

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.)	

NOTICE OF FILING


To: James L. Curtis
 Jeryl L. Olson
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Carol Webb
 Hearing Officer
 Illinois Pollution Control Board
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Mr. Don Brown
 Clerk
 Illinois Pollution Control Board
 100 W. Randolph
 Chicago, IL 60601
 Don.Brown @illinois.gov

PLEASE TAKE NOTICE that on August 3, 2018, the Complainant filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement, copies of which are attached hereto and hereby served upon you. Financing may be available, through the Illinois Environmental Facilities Financing Act, to correct the violations alleged in the Complaint.

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

By: 
 Kathryn A. Pamenter
 Assistant Attorney General
 Environmental Bureau
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MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2016), moves that the Illinois Pollution Control Board (“Board”) grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2016). In support of this motion, Complainant states as follows:

1. The Fourth Amended Complaint in this matter alleges violations of (a) Count I: Sections 9.1 and 39.5(6)(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/9.1 and 39.5(6)(1) (2012), 40 C.F.R. § 60.43(a) and Condition 7.7.3 of Respondent’s Clean Air Act Permit Program (“CAAPP”) permit; (b) Count II: Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and Conditions 6(a) and 5(a)(ii) of Respondent’s construction permit no. 03070016 issued on February 25, 2004 (“Construction Permit”); and (c) Count III: 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 (2010).

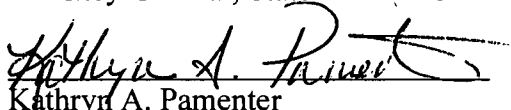
2. The parties have reached agreement on all outstanding issues in this matter.
3. The agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.
4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2016).

Respectfully submitted,

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

BY:


Kathryn A. Pamerter
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0608
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Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and TATE AND LYLE INGREDIENTS AMERICAS LLC f/k/a Tate and Lyle Ingredients Americas, Inc. (“Respondent”), (collectively “Parties to the Stipulation”) have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and to submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (“CAA”), applicable federal regulations, the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2016), and the Board’s regulations alleged in the Fourth Amended Complaint, except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On August 11, 2016, a Fourth Amended Complaint (“Fourth Amended Complaint”) was accepted by the Board that was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2012), against Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2016).

3. Respondent is an Illinois limited liability company registered with the Secretary of State’s Office and is in good standing.

4. At all times relevant to the Fourth Amended Complaint, Respondent owned and operated and continues to own and operate a Corn Wet Mill multi-plant complex (the “Complex”) at 2200 East Eldorado Street, Decatur, Macon County, Illinois (“Facility”).

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

6. One of the operations within the Facility is the Utilities Area Plant, also known as the Co-Generation Plant (the “Co-Generation Plant”).

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 October 27, 2016, the Board entered an Order granting the Joint Motion to Approve and Enter Agreed Interim Order and entering such order (the “Agreed Interim Order”).

B. Allegations of Non-Compliance

1. Violations Alleged in the Fourth Amended Complaint.

Complainant contends that Respondent has violated the following provisions of the CAA, applicable federal regulations, the Act and Board regulations:

Count I: Emission of Contaminants in Violation of the Act and Corresponding Regulations in violation of Sections 9.1 and 39.5(6)(a) of the Act, 415 ILCS 5/9.1 and 39.5(6)(a) (2012), Section 60.43(a) of the Standards of Performance for New Stationary Sources ("NSPS"), 40 C.F.R. § 60.43(a), and Condition 7.7.3 of Respondent's CAAPP permit number 96020099 (the "CAAPP Permit").

Count II: Construction Permit Violations in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), and Conditions 6(a) and 5(a)(ii) of Respondent's construction permit 03070016 (the "Construction Permit").

Count III: Violation of Prevention of Significant Deterioration ("PSD") Requirements 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), 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).

2. Additional Alleged Violations.

Complainant contends that between the date of the filing of the Fourth Amended Complaint and the Effective Date (as defined below), Respondent has violated and may violate Sections 9.1 and 39.5(6)(a) of the Act, 415 ILCS 5/9.1 and 39.5(6)(a) (2016), Section 60.43(a) of the NSPS, 40 C.F.R. § 60.43(a), and Condition 7.7.3 of Respondent's CAAPP Permit, arising from the same or similar allegations as those set forth in Count I of the Fourth Amended Complaint (the "Additional Alleged Violations").

