



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO. 09-107</b>
	)	<b>(Enforcement - Air)</b>
<b>TATE AND LYLE INGREDIENTS</b>	)	
<b>AMERICAS, LLC, an Illinois limited liability</b>	)	
<b>company, f/k/a Tate and Lyle Ingredients</b>	)	
<b>Americas, Inc.,</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINANT’S MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT**

People of the State of Illinois *ex rel.* Lisa Madigan, Attorney General of the State of Illinois (“Complainant”), pursuant to 35 Ill. Adm. Code 103.206(d), 35 Ill. Adm. Code 101.500 and 735 ILCS 5/2-616, moves for leave to amend the complaint filed in this matter. In support of this Motion, Complainant hereby states as follows:

1. On May 11, 2009, Complainant filed a five-count Complaint (the “Original Complaint”) against Tate and Lyle Ingredients Americas, Inc. n/k/a Tate and Lyle Ingredients Americas, LLC (the “Respondent”), alleging violations of, among other things, the Illinois Environmental Protection Act and the Illinois Pollution Control Board’s regulations regarding air pollution.

2. On July 1, 2009, Respondent filed its Answer and Affirmative Defenses to the Original Complaint.

3. On November 25, 2009, Complainant filed a Motion to File Amended Complaint to include additional violations in Counts I, II and III of the Original Complaint.

4. Pursuant to the Hearing Officer's Order of December 14, 2009, the Hearing Officer accepted the Amended Complaint.

5. On March 4, 2010, Respondent filed its Answer and Affirmative Defenses to Complainant's Amended Complaint.

6. On February 24, 2011, Complainant filed a Motion to File Second Amended Complaint to include additional violations in Counts I, II and III of the Amended Complaint and to clarify alleged violations of Section 9(a) of the Act, 415 ILCS 5/9(a).

7. Pursuant to the Hearing Officer's Order of March 15, 2011, the Hearing Officer accepted the Second Amended Complaint.

8. On May 13, 2011, Respondent filed its Answer to Complainant's Second Amended Complaint.

9. On August 22, 2013, Respondent filed its Unopposed Motion for Leave to File Amended Answer *Instanter*.

10. On September 26, 2013, Complainant filed an Unopposed Motion for Extension of Time to respond to Respondent's Amended Answer to Complainant's Second Amended Complaint.

11. Pursuant to the Hearing Officer's Order of October 15, 2013, the Hearing Officer granted Respondent's August 22, 2013 motion for leave to file amended answer and Complainant's September 26, 2013 motion for extension of time.

12. On November 1, 2013, Complainant filed a Motion to File Third Amended Complaint and Third Amended Complaint. It appears that no order has been entered regarding Complainant's Motion to File Third Amended Complaint. To date, Respondent has not answered or otherwise responded to Complainant's Third Amended Complaint.

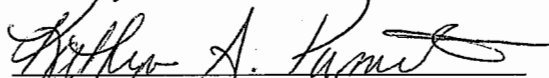
13. On November 4, 2013, Complainant filed a Motion to Strike Respondent's Affirmative Defenses, which affirmative defenses were set forth in Respondent's August 22, 2013 Amended Answer to Complainant's Second Amended Complaint. Pursuant to the Hearing Officer's Order of March 20, 2014, Respondent's deadline to respond to Complainant's Motion to Strike Respondent's Affirmative Defenses has been stayed.

14. Complainant seeks to amend the Third Amended Complaint to (a) correct the Respondent's name and status from a corporation to a limited liability company, which changed during the pendency of this case, (b) include allegations that Respondent constitutes a "Person," SO2 emissions constitute a "contaminant," the facilities at issue meet the definitions within 415 ILCS 5/39.5(6), and Respondent is an "owner and operator;" (c) delete the allegations regarding 415 ILCS 5/9(a) and 35 Ill. Adm. Code 201.141, that were included in Count I of the Third Amended Complaint; (d) combine Counts I and III of the Third Amended Complaint; (e) move the Xanthan gum plant allegations from Count I of the Third Amended Complaint to Count II of the Fourth Amended Complaint; (f) include additional violations in Count I which arise out of the occurrences that are the subject matter of the proceeding; and (g) make additional clarifications and correct certain typographical errors. A true and correct copy of the Fourth Amended Complaint is attached hereto as Exhibit 1.

