

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 09-107
)	(Enforcement-Air)
TATE AND LYLE INGREDIENTS AMERICAS,)	
INC., an Illinois corporation,)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on November 1, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S MOTION TO FILE THIRD AMENDED COMPLAINT and THIRD AMENDED COMPLAINT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: s/Christine Zeivel
CHRISTINE ZEIVEL
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB NO. 09-107
)	(Enforcement)
TATE AND LYLE INGREDIENTS AMERICAS,)	
INC, an Illinois corporation,)	
)	
Respondent.)	

COMPLAINANT'S MOTION TO FILE THIRD AMENDED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves, pursuant to Section 103.206(d) of the Board's Procedural Rules for leave to file the attached Second Amended Complaint in order to add an omitted reference and violation of Section 9.1(d) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/9.1(d) (2012), in Count V.

Complainant filed the Complaint on May 11, 2009, an Amended Complaint on November 25, 2009, and a Second Amended Complaint on February 24, 2011. On August 22, 2013, Respondent filed an Amended Answer to Second Amended Complaint. Upon further review of the Second Amended Complaint in preparation for Complainant's Motion to Strike Respondent's Affirmative Defenses, Complainant discovered that Count V was missing the reference to and violation of the Act. Specifically, Count V of the Second Amended Complaint alleges violations of Section 165 of the Clean Air Act and the federal regulations, but not Section 9.1(d) of the Act, which makes those actions a violation of state law and gives Complainant authority to enforce those federal programs.

Pursuant to Section 103.204(f) of the Board's Procedural Rules, the Respondent is hereby notified: Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as

if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

WHEREFORE, Complainant respectfully asks that this Motion to File Third Amended Complaint be granted and that the Third Amended Complaint be allowed in this pending matter.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY: s/Thomas Davis

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

Christine Zeivel
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: November 1, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB NO. 09-107
)	(Enforcement)
TATE AND LYLE INGREDIENTS AMERICAS,)	
INC, an Illinois corporation,)	
)	
Respondent.)	

THIRD AMENDED COMPLAINT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and complains of Respondent, TATE AND LYLE INGREDIENTS AMERICAS, INCORPORATED, as follows:

COUNT I
EMISSION OF CONTAMINANTS IN VIOLATION OF REGULATIONS OR STANDARDS

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

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

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.

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.

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.

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)

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 SO₂ in excess of CAAPP permit and regulatory limits.

20. On May 1, 2009, Illinois EPA received Respondent's first quarter 2009 excess emissions report and compliance emission monitor downtime performance report ("the First Quarter 2009 Reports"). Respondent submitted the First Quarter 2009 Reports for the period January through March 2009, as prescribed by CAAPP permit condition 7.7.10.

21. The First Quarter 2009 Reports, in part, informed Illinois EPA that, during the period January 2, 2009 through February 2, 2009, limestone feeders utilized to convey limestone material into boiler #1 choked resulting from packed limestone fines causing the

material to be introduced into each boiler at an inconsistent rate. The failure of the limestone gravimetric feeder to properly convey limestone into boiler #1 resulted in SO₂ emissions in excess of the applicable NSPS and CAAPP permit limit.

22. In addition, the First Quarter 2009 Reports informed Illinois EPA that on various dates, during the period January through February 2009, 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 during operation of boilers #1 and #2.

23. On October 29, 2009, Illinois EPA received Respondent's third quarter 2009 excess emissions report and compliance emission monitor downtime performance report ("the Third Quarter 2009 Reports"). Respondent submitted the Third Quarter 2009 Reports for the period July through September 2009, as prescribed by CAAPP permit condition 7.7.10.

24. The Third Quarter 2009 Reports, in part, informed Illinois EPA that, on various dates during the period July through September 2009, events that include boiler startup and soot blowing resulted in the emission of SO₂ in excess of CAAPP permit and regulatory limits during operation of boilers #1 and #2.

25. On February 1, 2010, Illinois EPA received Respondent's fourth quarter 2009 excess emissions report and compliance emission monitor downtime performance report ("the Fourth Quarter 2009 Reports"). Respondent submitted the Fourth Quarter 2009 Reports for the period October through December 2009, as prescribed by CAAPP permit condition 7.7.10.

26. The Fourth Quarter 2009 Reports, in part, informed Illinois EPA that, on various dates in December 2009, limestone feeders utilized to convey limestone material into boilers #1 and #2 choked causing the material to be introduced into each boiler at an inconsistent rate. The failure of the limestone feeders to properly convey limestone into boilers #1 and #2 resulted

in SO2 emissions in excess of the applicable NSPS and CAAPP permit limit.

27. In addition, the Fourth Quarter 2009 Reports informed Illinois EPA that on various dates, during the period October through December 2009, events that include process problems 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 during operation of boilers #1 and #2.

28. On April 21, 2010, Illinois EPA received Respondent's first quarter 2010 excess emissions report and compliance emission monitor downtime performance report ("the First Quarter 2010 Reports"). Respondent submitted the First Quarter 2010 Reports for the period January through March 2010, as prescribed by CAAPP permit condition 7.7.10.

29. The First Quarter 2010 Reports, in part, informed Illinois EPA that, during the period January through March 2010, the limestone feeder utilized to convey limestone material into boiler #1 caused the material to be introduced into the boiler at an inconsistent rate. The failure of the limestone feeder to properly convey limestone into boiler #1 resulted in SO2 emissions in excess of the applicable NSPS and CAAPP permit limit.

