BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant, vs. TATE AND LYLE INGREDIENTS AMERICAS, INC., an Illinois corporation, Respondent.	)	PCB No. 2009-107 (Enforcement Air)

NOTICE OF FILING

To: Stephen J. Janasie
Environmental Bureau
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706

PLEASE TAKE NOTICE that on the 1st day of July, 2009, we filed Tate and Lyle Ingredients Americas, Inc.'s ANSWER AND AFFIRMATIVE DEFENSES, before the Illinois Pollution Control Board, a copy which is attached and served upon you.

Respectfully submitted,

TATE AND LYLE INGREDIENTS AMERICAS, INC.

By _____

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(THIS FILING IS SUBMITTED ON RECYCLED PAPER)

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RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES

Respondent, TATE AND LYLE INGREDIENTS AMERICAS, INC., by and through its attorneys, Seyfarth Shaw LLP, hereby makes answer to Complainant's Complaint as follows:

COUNT I
EMISSION OF CONTAMINANTS
IN VIOLATION OF REGULATIONS OR STANDARDS

COMPLAINT ¶ 1:

This Complaint is brought by the Attorney General of the State of Illinois on her own motion.

ANSWER:

Respondent admits the allegations contained in Paragraph 1 of the Complaint.

COMPLAINT ¶ 2:

The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board.

ANSWER:

Respondent admits the allegations contained in Paragraph 2 of the Complaint.

COMPLAINT ¶ 3:

Respondent, Tate & Lyle Ingredients Americas, Inc. ("TLIA") is an Illinois corporation registered with the Secretary of State's Office and is in good standing. Its registered agent is CT Corporation System, 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604. TLIA's corporate offices are located at 2200 East Eldorado Street, Decatur, Illinois.

ANSWER:

Respondent admits the allegations contained in Paragraph 3 of the Complaint except that Respondent states that TLIA is a Delaware corporation.

COMPLAINT ¶ 4:

At all times relevant to this Complaint, Respondent has owned and operated a Corn Wet Mill multi-plant complex ("the Complex") at 2200 East Eldorado Street, Macon County, Decatur, Illinois.

ANSWER:

Respondent admits the allegations contained in Paragraph 4 of the Complaint.

COMPLAINT ¶ 5:

The Complex is a grain processing facility engaged in the manufacture of various food and industrial grade ingredients from renewable crops.

ANSWER:

Respondent admits the allegations contained in Paragraph 5 of the Complaint.

COMPLAINT ¶ 6:

One of the plants located within the Complex is the Utilities Area Plant, also known as the Co-Generation Plant. The Co-Generation Plant is comprised of two buildings containing a combined total of six boilers. These boilers provide steam, compressed air, cooling and process water services to the Complex.

ANSWER:

Respondent admits that it operates a co-generation plant within its Decatur complex. Respondent denies the remaining allegations contained in Paragraph 6 of the Complaint.

COMPLAINT ¶ 7:

Emissions sources at the Co-Generation Plant include two coal-fired boilers; boiler numbers 1 and 2. Each boiler is a source of sulfur dioxide ("SO2") emissions.

ANSWER:

Respondent admits the allegations contained in Paragraph 7 of the Complaint.

COMPLAINT ¶ 8:

On August 12, 2003, based upon information contained within Respondent's Clean Air Act Permit Program ("CAAPP") permit application, the Illinois EPA issued CAAPP permit number 96020099 ("CAAPP permit") to Respondent as a CAAPP source. The CAAPP permit would allow operation of the Complex as a major source.

ANSWER:

Respondent admits that the Illinois EPA issued CAAPP permit number 96020099 to Respondent as a major source. Respondent states that the CAAPP permit speaks for itself as to its contents and denies any allegations contained in Paragraph 8 of the Complaint that are inconsistent therewith.

COMPLAINT ¶ 9:

The CAAPP permit contains permit condition 7.7.3(g), stating coal boiler -numbers 1 and 2 are subject to New Source Performance Standards ("NSPS") and emissions standards applicable to steam generating boilers. Permit condition 7.7.3(g), CAAPP permit 96020099, provides, in pertinent part:

g. The affected boilers #1 and #2 are subject to emission limits and requirements of 40 CFR Part 60 Subparts D and Db and shall not exceed the following limits:

ii. SO2: 1.2 lb/mmBtu (Subpart D)

ANSWER:

Respondent states that the CAAPP permit speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 9 of the Complaint that are inconsistent with the CAAPP permit as referenced.