15. Respondent has not filed an answer to the Third Amended Complaint; the parties conducted limited written discovery in 2010; and Respondent will not be prejudiced if Complainant is granted leave to amend the Third Amended Complaint at this time. To the extent Complainant's Motion for Leave to File Fourth Amended Complaint is granted, the case will be procedurally positioned to proceed with litigation should the parties continue to be unable to reach a settlement.

WHEREFORE, Complainant People of the State of Illinois respectfully requests that the Hearing Officer (1) grant Complainant's Motion for Leave to File Fourth Amended Complaint and accept the Fourth Amended Complaint; and (2) grant such other relief as the Hearing Officer deems proper.

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



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# **EXHIBIT 1**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB NO. 09-107
	)	(Enforcement - Air)
TATE AND LYLE INGREDIENTS	)	
AMERICAS, LLC, an Illinois limited liability	)	
company, f/k/a Tate and Lyle Ingredients	)	
Americas, Inc.,	)	
	)	
Respondent.	)	

FOURTH AMENDED COMPLAINT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, and complains of Respondent, TATE AND LYLE INGREDIENTS AMERICAS, LLC (f/k/a Tate and Lyle Ingredients Americas, Inc.), as follows:

COUNT I

EMISSION OF CONTAMINANTS IN VIOLATION OF THE ACT AND CORRESPONDING REGULATIONS

1. This Fourth Amended Complaint is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2012), against Tate and Lyle Ingredients Americas, LLC (f/k/a Tate and Lyle Ingredients Americas, Inc.) (“TLIA” or “Respondent”).

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 (2012), and charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent TLIA is an Illinois limited liability company 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 Fourth Amended Complaint, Respondent has owned and operated a Corn Wet Mill multi-plant complex at 2200 East Eldorado Street, Decatur, Macon County, Illinois (the "Complex").

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"). 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 ("SO<sub>2</sub>") emissions.

8. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2012), 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 (A) without a permit granted by the Agency . . . or (B) 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.

9. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), provides as follows:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

10. Respondent, a limited liability company, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

11. Section 111 of the Clean Air Act establishes the New Source Performance Standards (“NSPS”). The NSPS regulations are codified in Title 40, Part 60 of the Code of Federal Regulations (“NSPS Regulations”). The Illinois EPA administers the NSPS for subject sources in Illinois pursuant to a delegation agreement with the United States Environmental Protection Agency (“USEPA”).

12. The NSPS Regulations governing Fossil-Fuel-Fired Steam Generators are found in Subpart D of Title 40, Part 60. Section 60.43(a) of the Code of Federal Regulations, 40 C.F.R. 60.43(a), provides, in pertinent part, as follows:

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 that contain SO<sub>2</sub> in excess of:

\* \* \*

- (2) 520 [nanograms per joule] heat input (1.2 lb/MMBtu) derived from solid fossil fuel or solid fossil fuel and wood residue. . . .

13. Section 39.5 of the Act, 415 ILCS 5/39.5 (2012), provides, in pertinent part, as follows:

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 (m) of subsection 7 of this Section.

14. Section 39.5 of the Act, 415 ILCS 5/39.5 (2012), provides the following 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 c of subsection 2 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 is

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 is located on contiguous or adjacent properties, and/or is 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.

15. On August 12, 2003, the Illinois EPA issued CAAPP permit number 96020099 ("CAAPP Permit 96020099") to Respondent, which constitutes a CAAPP Permit as that term is defined in Section 39.5 of the Act, 415 ILCS 5/39.5 (2012).

16. The Complex constitutes a "CAAPP source," a "Major source," a "Source," and a "Stationary source" as those terms are defined in Section 39.5 of the Act, 415 ILCS 5/39.5 (2012).