30. In addition, the First Quarter 2010 Reports informed Illinois EPA that on various dates, during the period January through March 2010, events that include soot blowing, in addition to undetermined causes, resulted in the emission of SO2 in excess of CAAPP permit and regulatory limits during operation of boilers #1 and #2.

31. 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.

32. The Xanthan Gum Plant's emissions include isopropyl alcohol ("IPA") emissions

and volatile organic material ("VOM") emissions generated during xanthan gum production.

33. 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.

34. 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").

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

- 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.

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

- 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).)

37. 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).

38. 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.

39. 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;

* * *

40. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. 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.

41. 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.

42. 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, Subpart D, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 Ill. Adm. Code Section 201.141.

43. 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, Subpart D, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 Ill. Adm. Code Section 201.141.

44. 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, Subpart D, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 Ill. Adm. Code Section 201.141.

45. During the period January through February 2009, 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, Subpart D, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 Ill. Adm. Code Section 201.141.

46. During the period July through September 2009, 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, Subpart D, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 Ill. Adm. Code Section 201.141.

47. During the period October through December 2009, 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, Subpart D, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 Ill. Adm. Code Section 201.141.

48. During the period January through March 2010, 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, Subpart D, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 Ill. Adm. Code Section 201.141.

49. 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 limits contained within conditions 6(a) and 5(a)(ii), in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and 35 Ill. Adm. Code Section 201.141.

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of The State of Illinois, respectfully requests that this Board enter an order against the Respondent, TATE AND LYLE INGREDIENTS AMERICAS, INCORPORATED:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), impose upon the Respondent a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT II
CLEAN AIR ACT PERMIT PROGRAM PERMIT VIOLATIONS

1-38. Complainant repeats and realleges paragraphs 1 through 38 of Count I as paragraphs 1 through 38 of Count II.

39. 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.

40. 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.

41. 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.

42. Respondent's excess emission report for the period of January through March 2009 states that SO2 emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

43. Respondent's excess emission report for the period of July through September 2009 states that SO2 emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

44. Respondent's excess emission report for the period of October through December 2009 states that SO2 emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

45. Respondent's excess emission report for the period of January through March 2010 states that SO2 emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

46. 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).

47. 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.

48. 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(c) 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.

* * *

49. Respondent caused or allowed the emission of SO₂ in excess of the 1.2 lb/mmBtu NSPS emission standard 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).

50. 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 obtaining a revised CAAPP permit accurately setting forth IPA and VOM emissions discharged by the source in violation of Section 39.5(6)(a) of the Act, 415 ILCS 39.5(6)(a) (2006).

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

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of The State of Illinois, respectfully requests that this Board enter an order against the Respondent, TATE AND LYLE INGREDIENTS AMERICAS, INCORPORATED:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), impose upon the Respondent a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT III
VIOLATION OF NEW SOURCE PERFORMANCE STANDARDS

1-30. Complainant repeats and realleges paragraphs 1 through 30 of Count I as paragraphs 1 through 30 of Count III.

31. 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.

32. 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.

33. 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.

34. Respondent's excess emission report for the period of January through March 2009 states that SO₂ emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

35. Respondent's excess emission report for the period of July through September 2009 states that SO₂ emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

36. Respondent's excess emission report for the period of October through December 2009 states that SO₂ emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

37. Respondent's excess emission report for the period of January through March 2010 states that SO₂ emissions generated during the operation of coal-fired boilers #1 and #2 exceeded 1.2 lb/mmBtu.

38. 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.

39. 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.

40. TLIA caused or allowed the emission of SO₂ 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).

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of The State of Illinois, respectfully requests that this Board enter an order against the Respondent, TATE AND LYLE INGREDIENTS AMERICAS, INCORPORATED:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that the Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), impose upon the Respondent a civil penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and

F. Grant such other and further relief as the Board deems appropriate.

COUNT IV
CONSTRUCTION PERMIT VIOLATIONS

1-14. Complainant repeats and realleges paragraphs 1 through 6 and 31 through 38

of Count I of this Complaint, as paragraphs 1 through 14 of Count IV.

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 or 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

* * *

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).

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of The State of Illinois, respectfully requests that this Board enter an order against the Respondent, TATE AND LYLE INGREDIENTS AMERICAS, INCORPORATED:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), impose upon the Respondent a civil penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and

F. Grant such other and further relief as the Board deems appropriate.

COUNT V
VIOLATION OF PSD REQUIREMENTS

1-14. Complainant repeats and realleges paragraphs 1 through 6 and 31 through 38 of Count I of this Complaint, as paragraphs 1 through 14 of Count V.

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.

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.

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;

* * *

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 (r) 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 NO_x 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.

* * *

(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.

* * *

19. Section 9.1 of the Act, 415 ILCS 5/9.1 (2006), provides as follows:

(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;

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

21. 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.

22. 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.

23. 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).

24. By violating Section 165 of the Clean Air Act and the federal regulations adopted thereunder, Respondent violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, People of The State of Illinois, respectfully requests that this Board enter an order against the Respondent, TATE AND LYLE INGREDIENTS AMERICAS, INCORPORATED:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that the Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act

and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), impose upon the Respondent a civil penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and

F. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
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Dated: November 1, 2013

CERTIFICATE OF SERVICE

I hereby certify that I did on November 1, 2013, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINANT'S MOTION TO FILE THIRD AMENDED COMPLAINT and THIRD AMENDED COMPLAINT upon the persons listed on the Service List.

s/Christine Zeivel
CHRISTINE ZEIVEL
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

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