C. Non-Admission of Violations

Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By

entering into this Stipulation and complying with its terms, Respondent does not affirmatively admit the allegations of violation within the Fourth Amended Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. On October 27, 2016, the Illinois Pollution Control Board (“Board”) entered an Order granting the Joint Motion to Approve and Enter Agreed Interim Order and approving the Agreed Interim Order.

2. In accordance with the Agreed Interim Order, Tate & Lyle timely (a) submitted the Test Plan (as defined therein) to conduct a SO₂ evaluation test of coal-fired Boilers #1 and #2 at the Facility, which the Illinois EPA, in consultation with the United States Environmental Protection Agency (“USEPA”), approved; (b) conducted the SO₂ evaluation testing; and (c) submitted the Test Results Report (as defined therein) to the Illinois EPA and USEPA.

3. By letter dated July 12, 2017, the Illinois EPA, following consultation with USEPA, notified Tate & Lyle that it declined to accept the Test Results Report.

4. On August 4, 2017, Tate & Lyle submitted its Dry Sorbent Injection SO₂ Reduction Evaluation Test Sodium Bicarbonate Coil Boilers 1 (123-08) and 2 (123-09) (“August 4 Test Plan”).

5. On August 17, 2017, the Illinois EPA, following consultation with USEPA, approved the August 4 Test Plan.

6. On October 14, 2016, the Illinois EPA issued a “Construction Permit NESHAP Source” numbered 16090004 to Respondent, pursuant to which, among other things, Respondent constructed a dry sorbent injection system for Boilers #1 and #2 at the Facility (the “2016 Construction Permit”).

7. On October 27, 2017, Tate & Lyle submitted its Dry Sorbent Injection SO₂ Reduction Evaluation Plan Sodium Bicarbonate Test Results Report for Coal Boilers 1 (123-08) and 2 (123-09) (the "Test Results Report").

7. On December 12, 2017, the Illinois EPA, following consultation with USEPA, approved the Test Results Report.

8. On July 16, 2018, Respondent submitted to USEPA, with a copy to the Illinois EPA, a petition in accordance with 40 C.F.R. § 60.43(d), to utilize the New Source Performance Standard provisions set forth at 40 C.F.R. § 60.42b(k)(4) for Boilers #1 and #2 at the Facility (the "Petition"). A copy of the Petition is attached hereto as Exhibit 1.

9. On August 1, 2018, USEPA approved the Petition in writing. A copy of USEPA's written approval of the Petition is attached hereto as Exhibit 2.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, members, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violations of the CAA, applicable federal regulations, the Act and the Board regulations for all violations alleged in the Fourth Amended Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2016).

Respondent shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide

a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, Respondent shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the Facility shall in any way alter the responsibilities of Respondent under this Stipulation. In the event that Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, Respondent shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the Facility or a portion thereof. Respondent shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligation(s) required by this Stipulation. Until the Termination Date, Respondent shall provide a copy of this Stipulation to any such successor in interest and Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, Respondent and a proposed purchaser or operator of the Facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, Respondent. This provision does not relieve Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2016), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Complainant alleges that human health and the environment were threatened, and the Illinois EPA's information gathering responsibilities were hindered by Respondent's violations.
2. There is social and economic benefit to the Facility.
3. Operation of the Facility was and is suitable for the area in which it is located.
4. Compliance with the statutes, regulations and Facility's permit terms is both technically practicable and economically reasonable.
5. With respect to the allegations of the Fourth Amended Complaint, Respondent has agreed to satisfy the requirements of this Stipulation.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2016), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of Respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by Respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by Respondent and to otherwise aid in enhancing voluntary compliance with this Act by Respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by Respondent;
6. whether Respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether Respondent has agreed to undertake a "supplemental environmental project, which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which Respondent is not otherwise legally required to perform; and
8. whether Respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. The alleged violations in Count I occurred between September 2005 and the entry of this Stipulation, and the alleged violations in Counts II and III occurred between approximately December 2004 and March 2006. Complainant alleges that human health and the environment

were threatened, and the Illinois EPA's information gathering responsibilities hindered by Respondent's violations.

