

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:

Tate and Lyle Ingredients Americas, LLC,
Respondent

Proceeding under Section 113(d) of the Clean
Air Act

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No. CAA-01-2021-0049

A. PRELIMINARY STATEMENT

1. The issuance of this Consent Agreement (“Consent Agreement”) and attached Final Order (“Final Order”), in accordance with 40 C.F.R. § 22.13(b), simultaneously commences and concludes an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 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. Complainant is the United States Environmental Protection Agency, Region 1 (“EPA”).
3. Respondent is Tate and Lyle Ingredients Americas, LLC (“Tate and Lyle”), a corporation organized under the laws of the state of Delaware and doing business in the state of Maine.
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement and the attached final order without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order (“CAFO”).

B. JURISDICTION

5. This Consent Agreement is entered into under Sections 113(a)(3)(A) and (d) of the CAA, as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules, 40 C.F.R. Part 22.
6. The EPA and the United States Department of Justice jointly determined that this matter is appropriate for an administrative penalty assessment in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4.

C. GOVERNING LAW AND REGULATIONS

7. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as section 654, title 29 of the United States code, 29 U.S.C. § 654, to: (a) identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques; (b) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as the "General Duty Clause" ("GDC").

8. "Extremely hazardous substances" under the GDC includes chemical substances that may, as a result of short-term exposures associated with releases to the air, cause death, injury or property damage due to the chemicals' toxicity, reactivity, flammability, or corrosivity. See Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989). Pursuant to Section 112(r)(1) of the CAA, the term includes, but is not limited to, substances listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) and in 40 C.F.R. § 68.130. In addition, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is extremely hazardous. Under Section 112(r)(3) of the CAA, the term "extremely hazardous substances" also includes, without limitation, the substances listed in 40 C.F.R. § 68.130 and those substances listed in 40 C.F.R. Part 355, Appendices A and B, published under Section 302 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11002.

9. The term "accidental release" is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

10. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines "stationary source" as any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

11. The term "have a general duty in the same manner and to the same extent as section 654, title 29 of the United States code" means owners and operators must comply with the General Duty Clause in the same manner and to the same extent as employers must comply with the Occupational Safety and Health Act administered by the Occupational Safety and Health Administration ("OSHA").

12. Separately, Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of accidental releases of certain regulated substances. EPA's regulations, which contain risk management program requirements, are set out at 40 C.F.R. Part 68 and are generally known as the "RMP

Rules.”

13. The RMP Rules list the regulated substances (“RMP chemicals”) at 40 C.F.R. § 68.130. This list identifies propylene oxide as an RMP chemical with a threshold quantity of 10,000 pounds.

14. A “process” is defined by 40 C.F.R. § 68.3 as any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

15. Pursuant to 40 C.F.R. § 68.10, each process in which a regulated substance is present in more than a threshold quantity (“covered process”) is subject to one of three risk management programs. Program 1 is the least comprehensive, and Program 3 is the most comprehensive.

16. Pursuant to 40 C.F.R. § 68.10(g), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is less than the distance to any “public receptor” within the meaning of Section 68.3. Under 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the Occupational Safety and Health Administration (“OSHA”) process safety management (“PSM”) standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(h), a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

17. Pursuant to 40 C.F.R. § 68.12(a) and (d), the owner or operator of a stationary source with a process subject to Program 3 requirements must, among other tasks, submit a Risk Management Plan (“RMP”), develop a management system to implement the risk management program, and implement the release prevention requirements of 40 C.F.R. §§ 68.65-87.

18. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), authorize EPA to assess civil penalties for violations of the CAA and regulations promulgated thereunder, including CAA Section 112(r)(1) and the RMP Rules at 40 C.F.R. Part 68. Pursuant to Section 113(d)(1) of the CAA, the Debt Collection Improvement Act of 1996 (as amended in 2015 by Section 701 of Pub. L. 114-74, 31 U.S.C. § 3701), and EPA regulations set out at 40 C.F.R. Part 19, EPA currently may assess penalties of up to \$48,762 per day for each violation.

D. BACKGROUND FACTS

19. Respondent owns and operates a food starch manufacturing plant at 48 Morningstar Road in Houlton, Maine (“Facility”). The Facility, which employs about 35 people, is one of several plants that Respondent operates, with about 2,000 employees overall. Respondent is a wholly-owned subsidiary of Tate & Lyle PLC, a publicly-traded international corporation.

