State of Louisiana, the State of Indiana, and the State of Ohio, and the Appropriate Defendants are Bunge and Bunge East. Because this is a material modification, notice and comment and Court approval are required.

D. The parties believe the changes made by this First Decree Modification comply with the requirements of the Consent Decree.

Overview of Modifications Regarding
Volatile Organic Compound Emission Controls

E. As required by Paragraph 32 of the Consent Decree, on April 23, 2007, Defendants submitted final volatile organic compound ("VOC") solvent loss ratio ("SLR") limits for Defendants' eleven soybean solvent extraction plants.

F. As required by Paragraph 34 of the Consent Decree, on October 12, 2007, the Plaintiffs approved Defendants' proposed final VOC SLR limits for Defendants' eleven soybean extraction plants, including a limit of 0.19 gallons per ton ("gal/ton") for Bunge's Destrehan, Louisiana facility (the "Destrehan Facility").

G. In February 2008, the Defendants requested that the Plaintiffs agree to adjust the Destrehan Facility's VOC SLR limit to 0.20 gal/ton.

H. Bunge has agreed to make certain improvements to the desolventizer-toaster at its Destrehan Facility to decrease solvent loss at that facility, as specified below. Those improvements include changes made during the Facility's summer 2009 shutdown to: (1) modify the existing counter current flow chutes; (2) install additional counter current flow chutes; and (3) install an independent soybean oil stripper condenser steam ejector.

I. In addition, Bunge has agreed to amend its pending Title V permit application for the Destrehan Facility to take certain annual limits on its VOC emissions as part of its Title V permit, as specified below.

J. Bunge also has agreed to make additional improvements to control solvent loss by installing a new, replacement desolventizer-toaster at its Cairo, Illinois facility (the "Cairo Facility"), as specified below.

K. This First Decree Modification will not alter the Defendants' existing and ongoing obligation to comply with a final VOC limit of 0.175 gal/ton on a company-wide capacity-weighted average basis for its soybean solvent extraction plants, as required by the Consent Decree (see Consent Decree ¶ 36.c, and Attachment A to the Consent Decree). The Defendants represent that they have maintained continuous compliance with that obligation since entry of the Consent Decree. The Defendants also represent that the Cairo and Destrehan facilities have complied with the Vegetable Oil MACT since the entry of the Consent Decree.

Overview of Modifications Regarding
Additional Emission Controls at the Cairo Facility

I. Among other things, the Control Technology Plan for the Cairo Facility (Attachment B to the original Consent Decree) required Bunge to: (1) equip Coal Boiler No. 1 with a

particular type of innovative technology -- known as the Phenix Technology -- to reduce emissions of certain pollutants from the boiler; and (2) evaluate and, if appropriate, implement alternative control technologies if certain emission reduction targets were not met using the Phenix technology. Coal Boiler No. 1 was equipped with the Phenix technology, but it was not successful in achieving the emission reduction targets and that boiler is no longer operating. The parties have agreed to resolve potential disagreements regarding the use of the Phenix technology and/or Alternative Technologies by devising other boiler emission control requirements for the Cairo Facility, as specified below.

M. Bunge has agreed to reduce emissions from Coal Boiler No. 2 at the Cairo Facility to no more than 1.6 pounds of sulfur dioxide per million British thermal units of heat input ("lb SO₂/mmBTU").

Overview of Modifications Regarding
Substitutes for Boiler MACT Requirements

N. Subparagraphs 23.b and 28.b of the Consent Decree required that Bunge East begin compliance with the National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (the "Boiler MACT") - codified at 40 C.F.R. 63 Subpart DDDDD - at its Decatur, Indiana and Delphos, Ohio facilities by December 31,

2006. Among other things, the Boiler MACT imposed limits on emissions of certain pollutants from affected boilers and heaters, including emission limits for particulate matter, hydrogen chloride, and mercury. For existing sources, EPA's Boiler MACT regulations established a September 17, 2007 compliance date.

O. On June 7, 2007, the United States Court of Appeals for the District of Columbia Circuit issued a decision vacating and remanding the Boiler MACT in *NRDC v. EPA*, 489 F.3d 1250 (D.C. Cir. 2007).

P. In light of, among other things, the court of appeals ruling vacating the Boiler MACT, this First Decree Modification: (1) deletes the Decree provisions requiring Bunge East's early compliance with the Boiler MACT at its Decatur, Indiana and Delphos, Ohio facilities; and (2) substitutes alternative projects that will reduce air pollutant emissions and wastewater discharges from the Decatur and Delphos facilities. This First Decree Modification shall not affect Defendants' obligations to comply with any repromulgated Boiler MACT requirements in accordance with the compliance schedule established by any newly-issued regulations.