2. Measures have been, and continue to be, implemented by Respondent to address the alleged violations in the Fourth Amended Complaint. Respondent has, among other things, installed a dry sorbent injection system, performed testing at higher sorbent injection rates and purchased both automatic and manual coal sampling equipment.

3. Any economic benefit obtained by Respondent is accounted for in the civil penalty provided for in Article V of this Stipulation.

4. Complainant has determined, based upon the specific facts of this matter, that the penalty provided for in Article V of this Stipulation will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. On January 19, 2016, the Circuit Court for the Sixth Judicial Circuit, Macon County, Illinois entered a Consent Order between Complainant, the Illinois EPA and Respondent in *People v. Tate & Lyle Ingredients Americas LLC* (Case No. 15CH22), pursuant to which, among other things, Respondent agreed to complete future compliance measures relating to its feed dryers and to pay a civil penalty of \$80,000.00. Respondent neither admitted nor denied the allegations referenced in the Consent Order.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondent shall pay a civil penalty in the sum of Three Hundred Fifteen Thousand Dollars (\$315,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest, and Default

1. If Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$500.00 per day per violation for up to the first fifteen (15) days of violation, \$1,000.00 per day per violation for the next fifteen (15) days of violation, and \$2,000.00 per day per violation thereafter until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. If Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount

owed by Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. The stipulated penalties shall be enforceable by the Complainant in Circuit Court and shall be in addition to, and shall not preclude the use of, (a) any other remedies or sanctions arising from the failure to comply with this Stipulation or (b) the filing of a new cause of action for any new, future violations of the Act and corresponding Board regulations.

C. Payment Procedures

1. All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Kathryn A. Pamerter
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. *Definition of Effective Date.* For purposes of this Section V.D., the term “Effective Date” shall mean the earlier to occur of (i) the date on which Illinois EPA receives a written notice of completion of the compliance test conducted in accordance with 40 CFR §§ 60.45b(b) and (c) and 60.8, or (ii) January 1, 2019.

2. *Compliance Standard Prior to the Effective Date.* Prior to the Effective Date, Respondent shall comply with the terms and provisions of CAAPP Permit 96020099.

3. *Compliance Standard After the Effective Date.* After the Effective Date, Respondent shall comply with the terms and provisions of CAAPP Permit 96020099, as may be renewed or modified from time to time; provided, however that, pursuant to Section 39.5(14)(a) and (c) of the Act, Respondent shall be subject to the requirements of 40 CFR Subpart Db applicable to SO₂, including complying with the 90% SO₂ emissions reduction rate and the 1.2 lb/MMBtu heat input emissions limit set forth at 40 CFR § 60.42b(k)(4), at Boilers #1 and #2 at the Facility. Compliance with the 90% SO₂ emissions reduction rate and the 1.2 lbs/MMBtu heat input emissions limit shall be determined utilizing a 30-day rolling average as set forth in 40 CFR § 60.42b(e).

4. *Submission of Minor Permit Modification Application.* Within thirty (30) days after the date that the Board approves this Stipulation and Proposal for Settlement, Respondent shall submit to the Illinois EPA a complete and accurate minor permit modification application pursuant to Section 39.5(14)(a) of the Act to, in place of the existing emission limit for SO₂, revise Condition 7.7.3(g)(ii) of CAAPP Permit 96020099 to incorporate the 90% SO₂ emissions reduction rate and 1.2 lb/MMBtu heat input emissions limit set forth at 40 CFR § 60.42b(k)(4) for Boilers #1 and #2 at the Facility, which rate and limit will be effective on the Effective Date.

5. *Submission of Significant Permit Modification Application.* Within thirty (30) days after the date that the Board approves this Stipulation and Proposal for Settlement, Respondent shall submit to the Illinois EPA a complete and accurate significant permit modification application pursuant to Section 39.5(14)(c) of the Act to revise Conditions 7.7.7(d), 7.7.8(a), 7.7.9(a), 7.7.10, and 7.7.12(d) of CAAPP Permit 96020099 to incorporate the requirements of the 40 CFR Subparts A and Db applicable to SO₂.

