



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

DEC 17 2009

CERTIFIED MAIL / RETURN RECEIPT REQUESTED: 7007 3020 0002 5102 1943

Madonna F. McGrath
Baker & Daniels LLP
300 North Meridian Street, Ste. 2700
Indianapolis, IN 46204-1782

RE: In the Matter of Tate & Lyle Ingredients Americas, Inc., Van Buren, Arkansas
Docket No. CAA 06-2009-3381

Dear Ms. McGrath,

Please find enclosed the fully executed Complaint and Consent Agreement and Final Order ("combo") in regard to the above-entitled case. The fully executed CAFO was filed with the Regional Hearing Clerk on December 17, 2009 (effective date).

Tate & Lyle Ingredients Americas, Inc. will have thirty (30) days from the effective date to pay the agreed upon penalty of fifty six thousand eight hundred thirty seven dollars (\$56,837.00).

If you have any questions, please feel free to contact me at 214-665-8328. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl Barnett for".

Cheryl Barnett
Assistant Regional Counsel
EPA, Region 6

Enclosure (1)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2009 DEC 17 PM 3: 26
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

DOCKET NO. CAA 06-2009-3381

Tate & Lyle Ingredients Americas Inc.,

COMPLAINT AND
CONSENT AGREEMENT AND
FINAL ORDER

Van Buren, Arkansas

RESPONDENT

COMPLAINT AND
CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 ("EPA") as Complainant, and Tate & Lyle Ingredients Americas Inc. owner and operator of Tate & Lyle Ingredients Americas Inc., Van Buren Facility located in Van Buren, Arkansas ("Respondent"), in the above referenced action, have agreed to resolve this matter, without hearing or adjudication of any issue of fact or law, through issuance of this Complaint and Consent Agreement and Final Order ("Complaint" and "CAFO"). Entry into this CAFO does not constitute an admission of any fact or violation contained herein. Respondent's entry into this CAFO shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this CAFO.

I.
PRELIMINARY STATEMENT

1. This enforcement proceeding is a civil administrative action initiated by EPA pursuant to Section 113(d) of the Clean Air Act, as amended (CAA or the Act), 42 U.S.C.

§ 7413(d). This proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing [hereinafter "Complaint"] incorporated herein, and is simultaneously concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.34.

2. This Complaint and CAFO serves as notice that the EPA alleges that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirements to implement a Risk Management Plan (RMP) as required by 40 C.F.R. Part 68 and Section 112(r) of the Act, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the Act, 42 U.S.C. 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent consents to the issuance of this CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

5. By signature on this Complaint and CAFO, Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

6. Compliance with all the terms and conditions of this CAFO shall only resolve

Respondent's liability for Federal civil penalties for the violations alleged in the CAFO.

7. Nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

8. Respondent represents that the undersigned representative is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO and to legally bind the Respondent to the terms and conditions of this CAFO.

9. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, but not limited to, subsequent purchasers. Nothing in the previous sentence shall adversely affect any right of EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee, even if not owned in whole or in part, directly or indirectly, by Respondent

II. STATUTORY AND REGULATORY BACKGROUND

10. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate release prevention, detection, and correction requirements.

11. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Act. These regulations require owners and operators of stationary sources as defined in 40 C.F.R. § 68.3, that have more than a threshold quantity of a regulated substance in a process to develop and implement an RMP that must be submitted to the EPA.

12. The regulations at 40 C.F.R. Part 68, set forth the requirements of a risk management program that must be established at each stationary source, subject to regulation under 40 C.F.R. Part 68. The risk management program is described in an RMP that must be submitted to the EPA.

13. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

14. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

15. "Stationary source" shall 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. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 C.F.R. parts 192, 193, or 195, or a state natural gas or

hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. § 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way as specified in 40 C.F.R. § 68.3; CAA § 112(r)(2)(C).

16. "Threshold quantity" shall mean the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, as amended, in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115

17. "Regulated substance" shall mean any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in § 68.130. 40 C.F.R. § 68.3.

18. "Process" shall 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. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process. 40 C.F.R. § 68.3.

19. Complainant has authority under Section 113 of the CAA to pursue civil penalties for violations of the Section 112(r)(7) Risk Management Program regulations found at 40 C.F.R. Part 68.

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

20. Respondent is a Delaware Corporation authorized to do business in the State of Arkansas. The Respondent's principal place of business is located at 610 S. 28TH Street, Van

Buren, Arkansas

21. The Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

22. At all times relevant to this CAFO, Respondent owns and operates a starch manufacturing facility, located at 610 S. 28th Street, Van Buren, Arkansas 72956 (the "Facility").