20. In the Facility’s manufacturing processes, Respondent uses hazardous chemicals that are received in outbuildings and transferred to process buildings via piping. A large release of propylene oxide could impact an area spanning several miles, including into Canada.

21. Tate and Lyle is a corporation and thus a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

22. The Facility is a “stationary source” from which an “accidental release” could occur, as those terms are defined at Sections 112(r)(2)(C) and (2)(A) of the CAA and in 40 C.F.R. § 68.3, respectively.

23. Respondent uses sulfuric acid, anhydrous hydrogen chloride, compressed natural gas (“CNG”), propane, and acetic anhydride at the Facility, among other chemicals. On its EPCRA Tier II submission for reporting year 2019, Respondent reported having a maximum of 76,000 pounds of sulfuric acid, 1,200 pounds of hydrogen chloride, and 31,538 pounds of CNG at the Facility.

24. Sulfuric acid is on EPCRA’s list of extremely hazardous substances, found at 40 C.F.R. Part 355, Appendix A, and thus is subject to the General Duty Clause.

25. Anhydrous hydrogen chloride is mandated for listing as an RMP chemical pursuant to 42 U.S.C. § 4212(r)(3), but the quantity at the Facility is below the RMP threshold of 5,000 pounds. It is corrosive and acutely toxic. It reacts violently with certain chemicals, including acetic anhydride. Accordingly, hydrogen chloride is an extremely hazardous substance subject to the General Duty Clause.

26. CNG and propane are both listed as RMP chemicals at with a threshold of 10,000 pounds, but under 40 C.F.R. § 68.126, both are excluded from the RMP requirements when used as a fuel, as they are at the Facility. However, both CNG and propane are highly flammable and easily ignited. They both can also cause asphyxiation at high concentrations. These qualities render CNG and propane extremely hazardous substances within the reach of the General Duty Clause.

27. Acetic anhydride also has dangerous qualities that qualify it as an extremely hazardous substance for purposes of the General Duty Clause. Acetic anhydride is corrosive, flammable, and highly toxic. Inhalation, ingestion, or other contact with it or its vapors or dust may cause severe injury, irritation/burns, or death. It reacts violently with water, a reaction that is particularly dangerous in the presence of sulfuric acid, among other chemicals.

28. At the Facility, Respondent stores the above-described GDC chemicals in horizontal and vertical storage tanks ranging in sizes up to 75,000 gallons. GDC chemicals are transported through piping from the chemical storage tanks to other parts of the Facility. These buildings, tanks, and piping containing GDC chemicals are subject to the GDC.

29. Respondent also uses propylene oxide in a manufacturing “process,” as defined by 40 C.F.R. § 68.3, in a series of interconnected pipes and vessels at the Facility (“PO Process”).

30. In 2015, Respondent filed a Program 3 RMP for the PO Process and reported that it used 230,000 pounds of propylene oxide. On its 2019 Tier II submission, Respondent reported that it stored a maximum of 245,000 pounds of PO at the Facility.

31. Accordingly, the PO Process at the Facility is a “covered process” subject to the RMP Rules of 40 C.F.R. Part 68.

32. The endpoint for a worst-case release of the amount of propylene oxide used in the PO Process is greater than the distance to a public receptor.

33. Therefore, in accordance with 40 C.F.R. § 68.10(a)–(d), and as set out in Respondent’s RMP plan, Respondent’s use, storage, and handling of propylene oxide in the PO Process is subject to the requirements of RMP Program 3.

34. In light of the potential hazards posed by the mishandling of hazardous chemicals like propylene oxide, industry trade associations have issued standards outlining the recognized and generally accepted good engineering practices (“RAGAGEP”). The standards of care are set out in Attachment A.

35. EPA visited the Facility (“Inspection”) on June 12, 2018 and reviewed documents to assess Respondent’s compliance with the General Duty Clause and the RMP Rules. EPA provided Respondent with an inspection report and Early Warning Letter outlining its concerns and identifying potential violations on July 25, 2019. Respondent has since informed EPA that it has remedied the identified issues.

E. ALLEGED VIOLATIONS

Count 1: Failure to Identify Hazards under the General Duty Clause

36. Respondent uses sulfuric acid, acetic anhydride, and CNG at the Facility. These chemicals are “extremely hazardous substances” under the CAA’s General Duty Clause.