6. *Right of Entry.* In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon Respondent's Facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

7. This Stipulation in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board regulations, as well as Respondent's CAAPP Permit 96020099.

8. Respondent shall cease and desist from future violations of the CAA, applicable federal regulations, the Act and the Board regulations that were the subject matter of the Fourth Amended Complaint.

E. *Force Majeure*

Respondent may declare *force majeure* in appropriate circumstances as follows:

- a. A *force majeure* event is an event arising solely beyond the reasonable control of Respondent, which prevents the timely performance of any of the requirements

of this Stipulation. For the purposes of this Stipulation, *force majeure* shall include, but is not limited to, events such as floods, tornadoes, other natural disasters, labor disputes beyond the reasonable control of Respondent, or prohibitions imposed by the Board or any Court having jurisdiction over Respondent.

b. When, in the opinion of Respondent, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Stipulation, Respondent shall electronically notify Complainant and the Illinois EPA via email within forty-eight (48) hours of when it knew or reasonably should have known of the occurrence. Written notice shall be given to Complainant as soon as practicable, but no later than ten (10) business days after the claimed occurrence, setting forth in detail the cause of the event, reasons preventing the timely performance of any requirement specified within Section V.D. herein, and measures implemented and/or to be implemented by Respondent in resolution of the apparent event so as to ensure compliance with the requirements set forth in Section V.D. contained herein.

c. Failure by Respondent to comply with the notice requirements of the preceding paragraph shall render this *force majeure* provision voidable by Complainant as to the specific event for which Respondent has failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

d. An increase in costs associated with implementing any requirement of this Stipulation shall not, by itself, excuse Respondent under the provisions of this Stipulation from a failure to comply with such a requirement.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this

Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Kathryn A. Pamerter
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

James Morgan
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to USEPA

Air Enforcement Compliance Tracker
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
r5airenforcement@epa.gov

As to Respondent

James L. Curtis and Jeryl L. Olson
Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, IL 60603-5577

Thor W. Ketzback
Bryan Cave Leighton Paisner LLP
161 North Clark Street, Suite 4300
Chicago, IL 60601-3315

G. Release from Liability

In consideration of Respondent's payment of the \$315,000.00 penalty, its commitment to cease and desist as contained in Section V.D.8. above, completion of all activities required

hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Respondent from any further liability or penalties for the violations of the CAA, applicable federal regulations, the Act and the Board regulations that were the subject matter of the Fourth Amended Complaint and the Additional Alleged Violations. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Fourth Amended Complaint accepted on August 11, 2016 and the Additional Alleged Violations. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than Respondent.

H. Enforcement and Modification of Stipulation

1. Upon the entry of the Board's Order approving and accepting this Stipulation, such Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.
2. The Parties to the Stipulation may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation, subject to the Board's approval. A

request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of the Parties to the Stipulation.

I. Termination.

1. Respondent may request that this Stipulation terminate upon the earlier to occur of:
 - (a) the Illinois EPA's issuance of a final, non-appealable written renewal of CAAPP Permit 96020099 for the significant permit modification application referenced in Section V.D.5 above, provided that Respondent has been in continuous compliance with (i) the terms of the Stipulation for the twelve (12) months preceding the request, and (ii) the renewed CAAPP Permit 96020099 for the thirty (30) days preceding the request; or
 - (b) the date that Respondent submits to Illinois EPA a permit modification for the removal of Boilers #1 and #2 from CAAPP Permit 96020099, provided that such permit modification includes documentation evidencing that Boilers #1 and #2 at the Site have been permanently retired.

Any such request must be made by notice to Complainant and include a statement that Respondent has completed all actions required by this Stipulation and has been in continuous compliance with the terms of the Stipulation and the renewed CAAPP Permit 96020099 for the time periods set forth above. Such request must also include the following certification by a responsible corporate official of Respondent:

I certify under penalty of law that this statement was prepared under my direction or supervision, and that the information submitted in or accompanying this statement of final compliance is to the best of my knowledge true, accurate and complete. I am aware that there are

significant penalties for submitting false information, including the possibility of fine and or imprisonment for knowing violations.

