

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1248-IHW-E **TCEQ ID:** RN103080487 **CASE NO.:** 40093
RESPONDENT NAME: Linde Gas North America LLC

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Linde Gas Clear Lake Plant, 9502 Bayport Boulevard, Pasadena, Harris County</p> <p>TYPE OF OPERATION: Carbon monoxide manufacturing plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 13, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Richard L. McFall, Process Engineering and Environmental Manager, Linde Gas North America LLC, 9502 Bayport Boulevard, Pasadena, Texas 77507 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 5, 2010</p> <p>Date of NOV/NOE Relating to this Case: July 1, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failed to maintain an automatic waste feed cutoff ("AWFCO") system within a hazardous waste boiler. Specifically, the AWFCO was reset above permitted limits on February 24, 2010 to conduct a comprehensive performance test ("CPT") and was not immediately reset to permitted limits once the CPT was completed on February 26, 2010 [30 TEX. ADMIN. CODE § 335.221(a)(6), 40 CODE OF FEDERAL REGULATIONS § 266.102(e)(7)(ii) and Hazardous Waste Permit No. 50391 V.I.3.b.2].</p> <p>2) Failed to maintain the hazardous waste feed rate under the permit limit. Specifically, on February 26, 2010, the hazardous waste feed rate exceeded permitted limits for 11 hours and 21 minutes [30 TEX. ADMIN. CODE § 335.221(a)(6), 40 CODE OF FEDERAL REGULATIONS § 266.102(e)(2)(i)(A) and Hazardous Waste Permit No. 50391 V.I.2.a].</p>	<p>Total Assessed: \$3,220</p> <p>Total Deferred: \$644 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,576</p> <p>Compliance History Classification: Person/CN – Average Site/RN – Average</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a. On February 27, 2010, reset the AWFCO system to permitted limits and returned to compliance with hazardous waste feed rate permitted limits; and</p> <p>b. On July 30, 2010, submitted documentation stating procedures were implemented to ensure proper operation of the AWFCO system and to ensure hazardous waste feed rate permitted limits are not exceeded.</p>

Additional ID No(s): IHW 87184



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	6-Jul-2010	Screening	28-Jul-2010	EPA Due	
	PCW	29-Jul-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	Linde Gas North America LLC		
Reg. Ent. Ref. No.	RN103080487		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	40093	No. of Violations	2
Docket No.	2010-1248-IHW-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Carlie Konkol
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$3,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1
 Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.
Compliance History **2.0%** Enhancement **Subtotals 2, 3, & 7** **\$70**

Notes: Enhancement for one NOV with dissimilar violations.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$350**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**
 Total EB Amounts **\$21**
 Approx. Cost of Compliance **\$1,025**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$3,220**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**
 Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$3,220**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$3,220**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$644**
 Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **\$2,576**

Screening Date 28-Jul-2010

Docket No. 2010-1248-IHW-E

PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 40093

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103080487

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Carlie Konkol

Compliance History Worksheet

Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

Compliance History Summary

Compliance History Notes

Enhancement for one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 2%

Screening Date 28-Jul-2010

Docket No. 2010-1248-IHW-E

PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 40093

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103080487

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Carlie Konkol

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.221(a)(6), 40 Code of Federal Regulations § 266.102(e)(7)(II) and Hazardous Waste Permit No. 50391 V.I.3.b.2

Violation Description Failed to maintain an automatic waste feed cutoff ("AWFCO") system within a hazardous waste boiler. Specifically, the AWFCO was reset above permitted limits on February 24, 2010 to conduct a comprehensive performance test ("CPT") and was not immediately reset to permitted limits once the CPT was completed on February 26, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential			X	

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes: Human health of the environment will or could be exposed to insignificant amounts of pollutants which would not exceed protective levels.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 1

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

	10.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

\$100

Notes: The Respondent returned to compliance on July 30, 2010.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$920

This violation Final Assessed Penalty (adjusted for limits) \$920

Economic Benefit Worksheet

Respondent Linde Gas North America LLC
Case ID No. 40093
Req. Ent. Reference No. RN103080487
Media Industrial and Hazardous Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment			0.00	\$0	\$0	\$0	
Buildings			0.00	\$0	\$0	\$0	
Other (as needed)			0.00	\$0	\$0	\$0	
Engineering/construction			0.00	\$0	\$0	\$0	
Land			0.00	\$0	n/a	\$0	
Record Keeping System			0.00	\$0	n/a	\$0	
Training/Sampling			0.00	\$0	n/a	\$0	
Remediation/Disposal			0.00	\$0	n/a	\$0	
Permit Costs			0.00	\$0	n/a	\$0	
Other (as needed)	\$500	26-Feb-2010	30-Jul-2010	0.42	\$11	n/a	\$11

Notes for DELAYED costs

Estimated cost to implement procedures to ensure the AWFCO system is operating and properly set while hazardous waste is in the boiler. The Date Required is the date of the violation and the Final Date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL:

\$11

Screening Date 28-Jul-2010

Docket No. 2010-1248-IHW-E

PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 40093

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103080487

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Carlie Konkol

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 335.221(a)(6), 40 Code of Federal Regulations § 266.102(e)(2)(I)(A) and Hazardous Waste Permit No. 50391 V.I.2.a

Violation Description

Failed to maintain the hazardous waste feed rate under the permit limit. Specifically, on February 26, 2010, the hazardous waste feed rate exceeded permitted limits for 11 hours and 21 minutes.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	7/30/2010	Moderate	Minor