37. Under the General Duty Clause, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques.

38. To identify hazards that may result from accidental releases of extremely hazardous substances under the GDC and Section 112(r)(1) of the CAA, owners and operators of stationary sources must determine: (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the potential effect of these releases on the public and the environment, using appropriate hazard assessment techniques like using standard, industry-developed checklists, a “What If” analysis, a Hazard and Operability study, or a Consequence Analysis. *See, e.g., U.S. Env’tl. Prot. Agency, Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1), § 2.3.1 (2000); NFPA 400-2016 Hazardous Materials Code, §§ 7.2.1, 7.2.2. (together, specifying that industrial processes be reviewed and written plans prepared by qualified personnel to ensure that fire and explosion and chemical hazards resulting from loss of containment or potential chemical interaction are prevented); and Center for Chemical Process Safety, Guidelines for*

Hazard Evaluation Procedures (2008).

39. At the time of Inspection, Respondent had not conducted an adequate hazard review for sulfuric acid, acetic anhydride, and CNG using appropriate hazard assessment techniques.

40. By failing to conduct adequate hazard reviews of sulfuric acid, acetic anhydride, and CNG using appropriate hazard assessment techniques, Respondent failed to identify hazards that may result from accidental releases, in violation of the first requirement of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 2: Failure to Design and Maintain a Safe Facility under the General Duty Clause

41. Complainant realleges and incorporates by reference Paragraphs 1 through 40 of this document.

42. Under the General Duty Clause, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to design and maintain a safe facility to prevent releases.

43. The standard of care for designing and maintaining a safe facility to prevent chemical releases or minimize their impacts is to, among other things, base design considerations upon applicable design codes, federal and state regulations, and recognized industry practices. Such industry standards of care show that 1) a given hazard is recognized in the industry, and 2) there are feasible ways to eliminate or reduce the hazard.

44. At the time of the Inspection, Respondent had failed in its general duty to design and maintain the Facility as a safe facility, taking such steps as are necessary to prevent a release of an extremely hazardous substance as summarized below and further described in Attachment A:

- (a) Sulfuric acid was leaking from tubing and/or valves near the sulfuric acid tote in Building 12, likely for an extended period;
- (b) Various chemical storage tanks, containers, and areas did not have an NFPA hazards diamond posted in accordance with NFPA 704;
- (c) Several sections of piping used to convey sulfuric acid, acetic anhydride, propane, and hydrochloric acid were not adequately labeled;
- (d) The emergency stop button for the propane transfer operation was not labeled;
- (e) Eyewash stations were not present in proximity to the Sulfuric Acid Shed or the Acetic Anhydride Shed;
- (f) Propane compressed gas cylinders near the Acetic Anhydride Shed were not sufficiently secured to prevent tipping;
- (g) Incompatible chemicals were stored together, including caustic chemicals with hydrochloric acid in Building 7, and hydrogen peroxide with acetic anhydride, hydrochloric acid, and sulfuric acid Building 11; and
- (h) Chemicals were stored without secondary containment, including a 55-gallon drum of hydrochloric acid in Building 7.

45. By failing to design and maintain a safe facility to prevent accidental releases of extremely hazardous substances used, handled, or stored as part of the Process, Respondent violated the General Duty Clause at Section 112(r)(1) of the Clean Air Act.

Count 3: Failure to Comply with Safety Information Requirements

46. Complainant realleges and incorporates by reference Paragraphs 1 through 45 of this document.

47. Pursuant to 40 C.F.R. § 68.65(a), the owner or operator of a Program 3 process is required, among other things, to compile written process safety information before completing the Process Hazard Analysis. This includes documenting information pertaining to the hazards of the RMP chemical in the process and information pertaining to the technology and equipment of the process. Pursuant to 40 C.F.R. §§ 68.65(d)(2) and (3), the owner or operator must also document that the equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”) and document that any equipment designed according to outdated standards is designed, maintained, inspected, tested, and operated in a safe manner.

48. At the time of Inspection, Respondent had not compiled all of the necessary process safety information pertaining to the technology and equipment of the PO Process. Specifically, Respondent lacked: an evaluation of the consequences of deviation from safe upper and lower limits for the process; documentation regarding electrical classification; information regarding the ventilation system design, including design codes and standards employed; design codes and standards employed for initial design and modifications to the process (except for design details for the PO storage tank); and information on safety systems.