23. On or about May 13, 2009, representatives of EPA conducted a review of the EPA Central Data Exchange, which includes the Toxic Release Inventory and submittal database.

24. Based on the review, Complainant finds that Respondent had more than the threshold quantity of 10,000 pounds (lbs.) for the regulated substance(s) Propylene oxide [Oxirane, methyl-0].

25. Based on the review, Respondent failed to submit an RMP for the regulated substance(s) listed above.

IV. VIOLATIONS

26. On the date of the review identified above through August 1, 2009, Respondent failed to submit a Risk Management Plan (RMP) in violation of 40 C.F.R. Part 68.150.

V. CIVIL PENALTY AND TERMS OF SETTLEMENT

27. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), which authorizes the United States to commence an action to assess civil penalties of not more

than \$25,000 per violation of Section 112(r) of the Act that occurs before January 30, 1997¹.

28. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the Penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, it is Ordered that Respondent be assessed a civil penalty in the amount of Fifty Six Thousand Eight Hundred Thirty Seven Dollars (\$56,837.00).

29. Within thirty (30) days of the effective date of this Complaint and CAFO, Respondent shall pay the assessed civil penalty by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; or wire transfer; Automated Clearinghouse for receiving US currency; or On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. FedEx), the check(s) should be remitted to:

¹ The Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 authorizes the United States to commence an action to assess civil penalties of not more than \$27,500 per day for each violation that occurs January 30, 1997 through March 15, 2004; \$32,500 per day for each violation that occurs March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009.

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact – Jesse White (301) 887-6548

For On Line Payment:

<https://www.pay.gov/paygov/>
Enter sfo 1.1 in search field
Open form and complete required fields.

PLEASE NOTE: The docket number shall be clearly typed on the check to ensure proper credit.

The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and transmittal letter to the following:

Ms. Minerva DeLeon
U.S. EPA, Region 6 (6EN-ASH)
10625 Fallstone Road
Houston, Texas 77099;

Region 6 Hearing Clerk
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

30. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

31. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. Part 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. Part 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. Part 13.11(b).

32. EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. Sec 40 C.F.R. Part 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. Part 901.9(d). Other penalties for failure to make a payment may also apply.

33. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

34. Respondent has agreed to certify within ninety (90) days of the effective date of this CAFO that it has a revised Operational Procedure for the receipt and transfer of propylene oxide cylinders to storage locations. Respondent shall also certify within ninety (90) days of the effective date of this CAFO that it is complying with the revised Operational Procedure and therefore corrected the violation(s) alleged herein, and is now, to the best of its knowledge, in

compliance with all the requirements of the Act.

35. This document is a "Final Order."

VI.

RETENTION OF ENFORCEMENT RIGHTS

36. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal laws, regulations, statutes, or permitting programs.

37. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

VII.

COSTS

38. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

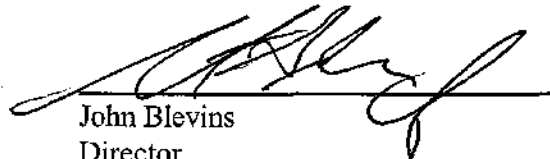
Date: December 9, 2009



Peter M. Castelli
Vice President
Tate & Lyle Ingredients Americas, Inc.

FOR THE COMPLAINANT:

Date: 12-16-09

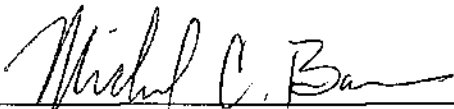


John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated December 17, 2009



Michael Barra
Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2009, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7007 3020 0002 5102 1950

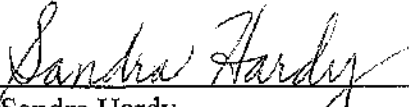
Mr. Randall Cook
Manager
Tate & Lyle Ingredients Americas Inc., Van Buren Facility
610 South 28th Street
Van Buren, Arkansas 72956

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7007 3020 0002 5102 1967

Mr. Marc Larson
Corporate Counsel
Tate & Lyle Ingredients Americas, Inc.
2200 East Eldorado Street
Decatur, IL 62525

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7007 3020 0002 5102 1943

Ms. Madonna F. McGarth
Baker & Daniels LLP
300 North Meridian St., Ste. 2700
Indianapolis, IN 46204-1782



Sandra Hardy
Paralegal Specialist