



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAY 24 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Marc W. Larson
Corporate Counsel
Tate & Lyle Ingredients Americas LLC
2200 East Eldorado Street
Decatur, Illinois 62525

Re: Tate & Lyle Ingredients Americas LLC, Decatur, Illinois
Consent Agreement and Final Order
Docket No. **CAA-05-2011-0041**

Dear Mr. Larson:

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 **MAY 24 2011**. Please pay the civil penalty in the amount of \$ 79,100 in the manner prescribed in paragraphs 38-39 and reference your check with the number BD **2751103A037** and the docket number **CAA-05-2011-0041**.

Please feel free to contact Silvia Palomo at (312)353-2172 if you have any questions regarding the enclosed documents. Please direct any legal questions to Louise Gross at (312)886-6844. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Bob Mayhugh".

Bob Mayhugh, Acting Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
MAY 24 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
Tate & Lyle Ingredients Americas LLC)
formerly known as Tate & Lyle)
Ingredients Americas, Inc.)
2200 East Eldorado Street)
Decatur, Illinois 62521)
)
EPA ID: 1000 0013 2858)
)
Respondent)

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

Docket No. CAA-05-2011-0041

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 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, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. Respondent is Tate & Lyle Ingredients Americas LLC f/k/a Tate & Lyle Ingredients Americas, Inc. (Respondent), a corporation 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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with 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 the 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 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include

monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions.

16. “Stationary source” is defined to mean “any buildings, structures, equipment,

installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.” 40 C.F.R. § 68.3.

17. “Process” is defined to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” 40 C.F.R. § 68.3.

18. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed ethylene oxide, CAS No. 75-21-8 and sulfur dioxide, CAS No. 7446-09-5 as substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment 42 U.S.C. § 7412(r), identifying a threshold quantity of 10,000 lbs. of ethylene oxide and 5,000 lbs. of sulfur dioxide as causing regulations promulgated there under to be applicable. 40 C.F.R. § 68.130, Table 1.

19. 40 C.F.R. § 68.115 provides that a “threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

20. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. §§ 150 through 185.

21. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirement of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

22. Section 113(d) of the Act 42 U.S.C. §7413(d) and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred from March 15, 2004 to January 12, 2009 and a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act that occurred after January 12, 2009.

23. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

24. On September 28, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Administrator and U.S. Attorney General jointly determined that administrative penalty actions were an appropriate remedy for all violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), not otherwise precluded by any statute of limitations.

Factual Allegations and Alleged Violations

25. Respondent is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

26. Respondent owns and operates a facility, located at 2200 East Eldorado Street, Decatur, Illinois 62521, which 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 (Facility).

27. On July 17, 2001, under Section 112(r) of the Act, 42 U.S.C. § 7412, and

implementing regulations, 40 C.F.R. Part 68, Respondent submitted to U.S. EPA an RMP for the Facility.

28. According to the RMP submitted to U.S. EPA by Respondent, the Facility:

a. falls within NAICS Code 311221, as Wet Corn Milling;

b. used "ethylene oxide," CAS No. 75-21-8 and "sulfur dioxide," CAS No. 7446-09-5 as process chemicals during its operations; and

c. held 390,000 lbs. of ethylene oxide and 40,000 lbs. of sulfur dioxide.

29. On August 6, 2007, authorized representatives of U.S. EPA conducted an inspection at the Facility to determine its compliance with 40 C.F.R. Part 68.

30. The Facility is a "stationary source," as defined at 40 C.F.R. § 68.3.

31. In July 17, 2001, having held for use in its operations at the Facility 10,000 lbs. or more of ethylene oxide and 5,000 lbs. or more of sulfur dioxide, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and became subject to 40 C.F.R. Part 68.

32. For purposes of compliance with 40 C.F.R. Part 68, in its RMP, Respondent acknowledged that it was required to meet Program 3 eligibility requirements.