49. Additionally, as further described in Attachment B, Respondent failed to document that the equipment complied with RAGAGEP and that equipment designed according to outdated standards was designed, maintained, inspected, tested, and operated in a safe manner. Specifically, among other things, Respondent:

- (a) had not equipped the main facility gate with crash-bar style hardware to allow for quick egress in the event of an emergency;
- (b) had not ensured the overhead PO pipeline from the storage building to process buildings was sufficiently supported;
- (c) failed to provide adequate tank signage; and
- (d) failed to provide adequate piping labeling.

50. Accordingly, by failing to compile the necessary information about the technology and equipment of the PO Process, including by documenting that the PO Process complied with RAGAGEP, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 4: Failure to Comply with Program 3 Mechanical Integrity Requirements

51. Complainant realleges and incorporates by reference Paragraphs 1 through 50 of this

document.

52. Pursuant to 40 C.F.R. § 68.73, the owner or operator of a Program 3 process must establish and implement written procedures to maintain the ongoing integrity of certain process equipment and train employees accordingly. Inspections and testing procedures shall follow RAGAGEP, and the frequency of inspections and tests shall be consistent with manufacturer's recommendations and good engineering practices, or more frequently if needed based on prior operating experience. The owner or operator must also document the inspections or tests on process equipment, correct deficiencies, assure that any new equipment is suitable for the process application, perform checks to ensure that equipment is installed properly, and assure that maintenance materials and spare parts are suitable for the process application.

53. At the time of Inspection, Respondent was not implementing an adequate hose safety management program to ensure ongoing integrity of the process hoses. Specifically, transfer hoses on the upper catwalk of the PO building were not properly labeled in accordance with National Association for Hose and Accessories Distribution (NAHAD) standards, exposing a failure to implement a comprehensive hose management program that ensures Respondent is tracking, inspecting, and replacing them on a given schedule.

54. By failing to comply with the Program 3 mechanical integrity requirements, Respondent violated 40 C.F.R. § 68.73 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), for the PO Process.

F. TERMS OF CONSENT AGREEMENT

55. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- (b) neither admits nor denies the specific factual allegations contained in this CAFO;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this CAFO;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the alleged violations of law set forth in Section E of this CAFO; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

56. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);

- (d) consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Maine; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

57. Respondent certifies that it has corrected the violations alleged in this CAFO and is currently in compliance with the CAA's General Duty Clause and the RMP Rules at the Facility.

Penalty Payment

58. Pursuant to Sections 113(d)(2)(B) and (e) of the CAA, 42 U.S.C. § 7413(d)(2)(B) and (e), and taking into account the relevant statutory penalty criteria, the applicable penalty policy, EPA has determined that it is fair and proper to assess a civil penalty of \$240,919 for the violations alleged in this matter.

59. Respondent consents to the issuance of this CAFO and consents for purposes of settlement to pay the civil penalty \$240,919 within 30 calendar days of the Effective Date of this CAFO.

60. Respondent agrees to pay the EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying every payment with "Docket No. CAA-01-2021-0049." Within 24 hours of payment of the EPA Penalty, email and mail proof of payment to

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code 4-6
Boston, Massachusetts 02109-3912
R1_Hearing_Clerk_Filings@epa.gov

and

Christine M. Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code 04-2
Boston, MA 02109-3912
foot.christine@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other

information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with "Docket No. CAA-01-2021-0049."

61. Collection of Unpaid Civil Penalty: If Respondent fails to timely pay any portion of its civil penalty or any stipulated penalties assessed under this CAFO, EPA may request that the U.S. Department of Justice institute a civil collection action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. In addition, EPA may also: (a) refer the debt to a credit reporting agency or a collection agency, pursuant to 42 U.S.C. § 7413(d)(5) and 40 C.F.R. §§ 13.13, 13.14, and 13.33; (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, pursuant to 40 C.F.R. Part 13, Subparts C and H; (c) suspend or revoke Respondent's licenses or other privileges, or (d) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, pursuant to 40 C.F.R. § 13.17.

G. ADDITIONAL PROVISIONS

62. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

63. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

64. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents.

65. By signing this CAFO, both parties agree that each party's obligations under this CAFO and EPA's compromise of statutory maximum penalties constitute sufficient consideration for the other party's obligations.

66. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

67. The Parties each consent to the use of digital signatures on this document, and Respondent further consents to receipt of service of the ESA, once filed, by electronic mail. Respondent understands that the provided e-mail address may be publicly available when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

H. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

68. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

69. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

70. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

71. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

72. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes. Nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

73. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

74. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

75. Except as qualified by Paragraphs 61 (overdue penalty collection), each party shall bear its own costs and fees in this proceeding including attorney's fees. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

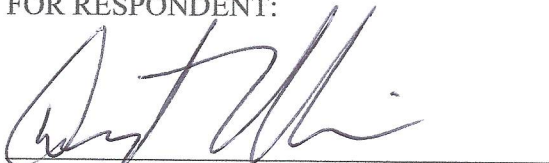
I. EFFECTIVE DATE

76. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date

of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of Tate and Lyle Ingredients Americas, LLC, Docket No. CAA-01-2021-0049, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature

09/15/2021

Date

Printed Name: David Vandiver

Title: Plant Manager

Address: 44 Morning Star Rd. Houlton, ME. 04730

FOR COMPLAINANT:

James Chow, Acting Director, *for* Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1 – New England

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
BEFORE THE ADMINISTRATOR

In the Matter of:

Tate and Lyle Ingredients Americas, LLC,

Respondent.

Docket No. CAA-01-2021-0049

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the EPA's Consolidated Rules of Practice and sections 113(d)(1) of the Clean Air Act, 42 U.S.C. §§ 7413(d)(1), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, which shall become effective on the date it is filed with the Regional Hearing Clerk.

So ordered.

LeAnn Jensen
Regional Judicial Officer

Attachment A

GDC Table of Recognized and Generally Accepted Good Engineering Standards and Industry Standards of Care

Industry standards of care for handling the Facility's GDC chemicals safely include, among others, National Fire Protection Association ("NFPA") codes, some of which are incorporated into state fire codes and safety information provided by primary chemical manufacturers and distributors. EPA is citing to the last version published before the inspection.

Alleged Hazards/Dangerous Condition	How Condition Could Lead to or Exacerbate the Consequences of a Release, Causing Harm	Examples of Industry Standards of Care
Sulfuric acid leaking from tubing and/or valves near the sulfuric acid tote in Building 12, likely for an extended period.	Uncontrolled leaking risks exposing personnel to contact with an EHS that is corrosive to all body tissue, can result in total loss of vision, and can produce severe necrosis. Inhalation of its vapor can cause serious lung damage.	The industry standard of care is to prevent, control, and mitigate the unauthorized release of hazardous materials. <i>See generally</i> NFPA 400-2016, § 6.1.3.
Multiple chemical storage tanks and containers – including the sulfuric acid tank and tote, acetic anhydride tank, propane tank and cylinders, and hydrochloric acid tank – did not have NFPA hazards diamonds posted.	Lack of NFPA hazard diamonds increases the chance of inadvertent exposure to these chemicals and could frustrate efforts to react quickly and fully recognize dangers during a release.	The industry standard of care is to mark the area and containers with NPFA hazard diamonds. <i>See, e.g.,</i> NFPA 1-2015, § 60.5.1.8.2.1 (requiring NPFA 704 hazard identification signs on above-ground tanks, containers and at entrances to locations where hazardous materials are stored, dispensed, used or handled in quantities requiring a permit, and at other entrances designated by the Authority Having Jurisdiction). <i>See generally</i> NFPA 704 (2012) (Chapter 4 sets out guidelines for marking the health, instability and flammability of material hazards to assist in identifying hazards within a facility and requires, at a minimum, signs to be posted at each room or area).
Several sections of piping used to convey sulfuric acid, acetic anhydride, propane, and hydrochloric acid were not adequately labeled.	Inadequate or missing piping labeling increases the chance of inadvertent exposure to these chemicals and could frustrate efforts to react quickly and fully recognize dangers during a release.	The industry standard of care is to provide piping with labels that identify the pipes' contents, physical state, and direction of flow at sufficient intervals and close to valves, flanges, bends, or branches in the piping. <i>See, e.g.,</i> ANSI/ASME 13.1 (2007).
The emergency stop button for the propane transfer operation was not labeled.	The failure to clearly identify the emergency stop button risks the prolonging of a release or	The industry standard of care is to label emergency shutdown stations with a sign that is visible from

