## ILLINOIS POLLUTION CONTROL BOARD August 17, 2017

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
V.	)	PCB 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.	)	

ORDER OF THE BOARD (by C.M. Santos):

For the reasons below, the Board today grants the parties' joint motion for a stay and stays paragraph 9(e) of the agreed interim order for 120 days, through December 15, 2017. When the stay ends, the parties must file a status report describing progress in this proceeding. 35 Ill. Adm. Code 101.514(b).

In a fourth amended complaint filed June 26, 2014, the Office of the Attorney General, for the People of the State of Illinois (People), alleged that Tate and Lyle Ingredients Americas, LLC (Tate and Lyle) violated statutory and regulatory authorities and permit conditions at its grain processing facility in Decatur, Macon County. Emissions sources at the facility include two coal-fired boilers, each of which is a source of sulfur dioxide (SO<sub>2</sub>) emissions.

On October 27, 2016, the Board granted the parties' joint motion to enter an agreed interim order. The agreed interim order sets deadlines for Tate and Lyle to propose a test plan and, on approval of the plan, to perform the test to determine the maximum achievable SO<sub>2</sub> removal rate through a Dry Sorbent Injection system. The agreed interim order also set a deadline for Tate and Lyle to report test results subject to review and approval by the Illinois Environmental Protection Agency (IEPA) in consultation with the U.S. Environmental Protection Agency (USEPA). The parties argued that following these deadlines would generate information needed to attempt to reach a settlement.

Paragraph 9(e) of the agreed interim order provides that, if IEPA in consultation with USEPA declines to accept the test report or accepts it with conditions, Tate and Lyle must within 14 days propose to revise the test report by addressing identified deficiencies or conditions. If IEPA declines to accept the revised report or accepts it with conditions, Tate and Lyle may within 21 days submit a second revision or invoke the dispute resolution provisions of the agreed interim order. People v. Tate and Lyle Ingredients America, LLC, PCB 09-107 (Oct. 21, 2017).

On July 24, 2017, the parties filed a joint motion to stay paragraph 9(e) of the agreed interim order (Mot.). Paragraphs 2 and 3 of the motion report in detail on the progress of the proceeding. Mot. at 1-2; *see* 35 Ill. Adm. Code 101.514(a). The motion states that Tate and Lyle timely proposed a test plan and, on approval, performed the evaluation testing. Tate and Lyle also timely submitted the test report to IEPA and USEPA. Mot. at 1. However, through a letter dated July 12, 2017, IEPA—after consulting with USEPA—notified Tate and Lyle that it declined to accept the test report. *Id.* at 2.

In their joint motion, the parties agree that Tate & Lyle will conduct additional  $SO_2$  evaluation testing. They add that they "are engaging in discussions to finalize the details of that evaluation and that the evaluation may facilitate ongoing efforts to settle this case." Mot. at 3.

Under the circumstances described by the parties, the Board grants the joint motion to stay paragraph 9(e) of the agreed interim order. However, the motion does not propose a duration for the stay, and the Board does not favor indefinite stays. Accordingly, the Board's stay will last for 120 days, through December 15, 2017, unless the Board sooner issues an order terminating the stay. At the end of the 120-day stay, the parties must file a status report and may request an extension. 35 Ill. Adm. Code 101.514(b).

The agreed interim order states that "[t]he parties may, by mutual consent, extend any compliance dates or modify the terms of this Order without filing a motion for leave." However, any modification of the order made by the parties and not accepted by the Board in a subsequent Board order is not enforceable under the Act. <u>Tate and Lyle</u>, PCB 09-107, slip op. at 1-2 (Oct. 27, 2016), citing <u>People v. Reliable Materials Lyons, *et al.*</u>, PCB 12-52, slip op. at 2 (Aug. 21, 2014).

IT IS SO ORDERED.

Board Members B.K. Carter abstained.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 17, 2017, by a vote of 4-0.

) on a. Brown

Don A. Brown, Clerk Illinois Pollution Control Board