COMPLAINT ¶ 10:

On September 28, 2005, Respondent informed Illinois EPA that, during the period July through September 2005, coal-fired boiler operations at boiler numbers 1 and 2 caused excess SO2 emissions.

ANSWER:

Respondent admits that it met with officials from the Illinois EPA on or about September 28, 2005. Respondent states that the remaining allegations contained in Paragraph 10 of the Complaint contain legal conclusions for which no answer is required. To the extent that an answer is required, Respondent denies the remaining allegations contained in Paragraph 10 of the Complaint.

COMPLAINT ¶ 11:

On November 3, 2005, the Illinois EPA received Respondent's third quarter 2005 excess emissions report and compliance emission monitor downtime performance report ("the Third Quarter 2005 Reports"). Respondent submitted the Third Quarter 2005 Reports for the period July through September 2005, as prescribed by CAAPP permit condition 7.7.10.

ANSWER:

Respondent admits that it timely submitted a report to the Illinois EPA which, on information and belief, was received on or about November 3, 2005. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 11 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 12:

The Third Quarter 2005 Reports, in part, informed Illinois EPA that coal-fired boiler #1 ceased operation during the period September 9 through 15, 2005 to facilitate the replacement of three broken primary air nozzles that had caused fuel solids to fuse within the boiler's combustion chamber, resulting in SO2 emissions in excess of the applicable NSPS and CAAPP permit limit.

ANSWER:

Respondent admits that it timely submitted a report to the Illinois EPA which, on information and belief, was received on or about November 3, 2005. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in

Paragraph 12 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 13:

The Third Quarter 2005 Reports also informed Illinois EPA that limestone utilized by the facility from September 15 through 29, 2005, as a measure to control SO2 emissions during coal-fired boiler operations, was introduced into the fuel combustion system wet, causing the emission of SO2 in excess of CAAPP permit and regulatory limits.

ANSWER:

Respondent admits that it timely submitted a report to the Illinois EPA which, on information and belief, was received on or about November 3, 2005. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 13 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 14:

On November 3, 2008, Illinois EPA received Respondent's third quarter 2008 excess emissions report and compliance emission monitor downtime performance report ("the Third Quarter 2008 Reports"). Respondent submitted the Third Quarter 2008 Reports for the period July through September 2008, as prescribed by CAAPP permit condition 7.7.10.

ANSWER:

Respondent admits that it timely submitted a report to the Illinois EPA which, on information and belief, was received on or about November 3, 2008. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 14 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 15:

The Third Quarter 2008 Reports, in part, informed Illinois EPA that, during the period July 3 through July 27, 2008, limestone gravimetric feeder R7, utilized to convey limestone

material into boiler #1, ceased operation on numerous occasions and introduced limestone into the boiler at an inconsistent rate. This issue resulted in SO2 emissions in excess of the applicable NSPS and CAAPP permit limit.

ANSWER:

Respondent admits that it timely submitted a report to the Illinois EPA which, on information and belief, was received on or about November 3, 2008. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 15 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 16:

In addition, the Third Quarter 2008 Reports informed Illinois EPA that on various dates, during the period July through September 2008, events that include process problems, boiler load changes, soot blowing, and the failure of its boiler equipment control process, in addition to undetermined causes, resulted in the emission of SO2 in excess of CAAPP permit and regulatory limits.

ANSWER:

Respondent admits that it timely submitted a report to the Illinois EPA which, on information and belief, was received on or about November 3, 2008. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 16 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 17:

On February 2, 2009, Illinois EPA received Respondent's fourth quarter 2008 excess emissions report and compliance emission monitor downtime performance report ("the Fourth Quarter 2008 Reports"). Respondent submitted the Fourth Quarter 2008 Reports for the period October through December 2008, as prescribed by CAAPP permit condition 7.7.10.