Percent 0%

Matrix Notes

The environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

1 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$250

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes The Respondent returned to compliance on July 30, 2010.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$2,300

This violation Final Assessed Penalty (adjusted for limits) \$2,300

Economic Benefit Worksheet

Respondent Linde Gas North America LLC

Case ID No. 40093

Req. Ent. Reference No. RN103080487

Media Industrial and Hazardous Waste

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No continues or \$:							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$25	26-Feb-2010	27-Feb-2010	0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	26-Feb-2010	30-Jul-2010	0.42	\$11	n/a	\$11

Notes for DELAYED costs

Estimated cost to Implement procedures to ensure the hazardous waste feed rate permit limit is not exceeded in the future. The Date Required is the date of the violation and the Final Dates are the date the immediate actions were taken to cease permit exceedances and the date the Respondent updated their standard operating procedures.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$525

TOTAL

\$11

Compliance History Report

Customer/Respondent/Owner-Operator: CN603335019 Linde Gas North America LLC Classification: AVERAGE Rating: 1.13
 Regulated Entity: RN103080487 LINDE GAS CLEAR LAKE PLANT Classification: AVERAGE Site Rating: 0.23

ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	87184
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXR000052175
	INDUSTRIAL AND HAZARDOUS WASTE	PERMIT	50391
	AIR OPERATING PERMITS	PERMIT	1329
	AIR NEW SOURCE PERMITS	AFS NUM	4820101556
	AIR NEW SOURCE PERMITS	REGISTRATION	75613
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HGA002B
	AIR NEW SOURCE PERMITS	REGISTRATION	78632
	AIR NEW SOURCE PERMITS	PERMIT	4056
	AIR NEW SOURCE PERMITS	REGISTRATION	87621
	AIR NEW SOURCE PERMITS	REGISTRATION	88450
	STORMWATER	PERMIT	TXR05X082
	IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	87184
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HGA002B

Location: 9502 BAYPORT BLVD, PASADENA, TX, 77507
 TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: July 09, 2010
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: July 09, 2005 to July 09, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:

Name: Carlie Konkol Phone: (512) 239-0735

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |
| 6. Rating Date: 9/1/2009 Repeat Violator: NO | |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	06/09/2006	(465352)
2	06/09/2006	(465715)
3	03/30/2007	(543139)
4	07/03/2007	(566234)
5	02/11/2008	(612875)
6	02/20/2008	(612876)
7	02/20/2008	(612878)
8	02/22/2008	(612879)
9	06/24/2009	(748357)
10	10/14/2009	(777923)
11	06/30/2010	(801942)
12	07/01/2010	(801944)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 02/22/2008 (612879) CN603335019
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 335, SubChapter F 335.152(a)(1)
40 CFR Chapter 264, SubChapter I, PT 264, SubPT B 264.15(b)(1)
PROVISION III.D. PERMIT
Description: Failure to follow written inspection plan.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LINDE GAS NORTH AMERICA
LLC
RN103080487**

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§
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§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2010-1248-IHW-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Linde Gas North America LLC ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a carbon monoxide manufacturing plant at 9502 Bayport Boulevard in Pasadena, Harris County, Texas (the "Plant").
2. The Respondent involves or involved the management of industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 6, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Two Hundred Twenty Dollars (\$3,220) is assessed by the Commission in settlement of the violations alleged in

- Section II ("Allegations"). The Respondent has paid Two Thousand Five Hundred Seventy-Six Dollars (\$2,576) of the administrative penalty and Six Hundred Forty-Four Dollars (\$644) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
 8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
 - a. On February 27, 2010, reset the automatic waste feed cutoff ("AWFCO") system to permitted limits and returned to compliance with hazardous waste feed rate permitted limits; and
 - b. On July 30, 2010, submitted documentation stating procedures were implemented to ensure proper operation of the AWFCO system and to ensure hazardous waste feed rate permitted limits are not exceeded.
 10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
 11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
 12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to maintain an AWFCO system within a hazardous waste boiler, in violation of 30 TEX. ADMIN. CODE § 335.221(a)(6), 40 CODE OF FEDERAL REGULATIONS § 266.102(e)(7)(ii) and Hazardous Waste Permit No. 50391 V.I.3.b.2 as documented during an investigation conducted on May 5, 2010. Specifically, the AWFCO was reset above permitted limits on February 24, 2010 to conduct a comprehensive performance test ("CPT") and was not immediately reset to permitted limits once the CPT was completed on February 26, 2010.

2. Failed to maintain the hazardous waste feed rate under the permit limit, in violation of 30 TEX. ADMIN. CODE § 335.221(a)(6), 40 CODE OF FEDERAL REGULATIONS § 266.102(e)(2)(i)(A) and Hazardous Waste Permit No. 50391 V.I.2.a, as documented during an investigation conducted on May 5, 2010. Specifically, on February 26, 2010, the hazardous waste feed rate exceeded permitted limits for 11 hours and 21 minutes.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Linde Gas North America LLC, Docket No. 2010-1248-IHW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

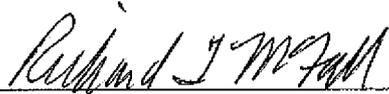
Date 11/22/2010

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Date October 6, 2010

RICHARD L. MCFALL
Name (Printed or typed)
Authorized Representative of
Linde Gas North America LLC

Title PROCESS ENGINEERING AND ENVIRONMENTAL MANAGER

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.