17. Respondent constitutes an "owner or operator" of the Complex, as that term is defined in Section 39.5 of the Act, 415 ILCS 5/39.5 (2012).

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), defines "contaminant" as follows:

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

19. SO<sub>2</sub> emissions from the boilers at the Respondent's Co-Generation Plant

constitute a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

20. Condition 7.7.3(g) of the CAAPP Permit provides, in pertinent part, as follows:

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. SO<sub>2</sub>: 1.2 lb/mmBtu (Subpart D)

21. On September 28, 2005, Respondent informed Illinois EPA that, during the period July through September 2005, coal-fired boiler operations of boiler numbers 1 and 2 caused SO<sub>2</sub> emissions in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

22. 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") for the period July through September 2005.

23. The Third Quarter 2005 Reports provide 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 SO<sub>2</sub> emissions in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

24. The Third Quarter 2005 Reports provide that limestone utilized by Respondent's facility from September 15 through 29, 2005, as a measure to control SO<sub>2</sub> emissions during coal-fired boiler operations, was introduced into the fuel combustion system wet, causing the

emission of SO<sub>2</sub> in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

25. On November 3, 2008, the Illinois EPA received Respondent's third quarter 2008 excess emissions report and compliance emission monitor downtime performance report (the "Third Quarter 2008 Reports") for the period July through September 2008.

26. The Third Quarter 2008 Reports provide 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, resulting in SO<sub>2</sub> emissions in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

27. The Third Quarter 2008 Reports provide that, on various dates during the period July through September 2008, process problems, boiler load changes, soot blowing, and the failure of the boiler equipment control process, in addition to undetermined causes, resulted in the emission of SO<sub>2</sub> in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

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

29. The Fourth Quarter 2008 Reports provide 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 a 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, resulting in SO<sub>2</sub> emissions in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

30. The Fourth Quarter 2008 Reports provide that, on various dates during the period October through December 2008, 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 SO<sub>2</sub> in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

31. On May 1, 2009, the Illinois EPA received Respondent's first quarter 2009 excess emissions report and compliance emission monitor downtime performance report (the "First Quarter 2009 Reports") for the period January through March 2009.

32. The First Quarter 2009 Reports provide that, during the period January 2, 2009 through February 2, 2009, limestone feeders utilized to convey limestone material into boilers #1 and #2 choked, resulting from packed limestone fines and 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 boilers #1 and #2 resulted in SO<sub>2</sub> emissions in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

33. The First Quarter 2009 Reports provide that, on various dates, during the period January through February 2009, process problems, boiler load changes, soot blowing, and the failure of its boiler equipment control process, in addition to undetermined causes during operation of boilers #1 and #2, resulted in the emission of SO<sub>2</sub> in excess, and thus in violation,

of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

34. On October 29, 2009, the Illinois EPA received Respondent's third quarter 2009 excess emissions report and compliance emission monitor downtime performance report (the "Third Quarter 2009 Reports") for the period July through September 2009.

35. The Third Quarter 2009 Reports provide that, on various dates during the period July through September 2009, boiler startup and soot blowing during the operation of boilers #1 and #2 resulted in the emission of SO<sub>2</sub> in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

36. On February 1, 2010, the Illinois EPA received Respondent's fourth quarter 2009 excess emissions report and compliance emission monitor downtime performance report (the "Fourth Quarter 2009 Reports") for the period October through December 2009.

37. The Fourth Quarter 2009 Reports provide 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 SO<sub>2</sub> emissions in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

38. The Fourth Quarter 2009 Reports provide that, on various dates during the period October through December 2009, process problems and the failure of its boiler equipment control process, in addition to undetermined causes during operation of boilers #1 and #2, resulted in the emission of SO<sub>2</sub> in excess, and thus in violation, of the emission standard set forth

in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

39. On April 21, 2010, the Illinois EPA received Respondent's first quarter 2010 excess emissions report and compliance emission monitor downtime performance report (the First Quarter 2010 Reports") for the period January through March 2010.