33. Based on the inspection conducted on August 6, 2007, U.S. EPA identified the following alleged violations of RMP requirements:

a. Failure to update and revise its RMP within five years from the date of its most recent update, as provided under 40 C.F.R. § 68.190(b)(1);

b. Failure to develop a chart or document describing the responsibilities of the individuals responsible for the implementation of the Risk Management Program, as provided under 40 C.F.R. § 68.15(c);

c. Failure to address the facility siting in the process hazard analysis, as required by 40 C.F.R. §§ 68.67(c)(5);

d. Failure to establish a system to promptly address the process hazard analysis findings and recommendations, as required by 40 C.F.R. § 68.67(e);

e. Failure to update and revalidate the process hazard analysis for the ethylene oxide and the sulfur dioxide process, as required by 40 C.F.R. § 68.67(f);

f. Failure to develop written emergency shutdown procedures for the ethylene oxide process and the sulfur dioxide process, as provided under 40 C.F.R. § 68.69(a)(1)(iv);

g. Failure to develop written startup procedures following a turnaround, or after an emergency shutdown for the sulfur dioxide process, as provided under 40 C.F.R. § 68.69(a)(1)(vii);

h. Failure to address in the operating procedures the operating limits, safety and health considerations, and safety systems and their functions for the sulfur dioxide process, as required by 40 C.F.R. §§ 68.69(a)(2) and (3);

i. Failure to certify annually that the operating procedures are current and accurate, as provided under 40 C.F.R. § 68.69(c);

j. Failure to establish written procedures to maintain the ongoing integrity of the process equipment, as required by 40 C.F.R. § 68.73(b);

k. Failure to conduct compliance audits, as required by C.F.R. §§ 68.79(a) through (e); and

l. Failure to investigate each incident which resulted in, or could have resulted in, a catastrophic release of a regulated substance, as required by 40 C.F.R. §§ 68.81(a) through (g).

34. The above-described violations of the RMP regulations are violations of Section 112(r)(7)(E) of the Act.

35. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

36. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act,

42 U.S.C. § 7413(d).

Civil Penalty

37. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation, prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$79,100.

38. Within 30 days after the effective date of this CAFO, Respondent must pay a \$79,100 civil penalty by sending a cashier's or certified check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "Tate & Lyle Ingredients America LLC," the docket number of this CAFO and the billing document number.

39. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Silvia Palomo, (SC-6J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Louise Gross, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

41. If Respondent does not pay timely 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 under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

42. 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 overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

43. This CAFO resolves only Respondent's liability for federal civil penalties for the

violations alleged in this CAFO.

44. The CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

45. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 42, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

46. Respondent certifies that it is complying fully with 40 C.F.R. Part 68.

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

48. 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.

49. Each party agrees to bear its own costs and attorneys' fees in this action.

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

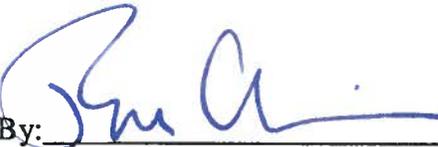
51. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk's office.

CONSENT AGREEMENT AND FINAL ORDER

**In the Matter of Tate & Lyle Ingredients America LLC
Docket No.**

Tate & Lyle Ingredients America LLC, Respondent

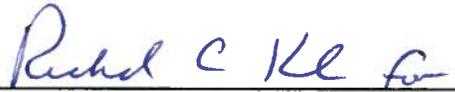
Date: 4-26-11

By:  _____

Peter M. Castelli
Vice President
Tate & Lyle Ingredients America LLC

United States Environmental Protection Agency, Complainant

5-17-11
Date

 _____
Douglas Ballotti, Acting Director
Superfund Division

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Tate & Lyle
Docket No. CAA-05-2011-0041

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MAY 24 2011

Final Order

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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.

5-19-11
Date



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

In the Matter of:

Tate & Lyle Ingredients Americas LLC

CAA-05-2011-0041

Docket Nos. _____

Certificate of Service

I, Silvia Palomo, certify that I hand delivered the original of the Consent Agreement and Final Order, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Mr. Marc W. Larson
Corporate Counsel
Tate & Lyle Ingredients Americas LLC
2200 East Eldorado Street
Decatur, Illinois 62525

RECEIVED

MAY 24 2011

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

on the 24 day of may, 2011



Silvia Palomo
U.S. Environmental Protection Agency
Region 5