



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 18 2011

REPLY TO THE ATTENTION OF:  
SC-5J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Matthew D. Wineinger  
President  
Tate & Lyle Ingredients Americas L.L.C.  
2200 East Eldorado  
Decatur, Illinois 62525

Re: Tate & Lyle Ingredients Americas L.L.C., Decatur, Illinois, Consent Agreement  
and Final Order, Docket Nos. MM-05-2011-0010 EPCRA-05-2011-0019

Dear Mr. Wineinger:

**CERCLA-05-2011-0014**

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on JUN 18 2011.

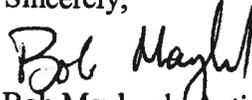
Please pay the Comprehensive Environmental Response, Compensation, and Liability Act civil penalty in the amount of \$12,500 in the manner prescribed in paragraph 55, and reference your check with the billing document number 2751130B013 and the docket number CERCLA-05-2011-0014.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$37,500 in the manner prescribed in paragraph 57, and reference your check with the billing document number 2751144E017 and the docket number EPCRA-05-2011-0019.

Your payments are due on JUL 18 2011.

Please feel free to contact James Entzminger, at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Brian Barwick, Associate Regional Counsel, at (312) 886-6620. Thank you for your assistance in resolving this matter.

Sincerely,



Bob Mayhugh, Acting Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

cc: Jon England, Legal Counsel (w/ enclosure)  
Kathy Allen (w/ enclosure)  
IL SERC

Jacqueline Simmons, Esq. (w/ enclosure)  
Baker & Daniels, LLP  
300 North Meridian Street, Suite 2700  
Indianapolis, Indiana 46204-1782 (certified)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

MM-05-2011-0010

CERCLA-05-2011-0014

In the Matter of: ) Docket Nos. EPCRA-05-2011-0019  
)  
Tate & Lyle Ingredients Americas )  
LLC ) Proceeding to Assess a Civil Penalty Under  
Decatur, Illinois ) Section 109(b) of the Comprehensive  
Respondent. ) Environmental Response, Compensation,  
) and Liability Act, and Section 325(b)(2) of  
) the Emergency Planning and Community  
) Right-to-Know Act of 1986  
)  
\_\_\_\_\_ )

RECEIVED

JUN 13 2011

Consent Agreement and Final Order  
Preliminary Statement

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Tate & Lyle Ingredients Americas LLC, a Delaware limited liability company doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

#### **Statutory and Regulatory Background**

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals

are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency planning commission (SERC) of any state likely to be affected by a release.

13. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous chemicals.

14. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b) and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2) authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation for violations that occurred after January 31, 1997 through March 15, 2004, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

#### **Factual Allegations and Alleged Violations**

15. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2200 East Eldorado Street, Decatur, Illinois (facility).

18. At all times relevant to this CAFO, Respondent was in charge of the facility.

19. Respondent's facility consists of a building, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

20. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

22. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

23. Ethylene oxide (CAS #75-21-8) is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

24. Ethylene oxide (CAS #75-21-8) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Ethylene oxide (CAS #75-21-8) has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Ethylene Oxide (CAS #75-21-8) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 10.1200(c).

27. At all times relevant to this CAFO, ethylene oxide was produced, used or stored at Respondent's facility.

28. Ethylene oxide (CAS #75-21-8) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

29. Ethylene oxide (CAS #75-21-8) has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

30. On December 1, 2009, at or about 9:50 a.m., a release occurred from Respondent’s facility of approximately 80.5 pounds of ethylene oxide (the release).

31. In a 24 hour time period, the release of ethylene oxide exceeded 10 pounds.

32. During the release, approximately 80.5 pounds of ethylene oxide leaked onto the land surface.

33. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

34. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

35. Respondent had knowledge of the release on December 1, 2009 at approximately 9:50 a.m.

36. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

37. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

38. The release was likely to affect Illinois.

39. At all times relevant to this CAFO, the Illinois Emergency Management Agency was the SERC for Illinois under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

40. The release was likely to affect Macon County, Illinois.

41. At all times relevant to this CAFO, the Macon County LEPC was the LEPC for Macon County, Illinois under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

**Count 1**

42. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

43. Respondent notified the NRC of the release on December 1, 2009, at 11:49 a.m.

44. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

45. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

**Count 2**

46. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

47. Respondent notified the Illinois SERC of the release on December 1, 2009, at 11:56 a.m.

48. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

49. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

**Count 3**

50. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

51. Respondent notified the LEPC of the release on December 1, 2009, at 12:03 p.m.

52. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

53. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

**Civil Penalty**

54. Complainant has determined that an appropriate civil penalty to settle this action is \$12,500 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation, and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$12,500 civil penalty for the CERCLA violation. Respondent must pay the penalty by ACH electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state the following: Tate & Lyle Ingredients Americas LLC, the docket number of this CAFO, and the billing document number 275130.0013

56. Complainant has determined that an appropriate civil penalty to settle this action is \$37,500 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

57. Within 30 days after the effective date of this CAFO, Respondent must pay a \$37,500 civil penalty for the EPCRA violations. Respondent must pay the penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state the following: Tate & Lyle Ingredients Americas LLC, the docket number of this CAFO, and the billing document number 2751144E017

58. Respondent must send a copy of the payment including, Respondent's name, the case name, Respondent's complete address, the case docket numbers, and the billing document numbers to:

James Entzminger, (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Michael Berman, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

59. This civil penalty is not deductible for federal tax purposes.

60. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

61. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

62. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

63. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

64. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 11004.

65. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA and other applicable federal, state and local laws, and regulations.

66. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

67. The terms of this CAFO bind Respondent and its successors and assigns.

68. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

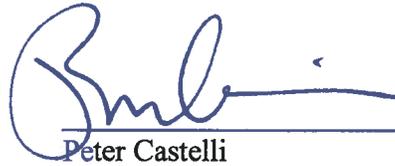
69. Each party agrees to bear its own costs and attorney's fees in this action.

70. This CAFO constitutes the entire agreement between the parties.

**In the Matter of: Tate & Lyle Ingredients Americas LLC, Decatur, Illinois**  
**Docket No.** \_\_\_\_\_

**Tate & Lyle Ingredients Americas LLC, Respondent**

June 2, 2011  
Date

  
\_\_\_\_\_  
Peter Castelli  
Vice President  
Tate & Lyle Ingredients Americas LLC

**U.S. Environmental Protection Agency, Complainant**

6/8/2011  
Date

  
\_\_\_\_\_  
Richard C. Karl  
Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

In the Matter of: Tate & Lyle Ingredients Americas, Inc, Decatur, Illinois  
Docket No. MM-05-2011-0010 EPCRA-05-2011-0019 CERCLA-05-2011-0014

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6-9-11  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

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JUN 13 2011  
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PROTECTION AGENCY

Certificate of Service

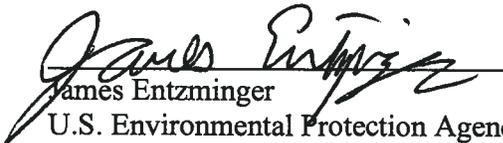
I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Matthew D. Wineinger, President  
2200 East Eldorado  
Decatur, Illinois 62525

Jacqueline Simmons, Esq.  
Baker & Daniels, LLP  
300 North Meridian Street, Suite 2700  
Indianapolis, Indiana 46204-1782

**RECEIVED**  
JUN 13 2011  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY.

on the 13 day of June, 2011

  
James Entzminger  
U.S. Environmental Protection Agency  
Region 5