2. Complainant shall notify Respondent of its decision on the request within forty-five (45) calendar days of Complainant's receipt of the request. If Complainant agrees to terminate this Stipulation, Complainant and Respondent shall jointly file a motion with the Board requesting termination of the stipulation. If Complainant does not agree to terminate this Stipulation, Complainant shall provide Respondent written notification stating the reasons why this Stipulation should not be terminated, and Respondent may then file a motion with the Circuit Court of Macon County (the "Court"). The Stipulation shall thereafter remain in effect pending resolution of any dispute by the Court concerning whether Respondent has completed its obligations under this Stipulation and is in compliance with the terms of the Stipulation. The request to terminate the Stipulation shall include a request that, in any Order terminating the Stipulation, Sections V.D.8. (Cease and Desist) and V.G. (Release from Liability) of this Stipulation shall survive and shall not be subject to and are not affected by the termination of any other provision of this Stipulation.

J. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

[Remainder of Page Blank; Signature Page on Page 19]

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


FOR COMPLAINANT

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

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
Environmental/Asbestos Litigation Division

ALEC MESSINA, Director
Illinois Environmental Protection Agency

By: 
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

By: _____
JOHN J. KIM
Chief Legal Counsel

DATE: 8/2/18

DATE: _____

RESPONDENT

TATE & LYLE INGREDIENTS
AMERICAS LLC f/k/a Tate & Lyle
Ingredients Americas, Inc.

BY: _____

Its: _____

DATE: _____

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

FOR COMPLAINANT

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


MATTHEW J. DUNN, Chief
Environmental/Asbestos Litigation Division

By: _____
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

DATE: _____

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

ALEC MESSINA, Director
Illinois Environmental Protection Agency

By:  _____
JOHN J. KIM
Chief Legal Counsel

DATE: 8/3/18

RESPONDENT

TATE & LYLE INGREDIENTS
AMERICAS LLC *f/k/a* Tate & Lyle
Ingredients Americas, Inc.

BY: _____

Its: _____

DATE: _____

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

FOR COMPLAINANT

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

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
Environmental/Asbestos Litigation Division

ALEC MESSINA, Director
Illinois Environmental Protection Agency

By: _____
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

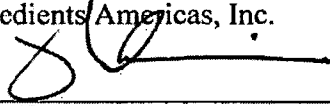
By: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

RESPONDENT

TATE & LYLE INGREDIENTS
AMERICAS LLC f/k/a Tate & Lyle
Ingredients Americas, Inc.

BY:  _____

Its: President

DATE: 8/3/18

EXHIBIT 1

TATE & LYLE

TATE & LYLE
2200 East Eldorado Street
Decatur, IL 62525
USA
Tel +1 217 423 4411
Fax +1 217 421 2216
www.tateandlyle.com

July 16, 2018

US EPA Region 5
Edward Nam
Director, Air and Radiation Division
77 West Jackson Boulevard
Chicago, IL 60604

Re: Petition for an Alternative Limit under 40 C.F.R. § 60.43(d)
Tate & Lyle, Decatur, Illinois

Dear Mr. Nam:

Pursuant to 40 C.F.R. § 60.43(d), Tate & Lyle Ingredients Americas LLC ("Tate & Lyle") submits this petition (the "Petition") to the United States Environmental Protection Agency ("U.S. EPA") to request that the cogeneration boiler units referenced below at its corn wet milling facility located in Decatur, Illinois be allowed to use the alternative rate and emissions limit for sulfur dioxide ("SO₂") set forth in 40 C.F.R. § 60.42b(k)(4) of Subpart Db, rather than the current applicable rate and limit set forth at 40 C.F.R. § 60.43(a)(2) of Subpart D.