40. The First Quarter 2010 Reports provide 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 SO<sub>2</sub> emissions in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

41. The First Quarter 2010 Reports provide that, on various dates during the period January through March 2010, soot blowing, in addition to undetermined causes during operation of boilers #1 and #2, resulted in the emission of SO<sub>2</sub> in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition 7.7.3(g) of the CAAPP Permit.

42. By operating boilers #1 and #2 in violation of 40 C.F.R. § 60.43(a) and Condition 7.7.3 of the CAAPP Permit during the periods July through September 2005, July 2008 through February 2009, July 2009 through March 2010, and such other dates better known to Respondent, Respondent also violated Sections 9.1 and 39.5(6)(a) of the Act, 415 ILCS 5/9.1 and 39.5(6)(a) (2012).

43. Since March 2010, on such dates better known to Respondent, Respondent operated boilers #1 and #2 in such a manner that has resulted in SO<sub>2</sub> emissions in excess, and thus in violation, of the emission standard set forth in 40 C.F.R. § 60.43(a) and Condition



7.7.3(g) of the CAAPP Permit.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, TATE AND LYLE INGREDIENTS AMERICAS, LLC (f/k/a Tate and Lyle Ingredients Americas, Inc.), with respect to this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Sections 9.1 and 39.5(6)(a) of the Act, 415 ILCS 5/9.1 and 39.5(6)(a) (2012), 40 C.F.R. § 60.43(a) and Condition 7.7.3 of the CAAPP Permit;
3. Ordering Respondent to cease and desist from any further violations of Sections 9.1 and 39.5(6)(a) of the Act, 415 ILCS 5/9.1 and 39.5(6)(a) (2012), 40 C.F.R. § 60.43(a) and Condition 7.7.3 of the CAAPP Permit;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II

CONSTRUCTION PERMIT VIOLATIONS

1-9. Complainant realleges and incorporates by reference herein paragraphs 1 through 7 and paragraphs 9 through 10 of Count I of this Fourth Amended Complaint as paragraphs 1 through 9 of this Count II.

10. Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), provides, in pertinent part, as follows:

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, (i) without a permit granted by the Agency . . . or (ii) in violation of any conditions imposed by such permit.

11. Between December 2004 and March 2006, and on such other dates better known to Respondent, the Xanthan Gum Plant, a separate operational facility in the Complex, conducted batch fermentation, alcohol mix and precipitation, desolventization, drying, distillation, packaging and storage operations to facilitate the manufacture of xanthan gum.

12. The Xanthan Gum Plant's emissions include isopropyl alcohol generated during xanthan gum production, which constitutes volatile organic material ("VOM").

13. On July 10, 2003, the Illinois EPA received Respondent's construction permit application to construct the Xanthan Gum Plant within the Complex.

14. On February 25, 2004, the Illinois EPA issued to Respondent construction permit

03070016 (the "Construction Permit").

15. Condition 6(a) of the Construction Permit provides as follows:

- 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.

16. Condition 5(a)(ii) of the Construction Permit provides as follows:

- 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).)

17. By letter dated February 28, 2006, Respondent notified the Illinois EPA of the emission of isopropyl alcohol at the Xanthan Gum Plant in excess of the isopropyl alcohol emission limit in Condition 5(a)(ii) of the Construction Permit and thus the emission of VOM in excess of the VOM emission limit in Condition 6(a) of the Construction Permit.

18. By letter dated February 28, 2006, Respondent informed the Illinois EPA that based upon an internal audit, Respondent incorrectly determined the mass balance calculations for isopropyl alcohol losses discharged to the environment. 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 isopropyl alcohol, and thus VOM, emissions totaling 43.41 t/yr, 41.96 t/yr, and 40.06 t/yr, respectively.