ANSWER:

Respondent admits that it timely submitted a report to the Illinois EPA which, on information and belief, was received on or about February 2, 2009. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 17 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 18:

The Fourth Quarter 2008 Reports, in part, informed Illinois EPA that, during the period October through December 2008, friction belts located on limestone gravimetric feeders utilized to convey limestone material into boilers #1 and #2 ceased operation on numerous occasions, as the result of large limestone blocks becoming wedged between discharge chutes and friction belts. Due to this issue, the limestone gravimetric feeders introduced limestone into each boiler at an inconsistent rate. The issue resulted in SO2 emissions in excess of the applicable NSPS and CAAPP permit limit.

ANSWER:

Respondent admits that it timely submitted a report to the Illinois EPA which, on information and belief, was received on or about February 2, 2009. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 18 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 19:

In addition, the Fourth Quarter 2008 Reports informed Illinois EPA that on various dates, during the period October through December 2008, events that include process problems, boiler load changes, soot blowing, and the failure of its boiler equipment control process, in addition to undetermined causes, resulted in the emission of S02 in excess of CAAPP permit and regulatory limits.

ANSWER:

Respondent admits that it timely submitted a report to the Illinois EPA which, on information and belief, was received on or about February 2, 2009. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 19 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 20:

Another facility within the Complex is the Xanthan Gum Plant. The Xanthan Gum Plant operations include batch fermentation, alcohol mix and precipitation, desolventization, drying, distillation, packaging and storage operations to facilitate the manufacture of xanthan gum.

ANSWER:

Respondent admits the allegations contained in Paragraph 20 of the Complaint.

COMPLAINT ¶ 21:

The Xanthan Gum Plant's emissions include isopropyl alcohol ("IPA") emissions and volatile organic material ("VOM") emissions generated during xanthan gum production.

ANSWER:

Respondent admits the allegations contained in Paragraph 21 of the Complaint.

COMPLAINT ¶ 22:

On July 10, 2003, the Illinois EPA received Respondent's construction permit application to construct the Xanthan Gum Plant situated within the multi-facility complex. Data contained within the application documented xanthan gum production would result in total IPA and VOM emissions discharged to the atmosphere of less than 31.5 tons per year ("t/yr") and 35 t/yr, respectively, determined based upon rolling, 12-month average emissions data.

ANSWER:

Respondent admits that it submitted an application for a permit to construct the Xanthan Gum Plant within the Decatur complex which, on information and belief, was received on or about July 10, 2003. Respondent states that the permit application speaks for itself as to its

contents. Respondent denies any allegations contained in Paragraph 22 of the Complaint that are inconsistent with the permit application as submitted.

COMPLAINT ¶ 23:

On February 25, 2004, based upon information contained within the construction permit application; the Illinois EPA issued to Respondent construction permit 03070016 ("the construction permit").

ANSWER:

Respondent admits the allegations contained in Paragraph 23 of the Complaint.

COMPLAINT ¶ 24:

The construction permit contains construction permit condition 6(a), which states that:

a. Total facility emissions of VOM shall not exceed 35 tons per year. Compliance with this limit shall be determined on a rolling 12 month basis, calculated monthly in accordance with Condition 12.

ANSWER:

Respondent admits that it received construction permit 03070016 on or about February 25, 2004. Respondent states that the permit speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 24 of the Complaint that are inconsistent with the permit as referenced.

COMPLAINT ¶ 25:

The construction permit also contains construction permit condition 5(a)(ii), which states that:

ii. The Permittee shall track solvent (isopropyl alcohol) inventory and perform mass balance calculations sufficient to verify whether losses to the atmosphere are less than 31.5 tons on a 12-month rolling basis (see Condition 6(a).)

ANSWER:

Respondent admits that it received construction permit 03070016 on or about February 25, 2004. Respondent states that the permit speaks for itself as to its contents. Respondent

denies any allegations contained in Paragraph 25 of the Complaint that are inconsistent with the permit as referenced.

COMPLAINT ¶ 26:

On March 6, 2006, the Illinois EPA received from Respondent a letter notifying the Illinois EPA of the emission of VOM in excess of the limits set forth in construction permit condition 6(a), as well as the emission of IPA in excess of construction permit condition 5(a)(ii).