1. Background Information

The Tate & Lyle Decatur corn wet milling facility is located at 2200 East Eldorado Street, Decatur, Illinois 62521. The facility has two Riley Stoker Multi-solids circulating fluid bed ("CFB") type boilers ("Boiler Units #1 and #2"), each with a maximum continuous capacity of 375,000 pounds per hour ("lbs/hr") of steam at 1,265 pounds per square inch ("psig") and 955° F (equivalent to approximately 470 mmBtu/hr heat input at design conditions). Boiler Units #1 and #2 generate high-pressure steam using coal to power an electrical turbine. Steam generated from the Boiler Units is also used as the primary source of heat for processes within the facility.

Construction of the boilers began on February 10, 1986, and, thus, the Boilers are currently subject to New Source Performance Standards ("NSPS") Subpart D standards for SO₂ emissions. The boilers were designed and constructed to meet a 1.2 lb/mmBtu SO₂ emission limit based on a rolling 3-hour rolling average in conformance with 40 C.F.R. § 60.43(a)(2). Continuous emission monitors ("CEMs") measure SO₂ emissions.

Boiler Units #1 and #2 are designed to facilitate SO₂ control through lime injection and capture of the resulting material in a baghouse. CFB boilers consist of a chamber in which fuel is burned while suspended in air with inert bed material and ground limestone. Most of the entrained

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US EPA Region 5
Edward Nam
Director, Air and Radiation Division
77 West Jackson Boulevard
Chicago, IL 60604

particles leaving the chamber are captured by cyclones and reinjected into the combustion chamber. The Riley Stoker design is unique in that the still-burning material from the cyclones is first collected in an external heat exchanger, prior to being reintroduced into the combustion chamber of the boiler. In the combustion chamber, the limestone undergoes a calcination reaction and then reacts with SO₂ released during combustion to form a calcium sulfate byproduct that is removed along with coal combustion ash by a bag-filter. The temperatures of fluidized bed boilers are maintained between 1400° F and 1500° F to maximize sulfur capture. This design currently results in approximately 85% control of potential SO₂ emissions.

It is well-established industrywide, that Riley Stoker boilers are difficult to operate, and Tate & Lyle's Boilers are believed to be the only ones remaining in operation in the United States because of the difficulty of operation. Over the years, Tate & Lyle has experienced malfunctions and operating conditions which, because of the 3-hour averaging period, result in apparent exceedences of the Subpart D standard—although the emissions stemming from such events are small. At the time of construction, Tate & Lyle was unable to demonstrate compliance with the 90% control standard of Subpart Db, and, thus, was subject to the 3-hour averaging period of Subpart D, compared to the 30-day averaging period of Subpart Db. For the reasons set forth below, Tate & Lyle now requests that it be subject to Subpart Db.

2. Explanation of plans for future compliance and monitoring

Tate & Lyle intends on making significant system improvements which will allow the facility to achieve the 90% reduction rate for SO₂ emissions referenced in the Subpart Db regulations, and, therefore, has submitted this Petition to subject Boiler Units #1 and #2 to the Subpart Db requirements and limits of 40 C.F.R. § 60.42b(k)(4). After completion of the compliance test conducted pursuant to 40 C.F.R. § 60.45b(b) and (c) and 40 C.F.R. § 60.8, compliance will thereafter be determined on a 30-day rolling average pursuant to 40 C.F.R. § 60.42b(e).

Section 60.42b(k)(4) requires Boiler Units #1 and #2 to comply with the following emission rate and limit: (1) SO₂ discharged to the atmosphere cannot exceed 10 percent of the potential SO₂ emission rate ("90 Percent Reduction Rate"); and (2) compliance with the 1.2 lb/MMBtu heat input limit. Tate & Lyle will comply with both components of 40 C.F.R. § 60.42b(k)(4) by using a currently permitted permanent dry sorbent injection ("DSI") system, utilizing sodium bicarbonate, in addition to the existing SO₂ controls already in place.

Tate & Lyle will utilize U.S. EPA Method 19 and ASTM Standard 2234 to comply with the 90 Percent Reduction Rate as specified in 40 C.F.R. § 60.47b(b). Compliance with the 90 Percent Reduction Rate will be demonstrated by comparing expected SO₂ emissions based on inlet coal sampling data (samples will be taken after the coal silo but before the coal bunkers) to the actual SO₂ emissions as measured by the Boiler Units' SO₂ CEMS.