Alleged Hazards/Dangerous Condition	How Condition Could Lead to or Exacerbate the Consequences of a Release, Causing Harm	Examples of Industry Standards of Care
	other problem with the transfer of this easily ignited and highly flammable gas, exacerbating the impacts of such a release.	the point of transfer. <i>See, e.g.</i> , NFPA 58-2017, §§ 6.13.5; NFPA 1-2015, § 60.5.1.3.1.
Eyewash stations were not present in proximity to the Sulfuric Acid Shed or the Acetic Anhydride Shed.	In the event of an accidental release, access to safety showers is critical if there is TDI exposure to employees.	The industry standard of care is to provide unimpeded access within 10 seconds (considered to be within 55 feet) to safety showers and eye wash stations in areas where people could be exposed to hazardous chemicals like sulfuric acid and acetic anhydride. <i>See, e.g.</i> , ANSI Z358.1-2014; NorFalco, LLC, Sulfuric Acid Handbook at 24 (2007). NorFalco is a major manufacturer and distributor of sulfuric acid.
Compressed gas cylinders, including propane, near the Acetic Anhydride Shed were not sufficiently secured to prevent tipping.	Unsecured cylinders are vulnerable to being knocking over, which poses risk of damage to the container and the potential for release.	The industry standard of care is to secure cylinders of compressed gases to a framework or fixed object to prevent them from falling or being knocked over. <i>See, e.g.</i> , NFPA 55-2016, § 7.1.8.4.
Incompatible chemicals were stored together in Building 11 (<i>e.g.</i> , hydrogen peroxide and acetic anhydride and sulfuric acid).	The failure to separate incompatible materials risks dangerous chemical reactions including explosion occurring in cases of container failure.	The industry standard of care is to segregate incompatible materials from each other. <i>See, e.g.</i> , NFPA 400-2016, §§ 6.1.12.1 and 6.1.12.2.
Chemicals were stored without secondary containment, including a 55-gallon drum of hydrochloric acid in Building.	Secondary containment is critical to ensure the impact of any accidental spill is minimized.	The industry standard of care is to provide secondary containment for corrosive liquids like hydrochloric acid. <i>See, e.g.</i> , NFPA 400-2016, § 6.3.2.2.4.2; NFPA 1-2015, § 64.1.2.

Attachment B

RMP Table of Recognized and Generally Accepted Good Engineering Practices ("RAGAGEP")

Industry standards of care for handling propylene oxide safely include, among others, National Fire Protection Association ("NFPA") codes, some of which are incorporated into state fire codes. EPA is citing to the last version published before the inspection.

Alleged Condition	Examples of RAGAGEP
Main facility gate was not equipped with crash-bar style hardware to allow for quick egress in the event of an emergency.	The industry standard of care is to allow for quick egress to a continuous and unobstructed way of travel to a public way. <i>See e.g.</i> , NFPA 101-2015, § 3.3.172.
Overhead pipeline used to convey PO from the storage building to process buildings was suspended from inadequate supports, given the potential in this environment for wind, ice and snow buildup, and shifting of the support poles from frost heaving.	The industry standard of care is to protect piping systems from physical damage from settlement, vibration, expansion, or contraction. <i>See e.g.</i> , NFPA 30-2008, § 27.6.1.
PO storage tank did not have an NFPA 704 hazard diamond.	The industry standard of care is to mark the area and containers with NPFA hazard diamonds. <i>See, e.g.</i> , NFPA 1-2015, § 60.5.1.8.2.1 (requiring NPFA 704 hazard identification signs on above-ground tanks, containers and at entrances to locations where hazardous materials are stored, dispensed, used or handled in quantities requiring a permit, and at other entrances designated by the Authority Having Jurisdiction). <i>See generally</i> NFPA 704 (2012) (Chapter 4 sets out guidelines for marking the health, instability and flammability of material hazards to assist in identifying hazards within a facility and requires, at a minimum, signs to be posted at each room or area).
Several sections of PO piping were not adequately labeled.	The industry standard of care is to provide piping with labels that identify the pipes' contents, physical state, and direction of flow at sufficient intervals and close to valves, flanges, bends, or branches in the piping. <i>See, e.g.</i> , ANSI/ASME 13.1 (2007).