ANSWER:

Respondent admits that it timely submitted a letter to the Illinois EPA which, on information and belied, was received on or about March 6, 2006. Respondent states that the letter speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 26 of the Complaint that are inconsistent with the letter as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 27:

On March 6, 2006, Respondent informed the Illinois EPA that based upon an internal audit, Respondent determined material balance calculations utilized to calculate IPA losses discharged to the environment incorrectly determined IPA and VOM emissions. Revised mass balance calculations based upon 12-month, rolling average data for the periods December 2004 through November 2005, January 2005 through December 2005, and February 2005 through January 2006 revealed IPA and VOM emissions totaled 43.41 t/yr, 41.96 t/yr, and 40.06 t/yr, respectively.

ANSWER:

Respondent admits that it timely submitted a letter to the Illinois EPA which, on information and belief, was received on or about March 6, 2006. Respondent states that the letter speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 27 of the Complaint that are inconsistent with the letter as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 28:

Section 9 of the Act, 415 ILCS 5/9 (2006), provides, in pertinent part:

No person shall:

a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

ANSWER:

Respondent states that the allegations contained in Paragraph 28 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent states that the Illinois Environmental Protection Act speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 28 of the Complaint that are inconsistent with the Illinois Environmental Protection Act as cited.

COMPLAINT ¶ 29:

Section 201.141 of the Board's Air Pollution Regulations, 35 III. Adm. Code 201.141, provides, as follows:

Prohibition of Air Pollution

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

ANSWER:

Respondent states that the allegations contained in Paragraph 29 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent states that the Illinois Administrative Code speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 29 of the Complaint that are inconsistent with the Illinois Administrative Code as cited.

COMPLAINT ¶ 30:

Section 3.06 of the Act, 415 ILCS 5/3.06 (2006), defines "contaminant" as follows:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

ANSWER:

Respondent states that the allegations contained in Paragraph 30 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent states that the Illinois Environmental Protection Act speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 30 of the Complaint that are inconsistent with the Illinois Environmental Protection Act as cited.

COMPLAINT ¶ 31:

During the period July through September 2005, Respondent's coal-fired boiler operations at the Co-Generation Plant resulted in the emission of SO2 in excess of the regulatory standard specified in 40 CFR Part 60, Subparts D and DB, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 Ill. Adm. Code Section 201.141.

ANSWER:

Respondent states that the allegations contained in Paragraph 31 of the Complaint contain a conclusion of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 31 of the Complaint.

COMPLAINT ¶ 32:

During the period July through September 2008, Respondent's coal-fired boiler operations at the Co-Generation Plant resulted in the emission of SO2 in excess of the regulatory standard specified in 40 CFR Part 60, Subparts D and DB, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 III. Adm. Code Section 201.141.

ANSWER:

Respondent states that the allegations contained in Paragraph 32 of the Complaint contain a conclusion of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 32 of the Complaint.

COMPLAINT ¶ 33:

During the period October through December 2008, Respondent's coal-fired boiler operations at the Co-Generation Plant resulted in the emission of SO2 in excess of the regulatory standard specified in 40 CFR Part 60, Subparts D and DB, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 III. Adm. Code Section 201.141.

ANSWER:

Respondent states that the allegations contained in Paragraph 33 of the Complaint contain a conclusion of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 33 of the Complaint.

COMPLAINT ¶ 34:

During the period beginning approximately December 2004 through at least March 2006, TLIA's xanthan gum production operations at the Xanthan Gum Plant resulted in the emission of IPA and VOM in excess of construction permit conditions 6(a) and 5(a)(ii) in violation of Section 9(a) of the Act; 415 ILCS 5/9(a) (2006) and 35 III. Adm. Code Section 201.141.

ANSWER:

Respondent states that the allegations contained in Paragraph 34 of the Complaint contain a conclusion of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 34 of the Complaint.

COUNT II
CLEAN AIR ACT PERMIT PROGRAM PERMIT VIOLATIONS

COMPLAINT ¶ 1:

Complainant repeats and realleges paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of Count II.

ANSWER:

Respondent restates its answers to Paragraphs 1 through 27 of Count I as if fully set forth herein in response to Paragraphs 1 through 27 of this Count II.