19. During the period beginning approximately October 1, 2004 through at least January 2006, and on such other dates better known to Respondent, TLIA's xanthan gum production operations at the Xanthan Gum Plant resulted in the emission of isopropyl alcohol in

excess of the isopropyl alcohol limit contained in Condition 5(a)(ii) of the Construction Permit, thereby also resulting in the emission of VOM in excess of the VOM emission limit in Condition 6(a) of the Construction Permit. As such, TLIA violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, TATE AND LYLE INGREDIENTS AMERICAS, LLC (f/k/a Tate and Lyle Ingredients Americas, Inc.), with respect to this Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and Conditions 6(a) and 5(a)(ii) of the Construction Permit;
3. Ordering Respondent to cease and desist from any further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and Conditions 6(a) and 5(a)(ii) of the Construction Permit;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III

VIOLATION OF PSD REQUIREMENTS

1-10. Complainant realleges and incorporates by reference herein paragraphs 1 through 10 of Count I of this Fourth Amended Complaint as paragraphs 1 through 10 of this Count III.

11. Section 165 of the Clean Air Act, 42 U.S.C.S. 7475(a) (2010), provides 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 limitations 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;

\* \* \*

12. Section 52.21 of Title 40 of the Code of Federal Regulations, 40 C.F.R. § 52.21, entitled "Prevention of significant deterioration of air quality," provides in pertinent part:

(a)(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<sub>x</sub> 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.

13. As of the date of the filing of this Fourth Amended Complaint, Respondent's Complex is a major stationary source located in an attainment area for ozone.

14. 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 isopropyl alcohol, and thus VOM, emissions at the Xanthan Gum Plant totaled 43.41 t/yr, 41.96 t/yr, and 40.06 t/yr, respectively.

15. 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.

16. 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 construction permit setting forth the BACT limitation prior to constructing the facility, and thereafter failed to implement BACT, in violation of Sections 165(a)(1) and (4) of the Clean Air Act, 42 U.S.C.S. 7475(a)(1) and (4) (2010), as well as Sections 52.21(a)(2)(ii), (a)(2)(iii), (j)(1) and (j)(3) of Title 40 of the Code of Federal Regulations, 40 C.F.R. § 52.21(a)(2)(ii), (a)(2)(iii), (j)(1) and (j)(3).

17. By violating Section 165 of the Clean Air Act and the federal regulations adopted thereunder, Respondent also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010).

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that this Board enter an order against Respondent, TATE AND LYLE INGREDIENTS AMERICAS, LLC (f/k/a Tate and Lyle Ingredients Americas, Inc.) with respect to this Count III:

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

2. Finding that Respondent has violated Sections 165(a)(1) and (4) of the Clean Air Act, 42 U.S.C.S. 7475(a)(1) and (4) (2010), Sections 52.21(a)(2)(ii), (a)(2)(iii), (j)(1) and (j)(3) of Title 40 of the Code of Federal Regulations, 40 C.F.R. § 52.21(a)(2)(ii), (a)(2)(iii), (j)(1) and (j)(3), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010);

3. Ordering Respondent to cease and desist from any further violations of Sections 165(a)(1) and (4) of the Clean Air Act, 42 U.S.C.S. 7475(a)(1) and (4) (2010), Sections



52.21(a)(2)(ii), (a)(2)(iii), (j)(1) and (j)(3) of Title 40 of the Code of Federal Regulations, 40 C.F.R. § 52.21(a)(2)(ii), (a)(2)(iii), (j)(1) and (j)(3), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010);

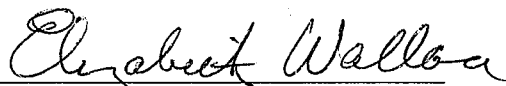
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN,  
Attorney General of the State of Illinois

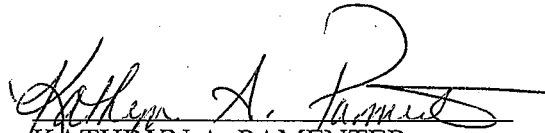
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**CERTIFICATE OF SERVICE**

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 26th day of June, 2014, the attached Notice of Electronic Filing and Complainant's Motion for Leave to File Fourth Amended Complaint upon the parties as set forth on the Notice of Electronic Filing.

  
KATHRYN A. PAMENTER