NOW THEREFORE, the United States, the State of Illinois, the State of Louisiana, the State of Indiana, the State of Ohio,

and Bunge and Bunge East hereby agree that the Consent Decree shall be modified as follows:

Volatile Organic Compound Emission Controls

1. New Subparagraph 36.e is added to the Consent Decree as follows:

e. Notwithstanding any other provision of this Consent Decree, upon entry of the First Decree Modification, Bunge shall comply with a final VOC SLR limit of 0.20 gal/ton at the Destrehan, Louisiana soybean solvent extraction plant. The first compliance determination for that final VOC SLR limit will be based on the 12 calendar months of operating data preceding the date of entry of the First Decree Modification. Pursuant to Consent Decree Subsection IV.E (Permits), by no later than 30 days after the date of entry of the First Decree Modification, Bunge shall apply for a federally-enforceable permit that incorporates the 0.20 gal/ton final VOC SLR limit as well as a 12-month rolling average limit of 726.6 tons of VOC emitted from the facility and a 12-month rolling average limit of 1,297,500 tons of crush at the facility. Bunge shall thereafter take any other steps that are necessary to ensure that such limits are incorporated into the facility's Title V operating permit.

Additional Emission Controls at the Cairo Facility

2. The existing text of Paragraph 14 of the Consent Decree is stricken and replaced with the following:

14.a. Commencing on January 1, 2011, the emissions of sulfur dioxide from the Cairo Facility's Coal Boiler No. 2 shall not exceed 1.6 lb SO₂/mmBTU of actual heat input from burning solid fuel in any one hour period. Compliance with that limit shall be determined on a monthly basis in accordance with 35 IAC 214.101(e). Pursuant to Consent Decree Subsection IV.E (Permits), Bunge shall apply for a federally-enforceable permit that incorporates the

1.6 lb SO₂/mmBTU emission limit for Coal Boiler No. 2. Bunge shall take any other steps that are necessary to ensure that such limit is incorporated into the facility's Title V operating permit.

14.b. During the Cairo Facility's summer 2009 shutdown, Bunge installed a new desolventizer-toaster for VOC control. Bunge shall operate the new desolventizer-toaster to, among other things, control VOC emissions from the Cairo Facility starting no later than September 1, 2009.

3. The new requirements imposed by replacement Paragraph 14, as set forth above, shall supersede and replace all requirements in Attachment B to the Consent Decree (entitled "Control Technology Plan for Bunge's Cairo, Illinois Conventional Soybean Plant") relating to: (1) the Phenix technology project; and (2) potential Alternative Technologies for reducing pollutant emissions from the coal boilers at the Cairo Facility. The sulfur dioxide emission limit for Coal Boiler No. 2 that is imposed by replacement Subparagraph 14 shall also supersede and replace the Operational Limits for Coal Boiler No. 2 that are specified by Section 10.3 of Attachment B to the Consent Decree.

Substitutes for Boiler MACT Requirements

4. The existing text of Paragraph 23 of the Consent Decree is stricken and replaced with the following:

23.a. In accordance with the Decatur, Indiana CTP, Bunge East shall complete the following emission reduction project on or before December 31, 2006:

install a bag filter on the coal boiler(s) to reduce PM/PM₁₀ emissions.

23.b. During the summer 2011 annual shutdown of the Decatur, Indiana facility, Bunge East shall implement a project to reduce air pollutant emissions and wastewater discharges associated with its use of steam in the facility's soybean extraction process. More specifically, Bunge East shall install equipment that is designed to capture and recycle the vast majority of the hot water that is condensed from its use of steam so that it will be re-used as steam in the facility's extraction system, rather than being discharged as wastewater. Bunge East shall commence and continue operation of that new steam reheating system at the Decatur, Indiana facility by no later than December 31, 2011.

5. The existing text of Subparagraph 28.b of the Consent Decree is stricken and replaced with the following:

28.b. During the summer 2011 annual shutdown of the Delphos, Ohio facility, Bunge East shall implement a project to reduce air pollutant emissions and wastewater discharges associated with its use of steam in the facility's soybean extraction process. More specifically, Bunge East shall install equipment that is designed to capture and recycle the vast majority of the hot water that is condensed from its use of steam so that it will be re-used as steam in the facility's extraction system, rather than being discharged as wastewater. Bunge East shall commence and continue operation of that new steam reheating system at the Delphos, Ohio facility by no later than December 31, 2011.

General Provisions

6. Effective Date. The Effective Date of this First Decree Modification shall be the date upon which this First Decree Modification is entered by the Court or a motion to enter

the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

7. Public Comment.

a. This First Decree Modification shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the First Decree Modification disclose facts or considerations indicating that the First Decree Modification is inappropriate, improper, or inadequate. Bunge consents to entry of this First Decree Modification without further notice and agrees not to withdraw from or oppose entry of this First Decree Modification by the Court or to challenge any provision of this Modification, unless the United States has notified Bunge in writing that it no longer supports entry of the Modification.

b. The parties acknowledge and agree that final approval by the State of Louisiana, Department of Environmental Quality, and entry of this Consent Decree are subject to the requirements of La. R.S. 30:2050.7, which provides for public notice of this Consent Decree in newspapers of general circulation and the official journals

of the parish in which Bunge's facility is located, and an opportunity for public comment, consideration of any comments, and concurrence by the State Attorney General. The State of Louisiana reserves the right to withdraw or withhold consent if the comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate.

8. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this First Decree Modification and to execute and legally bind the Party he or she represents to this document.

9. This First Decree Modification may be signed in counterparts, and its validity shall not be challenged on that basis. Bunge and Bunge East agree to accept service of process by mail with respect to all matters arising under or relating to the Consent Decree and this First Decree Modification and agree 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.

ENTERED this ____ day of June, 2010

s/ Michael P. McCuskey
MICHAEL P. McCUSKEY
CHIEF U.S. DISTRICT JUDGE

First Material Modification to the Consent Decree in
United States of America, et al. v. Bunge North America, Inc.,
et al. (C.D. Ill.)

FOR THE UNITED STATES OF AMERICA

Dated: December 21, 2009

s/ Ignacia S. Moreno
IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources
Division

Dated: December 21, 2009

s/ Randall M. Stone
RANDALL M. STONE
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First Material Modification to the Consent Decree in
United States of America, et al. v. Bunge North America, Inc.,
et al. (C.D. Ill.)

FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY

Dated: January 29, 2010

s/ Adam M. Kushner
Adam M. Kushner
Director
Office of Civil Enforcement
Office of Enforcement and
Compliance Assurance
United States Environmental
Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dated: January 28, 2010

s/ Pamela J. Mazakas
Pamela J. Mazakas
Acting Director
Air Enforcement Division
Office of Enforcement and
Compliance Assurance
United States Environmental
Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

In the United States District Court for the Central District of Illinois, *United States of America, et al. v. Bunge North America, Inc., et al.*, Docket No. 2:06-CV-02209-MPM-DGB, a civil action, subject to the public notice and comment requirements.

FINAL APPROVAL FOR PLAINTIFF-INTERVENOR THE STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF ENVIRONMENTAL QUALITY

s/ Paul D. Miller
PAUL D. MILLER, P.E.
Assistant Secretary
Office of Environmental Compliance
Louisiana Department of Environmental Quality

Dated: June 14, 2010

s/ Dwana C. King
DWANA C. KING (Bar Roll # 20590)
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Dated: June 11, 2010

This Consent Decree has been reviewed, and is concurred in, by the Attorney General of the State of Louisiana, pursuant to the provisions of La. R.S. 30:2050.7.

JAMES D. "BUDDY" CALDWELL

s/ James D. Caldwell
ATTORNEY GENERAL

Dated: May 27, 2010

First Material Modification to the Consent Decree in
United States of America, et al. v. Bunge North America, Inc.,
et al. (C.D. Ill.)

FOR THE PEOPLE OF
THE STATE OF ILLINOIS
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

Dated: November 6, 2009

s/ Thomas Davis
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General
500 South Second Street
Springfield, IL 62706

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental
Protection Agency

Dated: November 5, 2009

s/ John J. Kim
JOHN J. KIM
Chief Legal Counsel

First Material Modification to the Consent Decree in
United States of America, et al. v. Bunge North America, Inc.,
et al. (C.D. Ill.)

FOR THE STATE OF INDIANA,
ON BEHALF OF THE INDIANA
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT:

Dated: October 26, 2009

s/ Thomas W. Easterly
THOMAS W. EASTERLY
Commissioner
Indiana Department of
Environmental Management

As to form and legality:

GREGORY F. ZOELLER
Indiana Attorney General

Dated: October 27, 2009

s/ Patricia Orloff Erdmann
PATRICIA ORLOFF ERDMANN
Chief Counsel for Litigation
Office of the Attorney General
Indiana Government Center South
5th Floor
302 West Washington Street
Indianapolis, IN 46204

First Material Modification to the Consent Decree in
United States of America, et al. v. Bunge North America, Inc.,
et al. (C.D. Ill.)

FOR THE STATE OF OHIO,
ON BEHALF OF THE OHIO
ENVIRONMENTAL PROTECTION AGENCY:

Dated: December 15, 2009

s/ Gregg H. Bachmann
Assistant Attorney General
Office of the Attorney General
Environmental Enforcement Section
30 E. Broad St., 25th floor
Columbus, Ohio 43215

First Material Modification to the Consent Decree in
United States of America, et al. v. Bunge North America, Inc.,
et al. (C.D. Ill.)

FOR BUNGE NORTH AMERICA, INC.

s/ David G. Kabbes
DAVID G. KABBES
Senior Vice President & Secretary
Bunge North America, Inc.

FOR BUNGE NORTH AMERICA
(EAST), L.L.C.

s/ David G. Kabbes
DAVID G. KABBES
Secretary