COMPLAINT ¶ 28:

Respondent's excess emission report for the period of July through September 2005 states that SO2 emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

ANSWER:

Respondent admits that it submitted a report to the Illinois EPA relating to SO2 emissions from coal-fired boilers #1 and #2 for the period of July through September 2005. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 28 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 29:

Respondent's excess emission report for the period of July through September 2008 states that SO2 emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

ANSWER:

Respondent admits that it submitted a report to the Illinois EPA relating to SO2 emissions from coal-fired boilers #1 and #2 for the period of July through September 2008. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 29 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 30:

Respondent's excess emission report for the period of October through December 2008 states that SO2 emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

ANSWER:

Respondent admits that it submitted a report to the Illinois EPA relating to SO2 emissions from coal-fired boilers #1 and #2 for the period of October through December 2008. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 30 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 31:

Based upon emissions data received from Respondent on March 6, 2006, Respondent's IPA and VOM emissions from approximately December 2004 through at least March 2006 exceed the limits set by construction permit conditions 5(a)(ii) and 6(a).

ANSWER:

Respondent admits that it timely submitted a letter to the Illinois EPA which, on information and belief, was received on or about March 6, 2006. Respondent states that the letter speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 31 of the Complaint that are inconsistent with the letter as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 32:

Section 39.5 of the Act, 415 ILCS 5/39.5 (2006), provides, in pertinent part:

6. Prohibitions.

a. It shall be unlawful for any person to violate any terms or conditions of a permit issued under this Section, to operate any CAAPP source except in compliance with a permit issued by the Agency under this Section or to violate any other applicable requirements. All terms and conditions of a permit issued under this Section are enforceable by USEPA

and citizens under the Clean Air Act, except those, if any, that are specifically designated as not being federally enforceable in the permit pursuant to paragraph 7(m) of this Section.

b. After the applicable CAAPP permit or renewal application submittal date, as specified in subsection 5 of this Section, no person shall operate a CAAPP source without a CAAPP permit unless the complete CAAPP permit or renewal application for such source has been timely submitted to the Agency.

ANSWER:

Respondent states that the allegations contained in Paragraph 32 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent states that the Illinois Environmental Protection Act speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 32 of the Complaint that are inconsistent with the Illinois Environmental Protection Act as cited

COMPLAINT ¶ 33:

Section 39.5 of the Act, 415 ILCS 5/39.5 (2006), provides, in pertinent part:

6. Definitions.

* * *

"CAAPP" means the Clean Air Act Permit Program, developed pursuant to Title V of the Clean Air Act.

* * *

"CAAPP Permit" or "permit" (unless the context suggests otherwise) means any permit issued, renewed, amended, modified or revised pursuant to Title V of the Clean Air Act.

* * *

"CAAPP source" means any source for which the owner or operator is required to obtain a CAAPP permit pursuant to subsection 2 of this Section.

* * *

"Major source" means a source for which emissions of one or more air pollutants meet the criteria for major status pursuant to paragraph 2©) [sic] of this Section.

* * *

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

* * *

"Source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties that are under common control of the same person (or persons under common control) and that belongs to a single major industrial grouping. For the purposes of defining "source," a stationary source or group of stationary sources shall be considered part of a single major industrial grouping if all of the pollutant emitting activities at such source or group of sources located on contiguous or adjacent properties and under common control belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987, or such pollutant emitting activities at a stationary source (or group of stationary sources) located on contiguous or adjacent properties and under common control constitute a support facility. The determination as to whether any group of stationary sources are located on contiguous or adjacent properties, and/or are under common control, and/or whether the pollutant emitting activities at such group of stationary sources constitute a support facility shall be made on a case by case basis.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Clean Air Act.

ANSWER:

Respondent states that the allegations contained in Paragraph 33 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent states that the Illinois Environmental Protection Act speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 33 of the Complaint that are inconsistent with the Illinois Environmental Protection Act as cited.

COMPLAINT ¶ 34:

Respondent caused or allowed the emission of SO2 in excess of the 1.2 lb/mmBtu NSPS emission standard so as to cause air pollution in violation of CAAPP permit condition 7.7.3(g), as well as Section 39.5(6)(a) of the Act, 415 ILCS 39.5(6)(a) (2006).