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US EPA Region 5
Edward Nam
Director, Air and Radiation Division
77 West Jackson Boulevard
Chicago, IL 60604

More specifically, evenly spaced coal samples, of equal amounts, will be taken from conveyors immediately prior to coal boiler bunkers whenever coal is being conveyed to the bunkers. The coal samples will be aggregated, prepared for analysis and sent to a laboratory. Once the sample data is returned, the information will be used to calculate potential, uncontrolled SO₂ emissions from the coal and compared to the SO₂ CEMS data generated. The potential SO₂ emissions from the coal samples will be calculated using U.S. EPA's Method 19 as set forth at 40 C.F.R. § 60.47b(b)(4).¹ Method 19 also incorporates ASTM Standard 2234 for the collection of coal samples. Tate & Lyle will develop and implement detailed standard operating procedures ("SOPs") for the collection of coal samples, in accordance with ASTM Standard 2234, prior to the Effective Date referenced below.

Actual SO₂ emissions into the atmosphere will continue to be managed and measured using CEMS, and compliance with the Subpart Db emission limit will be determined using the rolling 30-day average procedures required in 40 C.F.R. § 60.45b(g) and Equation 19-19 of Method 19.

3. Expected Compliance Date

The facility intends to comply with 40 C.F.R. § 60.42b(k)(4) by the earlier of the completion of performance test conducted pursuant to 40 C.F.R. § 60.45b(b) and (c) and 40 C.F.R. § 60.8 or January 1, 2019 (the "Effective Date"). From the completion of the performance test and thereafter, compliance will be determined by a 30-day rolling average of the previous 30 days of data.

If EPA grants this Petition, as set forth within a final Stipulation and Proposal for Settlement between Tate & Lyle and Illinois EPA, the Company will submit an application to Illinois EPA to modify the facility's Clean Air Act Permit Program ("CAAPP") permit number 96020099, so that Boiler Units #1 and #2 become subject to the emission rate and limit set forth at 40 C.F.R. § 60.42b(k)(4) and other relevant provisions referenced herein that ensure compliance with 40 C.F.R. § 60.42b(k)(4).


Please let us know if you have any comments or concerns or otherwise require additional information.

¹ SO₂ emission rates from inlet coal sampling will be determined by Section 2.2.2.1 and equation 19-20 in Section 12.4.2 (Average Pollutant Rates for Other Than Hourly Averages) of Method 19. Tate & Lyle will also employ the following sections of Method 19: Section 12.5.2.1 (Solid Fossil Fuel/Sampling and Analysis); Section 12.5.2.1.1 (ASTM Sample Increment Collection); Section 12.5.2.1.3 (Gross Sample Analysis); Section 12.5.3.2.1 (Average inlet SO₂ rate calculation); and Section 12.5.3.2.2 (Sample Collection and Lot Size); .

July 16, 2018
Page 4

US EPA Region 5
Edward Nam
Director, Air and Radiation Division
77 West Jackson Boulevard
Chicago, IL 60604

Very truly yours,


Council for T&L Lyle

cc:

Cathy Stepp
Regional Administrator
US EPA REGION 5, Mail Code: R-19J
77 West Jackson Blvd.
Chicago, IL 60604-3590
Stepp.cathy@Epa.gov
(312) 886-3000

Julie Armitage
Bureau Chief
BUREAU OF AIR, ILLINOIS EPA
1021 North Grand Avenue East
Springfield, IL 62794
julie.armitage@illinois.gov
(217) 782-9846

EXHIBIT 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 01 2018

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard L. Dickenson, Director
Environmental Services
Tate & Lyle Ingredients Americas LLC
2200 East Eldorado Street
Decatur, Illinois 62525

RE: Response to Petition for Alternative SO₂ Limit under 40 C.F.R. § 60.43(d)
Tate & Lyle, Decatur, Illinois

Dear Mr. Dickerson:

The U.S. Environmental Protection Agency has reviewed Tate & Lyle Ingredients Americas LLC (Tate & Lyle or you) July 16th, 2018 petition under 40 C.F.R. § 60.43(d) (Petition), requesting EPA approval of alternate sulfur dioxide (SO₂) emissions limitations for the cogeneration boilers at Tate & Lyle's corn wet milling facility located at 2200 East Eldorado Street in Decatur, Illinois.