ANSWER:

Respondent states that the allegations contained in Paragraph 34 of the Complaint contain a conclusion of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 34 of the Complaint.

COMPLAINT ¶ 35:

Respondent caused or allowed the excess emission of IPA for the period beginning approximately December 2004 through at least March 2006, resulting in the exceedance of VOM emission limits prescribed by construction permit conditions 5(a)(ii) and 6(a). In doing so, Respondent operated a CAAPP source without first submitting a revised permit application accurately setting forth VOM emissions discharged by the facility in violation of Section 39.5(6)(a) of the Act, 415 ILCS 39.5(6)(a) (2006):

ANSWER:

Respondent states that the allegations contained in Paragraph 35 of the Complaint contain a conclusion of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 35 of the Complaint.

COMPLAINT ¶ 36:

Due to IPA and VOM emissions in excess of limits set by construction permit conditions 5(a)(ii) and 6(a), Respondent operates a facility without the requisite CAAPP permit for the entire source, in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5139.5(6)(b) (2006).

ANSWER:

Respondent states that the allegations contained in Paragraph 36 of the Complaint contain a conclusion of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 36 of the Complaint.

COUNT III
VIOLATION OF NEW SOURCE PERFORMANCE STANDARDS

COMPLAINT ¶ 1:

Complainant repeats and realleges paragraphs 1 through 19 of Count I as paragraphs 1 through 19 of Count III.

ANSWER:

Respondent restates its answers to Paragraphs 1 through 19 of Count I as if fully set forth herein in response to Paragraphs 1 through 19 of this Count III.

COMPLAINT ¶ 20:

Respondent's excess emission report for the period of July through September 2005 states that SO2 emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

ANSWER:

Respondent admits that it submitted a report to the Illinois EPA relating to SO2 emissions from coal-fired boilers #1 and #2 for the period of July through September 2005. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 20 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 21:

Respondent's excess emission report for the period of July through September 2008 states that SO2 emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

ANSWER:

Respondent admits that it submitted a report to the Illinois EPA relating to SO2 emissions from coal-fired boilers #1 and #2 for the period of July through September 2008. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 21 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 22:

Respondent's excess emission report for the period of October through December 2008 states that SO2 emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

ANSWER:

Respondent admits that it submitted a report to the Illinois EPA relating to SO2 emissions from coal-fired boilers #1 and #2 for the period of October through December 2008. Respondent states that the report speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 22 of the Complaint that are inconsistent with the report as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 23:

Section 9.1 of the Act, 415 ILCS 5/9.1 (2004), provides, in pertinent part:

(d) No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or

(2) construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken without a permit granted by the Agency or in violation of any conditions imposed by such permit. Any denial of such a permit or any conditions imposed in such a permit shall be reviewable by the Board in accordance with Section 40 of this Act.

ANSWER:

Respondent states that the allegations contained in Paragraph 23 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent states that the Illinois Environmental Protection Act speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 23 of the Complaint that are

inconsistent with the Illinois Environmental Protection Act as cited and denies that it violated Section 9.1 of the Act, 415 ILCS 5/9.1 (2004).

COMPLAINT ¶ 24:

Section 60.43 of the Code of Federal Regulations, 40 CFR 60.43, provides, in pertinent part:

> (a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of:
>
> > (2) 520 nanograms per joule heat input (1.2 lb per million Btu) derived from solid fossil fuel or solid fossil fuel and wood residue, except as provided in paragraph (e) of this section.

ANSWER:

Respondent states that the allegations contained in Paragraph 24 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent states that the Code of Federal Regulations speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 24 of the Complaint that are inconsistent with the Code of Federal Regulations as cited.

COMPLAINT ¶ 25:

TLIA caused or allowed the emission of S02 in excess of the applicable New Source Performance Standard, Section 60.43(a)(2) of the Code of Federal Regulations, 40 CFR 60.43(a)(2), and therefore in violation of Section 9,1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

ANSWER:

Respondent states that the allegations contained in Paragraph 25 of the Complaint contain a conclusion of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 25 of the Complaint.

COUNT IV
CONSTRUCTION PERMIT VIOLATIONS

COMPLAINT ¶ 1:

Complainant repeats and realleges paragraphs 1 through 6 and 20 through 27 of Count I of this Complaint, as paragraphs 1 through 14 of Count IV.