As discussed in the Petition, the cogeneration plant contains two Riley Stoker Multi-solids circulating fluidized bed (CFB) boilers constructed in 1986 (Boiler Units #1 and #2). Both units were designed to meet the New Source Performance Standards (NSPS), Subpart D, SO₂ emission standard of 1.2 lbs/mmBtu on a 3-hour rolling average basis in accordance with 40 C.F.R. 60.43(a)(2). Tate & Lyle, in its Petition, describes the difficulties these Riley Stoker boilers have had continuously meeting the short term, 3-hour rolling average, Subpart D emissions limitation. To address these difficulties, Tate & Lyle described planned, significant system improvements, including the installation of a permanent dry sorbent injection (DSI) system (utilizing sodium bicarbonate). Tate & Lyle states that it believes these system improvements will allow the cogeneration boilers to meet the alternate SO₂ emission limitation set forth in 40 C.F.R. § 60.43b(k)(4) of Subpart Db, instead of the current emission limitation set forth in 40 C.F.R. § 60.43(a)(2) of Subpart D.

Tate & Lyle stated in the Petition that the 90 percent reduction in SO₂ emissions required by 40 C.F.R. § 60.43b(k)(4), will be measured by sampling the coal immediately prior to the coal entering the bunkers and comparing the potential SO₂ emissions in sampled coal with actual SO₂ emissions, as measured by the Boiler's SO₂ continuous emission monitor

system (CEMS) on the outlet. Tate & Lyle stated that it will use EPA Method 19 and ASTM Standard 2234 for the collection of the coal samples and the determination of the percent reduction in SO₂ emissions, as required by Subpart Db. Tate & Lyle further stated that it will develop a detailed Standard Operating Procedures (SOPs) for the collection of the coal samples. EPA would like to note that Method 19 only allows the use of certain versions of this standard (e.g. ASTM D2234-76, -96, -97a, or -98) and use of any other versions would require an alternative test method request and additional approval by EPA. Furthermore, EPA notes that EPA Method 19 requires Tate & Lyle to use other ASTM methods for analysis of sulfur in the coal and the gross calorific value. EPA assumes that all other methods utilized by Tate & Lyle will be versions specifically allowed under EPA Method 19.

Based on the information, provided in the Petition and with the assumption noted above, EPA hereby approves the Petition as submitted, including the January 1, 2019 effective date for applicability of the standard.

If you have any further questions please contact Ethan Chatfield of my staff at (312) 886-5112.

Sincerely,



Sara Breneman

Chief

Air Enforcement and Compliance Assurance Branch

Cc: Julie Armitage, Bureau Chief
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794

CERTIFICATE OF MAILING

I certify that I sent a Certified Mail, Return Receipt Requested letter to:

Richard L. Dickenson, Director
Environmental Services
Tate & Lyle Ingredients Americas LLC
2200 East Eldorado Street
Decatur, Illinois 62525

I also certify that I sent a copy of this letter to:

Thor Ketzback, Attorney
Bryan Cave Leighton Paisner LLP
thor.ketzback@bclplaw.com

Jane Kwak
Bryan Cave Leighton Paisner LLP
jane.kwak@bclplaw.com

On the 1st day of August 2018.

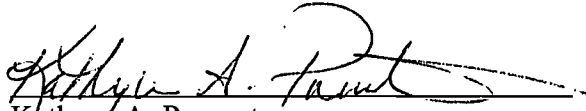
Kathy Jones

Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7017 0530 0000 6289 1498

CERTIFICATE OF SERVICE

I, Kathryn A. Pamenter, an Assistant Attorney General, do certify that I caused to be served this 3rd day of August, 2018, the attached Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement upon the persons set forth on the Notice of Filing, *via email*.



Kathryn A. Pamenter
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0608
KPamenter@atg.state.il.us