ANSWER:

Respondent restates its answers to Paragraphs 1 through 6 and 20 through 27 of Count I as if fully set forth herein in response to Paragraphs 1 through 14 of this Count IV.

COMPLAINT ¶ 15:

Section 9 of the Act, 415 ILCS 5/9 (2006), provides, in pertinent part:

No person shall:

b. Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing of contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit

ANSWER:

Respondent states that the allegations contained in Paragraph 15 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent states that the Illinois Environmental Protection Act speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 15 of the Complaint that are inconsistent with the Illinois Environmental Protection Act as cited and denies that it violated Section 9 of the Act, 415 ILCS 5/9 (2006).

COMPLAINT ¶ 16:

Based upon emissions data Illinois EPA received from Respondent on March 6, 2006, IPA and VOM emissions generated by TLIA beginning approximately December 2004 through at least March 2006 exceed the limits set by construction permit conditions 5(a)(ii) and 6(a), respectively, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2006).

ANSWER:

Respondent states that the allegations contained in Paragraph 16 of the Complaint contain a conclusion of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 16 of the Complaint.

COUNT V
VIOLATION OF PSD REQUIREMENTS

COMPLAINT ¶ 1:

Complainant repeats and realleges paragraphs 1 through 6 and 20 through 27 of Count I of this Complaint, as paragraphs 1 through 14 of Count V.

ANSWER:

Respondent restates its answers to Paragraphs 1 through 6 and 20 through 27 of Count I as if fully set forth herein in response to Paragraphs 1 through 14 of this Count V.

COMPLAINT ¶ 15:

Information and emissions data contained within Respondent's construction permit application, dated July 7, 2003, states that construction of the Xanthan Gum Plant would not result in a significant increase in VOM emissions and, therefore, the project is not subject to Prevention of Significant Deterioration ("PSD") requirements.

ANSWER:

Respondent admits that it submitted an application for a permit to construct the Xanthan Gum Plant within the Decatur complex which, on information and belief, was received on or about July 7, 2003. Respondent further states that the permit application speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 15 of the Complaint that are inconsistent with the permit application as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 16:

The application also indicated the multi-facility complex was a major source for VOM emissions prior to the submission of the permit application to construct the Xanthan Gum Plant.

ANSWER:

Respondent admits that it submitted an application for a permit to construct the Xanthan Gum Plant within the Decatur complex on or about July 7, 2003. Respondent further states that the permit application speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 16 of the Complaint that are inconsistent with the permit application as submitted, including any legal conclusions drawn therefrom.

COMPLAINT ¶ 17:

Section 165 of the Clean Air Act, 42 USCS 7475(a) (1997) states in pertinent part:

(a) Major emitting facilities on which construction is commenced

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless-

1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitation for such facility which conform to the requirements of this part;

* * *

4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility;

ANSWER:

Respondent states that the allegations contained in Paragraph 17 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent states that the Clean Air Act speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 17 of the Complaint that are inconsistent with the Clean Air Act as cited and denies that it violated the Clean Air Act.

COMPLAINT ¶ 18:

Section 52.21 of Title 40 of the Code of Federal Regulations, 40 CFR 52.21 (1995), provides in pertinent part:

Prevention of significant deterioration of air quality.

* * *

(2) Applicability procedures.

* * *

(ii) The requirements of paragraphs (j) through ®) [sic] of this section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Administrator has authority to issue any such permit.

* * *

(b) Definitions. For the purposes of this Section:

(1)(I) Major stationary source means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant. . .fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input. . .

* * *

(ii) A major source that is major for volatile organic compounds or NOx shall be considered major for ozone.

* * *

(2)(I) Major modification means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section); and a significant net emissions increase of that pollutant from the major stationary source.

* * *

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(23)(I) Significant means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

* * *

Ozone: 40 tpy of volatile organic compounds or nitrogen oxides

* * *

(j) Control Technology Review.

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

* * *

(3) A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

ANSWER:

Respondent states that the allegations contained in Paragraph 18 of the Complaint contain a statement of law, for which no answer is required. To the extent that an answer is required, Respondent states that the Code of Federal Regulations speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 18 of the Complaint that are inconsistent with the Code of Federal Regulations as cited and denies that it violated any of said Code sections.

COMPLAINT ¶ 19:

Respondent's Complex is a major stationary source located in an attainment area for ozone.

ANSWER:

Respondent admits the allegations contained in Paragraph 19 of the Complaint.

COMPLAINT ¶ 20:

Respondent's revised mass balance calculations for the periods December 2004 through November 2005, January 2005 through December 2005, and February 2005 through January 2006 revealed IPA and VOM emissions at the Xanthan Gum Plant totaled 43.41 t/yr, 41.96 t/yr, and 40.06 t/yr, respectively.

ANSWER:

Respondent admits that it timely submitted a letter to the Illinois EPA which, on information and belief, was received on or about March 6, 2006. Respondent further states that the letter speaks for itself as to its contents. Respondent denies any allegations contained in Paragraph 20 of the Complaint that are inconsistent with the letter as submitted, including any legal conclusions drawn therefrom and denies that it violated the PSD requirements as alleged.

COMPLAINT ¶ 21:

Respondent's construction of the Xanthan Gum Plant resulted in a significant net increase in VOM emissions in excess of 40 t/yr. As a result, Respondent's construction of the Xanthan Gum Plant constitutes a major modification of a major stationary source subject to Prevention of Significant Deterioration ("PSD") requirements.

ANSWER:

Respondent states that the allegations contained in Paragraph 21 of the Complaint contain conclusions of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 21 of the Complaint.

COMPLAINT ¶ 22:

Respondent failed to conduct the requisite best available control technology ("BACT") analysis, consisting of a control technology review to facilitate calculation of an emission limitation which is determined to be BACT. Respondent failed to acquire the requisite Prevention of Significant Deterioration ("PSD") construction permit setting forth the BACT limitation prior to constructing the facility, and thereafter failed to implement BACT, in violation of Section(s) 165(a)(1) and (4) of the Clean Air Act, 42 USCS 7475(a)(1) and (4) (1997), as well

as Section(s) 52.21(a)(2)(ii) and (iii), as well as (j)(1) and (3) of Title 40 of the Code of Federal Regulations, 40 CFR 52.21(a)(2)(ii) and (iii), (j)(1) and (3) (1995).

ANSWER:

Respondent affirmatively states that the allegations contained in Paragraph 22 of the Complaint contain conclusions of law, for which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 22 of the Complaint.

AFFIRMATIVE DEFENSES

Respondent asserts the following affirmative defense without waiving Complainant's obligation to meet its burden of proof and without assuming any burden of proof not otherwise imposed by law. Respondent reserves the right to raise other defenses of which it may become aware of during discovery or at the time of hearing.

1. Respondent states that to the extent the Board determines that it emitted any pollutant or pollutants in excess of permitted limits at any time during the period relevant to this Complaint, such emissions occurred during start-up, shut-down, and/or malfunction and are therefore not subject to enforcement pursuant to 40 C.F.R. § 60.8(c), 35 Ill. Adm. Code §§ 201.149, 201.265, and Conditions 7.7.5(g) and 7.7.5(i) of CAAPP Permit No. 96020099.

2. Respondent states that to the extent the Board determines that Respondent, at any time, did not have a required operating permit, Respondent had submitted a timely and complete application for a CAAPP permit and was operating under a valid construction permit and therefore is not subject to enforcement pursuant to 415 ILCS 5/39.5(5)(h) and Condition 14 of Construction Permit No. 03070016.

DATED: July 1, 2009.

Respectfully submitted,

TATE AND LYLE INGREDIENTS AMERICAS, INC.

By _____
One of Its Attorneys

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James L. Curtis
Elizabeth Leifel Ash
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CERTIFICATE OF SERVICE

Elizabeth Leifel Ash, an attorney certifies that she caused a true and correct copy of Tate and Lyle Ingredients Americas, Inc. NOTICE OF FILING and RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES to be served via U.S Mail, postage prepaid, this 1st day of July 2009,

To: Stephen J. Janasie
Environmental Bureau
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706

and the original and ten copies of the same foregoing instruments by hand delivery,

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

Elizabeth Leifel Ash