

Executive Summary – Enforcement Matter – Case No. 40896
Linde Gas North America LLC
RN100217207
Docket No. 2010-2061-IWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

IWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Linde Gas La Porte Syngas Plant, located on Strang Road approximately one-half mile east of the intersection of Strang Road and Miller Cut-off Road, Harris County

Type of Operation:

Methanol carbon monoxide and hydrogen manufacturing facility

Other Significant Matters:

Additional Pending Enforcement Actions: Yes, Docket No. 2010-1187-AIR-E.

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: April 22, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$11,118

Amount Deferred for Expedited Settlement: \$2,223

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$4,448

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$4,447

Name of SEP: Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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Linde Gas North America LLC
RN100217207
Docket No. 2010-2061-IWD-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: November 8, 2010

Date(s) of NOE(s): December 3, 2010

Violation Information

1. Failed to comply with permitted effluent limits for total organic carbon, total suspended solids, total zinc, and pH [Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0004092000, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 001 and No. 2 for Outfall 002, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)(1)].
2. Failed to submit a complete discharge monitoring report (“DMR”) for the monitoring period ending December 31, 2009. Specifically, the DMR failed to include the pH monthly total values for Outfall No. 001 [TPDES Permit No. WQ0004092000 Monitoring and Reporting Requirements No. 1, and 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.1].
3. Failed to submit monitoring results at the intervals specified in the permit. Specifically, the Respondent failed to submit the semiannual biomonitoring results for the monitoring period ending December 31, 2009 [30 TEX. ADMIN. CODE § 305.125(1) and (17) and TPDES Permit No. WQ0004092000 Chronic Biomonitoring Requirements, Reporting No. 3].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project (“SEP”). (See SEP Attachment A)
2. Within 15 days, submit a revised DMR for the monitoring period ending December 31, 2009 to include the missing data for pH monthly total value;
3. Within 30 days:
 - i. Submit the semiannual biomonitoring results for the monitoring period ending December 31, 2009; and

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ii. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DMRs.

4. Within 90 days, submit certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0004092000 and Ordering Provisions a. and b., including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted limitations.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

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

TCEQ SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732

Respondent: Mr. Joshua H. Burnett, Cluster Manager, Linde Gas North America LLC, P.O. Box 1058, La Porte Texas 77572

Respondent's Attorney: N/A

Attachment A
Docket Number: 2010-2061-IWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Linde Gas North America LLC

Penalty Amount: Eight Thousand Eight Hundred Ninety-Five Dollars (\$8,895)

SEP Offset Amount: Four Thousand Four Hundred Forty-Seven Dollars (\$4,447)

Type of SEP: Pre-approved

Third-Party Recipient: Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash

Location of SEP: Harris County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Gulf Coast Waste Disposal Authority to be used for the River, Lakes, Bays, and Bayous Trash Bash Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Trash Bash is an annual event that entails the use of volunteers to clean up trash and pollutants from Galveston Bay and waterways in the San Jacinto watershed. The project has resulted in the removal of an average of 141.7 tons of trash and 729 abandoned tires annually from these waterways. SEP monies will be used to pay for materials, supplies, disposal cost and transportation cost directly associated with the clean up of trash and pollutants from the Galveston Bay and waterways in the San Jacinto watershed.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

The Project will provide a discernible environmental benefit by removing pollutants from the Galveston Bay and waterways in the San Jacinto watershed, which will improve water quality. The project will also help educate volunteers about non-point source pollution and what the volunteers can do to help keep the environment clean.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Gulf Coast Waste Disposal Authority
Rivers, Lakes, Bays, and Bayous Trash Bash
Attention: Lori Gernhardt
910 Bay Area Boulevard
Houston, TX 77052

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

Linde Gas North America LLC
Agreed Order - Attachment A

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Dec-2010		
	PCW	22-Dec-2010	Screening	13-Dec-2010
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Linde Gas North America LLC
Reg. Ent. Ref. No.	RN100217207
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	3
Enf./Case ID No.	40896	Order Type	1660
Docket No.	2010-2061-IWD-E	Government/Non-Profit	No
Media Program(s)	Water Quality	Enf. Coordinator	Cheryl Thompson
Multi-Media		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	\$5,100
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	118.0% Enhancement	Subtotals 2, 3, & 7	\$6,018
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Notes: Enhancement for 18 months of self-reported effluent violations, four NOV's for dissimilar violations and one Agreed Order with denial language.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$942
 Approx. Cost of Compliance: \$10,620
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,118
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$11,118
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,118
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DEFERRAL	20.0% Reduction	Adjustment	-\$2,223
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$8,895
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Screening Date 13-Dec-2010

Docket No. 2010-2061-IWD-E

PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 40896

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100217207

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	18	90%
	Other written NOVs	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 118%

>> **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 18 months of self-reported effluent violations, four NOVs for dissimilar violations and one Agreed Order with denial language.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 118%

Screening Date 13-Dec-2010

Docket No. 2010-2061-IWD-E

PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 40896

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100217207

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s)

Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004092000, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 001 and No. 2 for Outfall 002, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)(1)

Violation Description

Failed to comply with permitted effluent limits, as documented during a record review conducted on November 8, 2010. See attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

A simplified model was used to evaluate zinc to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids, pH and total organic carbon were also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 4

182 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$4,000

Four quarterly events are recommended, three quarters for Outfall 001 and one quarter for Outfall 002.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$4,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$916

Violation Final Penalty Total \$8,720

This violation Final Assessed Penalty (adjusted for limits) \$8,720

Economic Benefit Worksheet

Respondent Linde Gas North America LLC
Case ID No. 40896
Reg. Ent. Reference No. RN100217207
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Item Description

No commas or \$

Delayed Costs

Item Description	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$10,000	31-Dec-2009	31-Oct-2011	1.83	\$916	\$916

Notes for DELAYED costs

The estimated cost to evaluate the causes of the effluent violations and to implement necessary rehabilitation to the wastewater treatment system. Date required is the month the first non-compliant excursion was documented. Final date is the expected date of compliance.

Avoided Costs

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

Item Description	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$10,000

TOTAL

\$916

Screening Date 13-Dec-2010

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PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 40896

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100217207

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s)

TPDES Permit No. WQ0004092000 Monitoring and Reporting Requirements No. 1, and 30 Tex. Admin. Code §§ 305.125(1) and 319.1

Violation Description

Failed to submit a complete discharge monitoring report ("DMR") for the monitoring period ending December 31, 2009. Specifically, the DMR failed to include the pH monthly total values for Outfall No. 001.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
			X

Percent 1%

Matrix Notes

Less than 30% of the rule requirement was not met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

327 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$218

This violation Final Assessed Penalty (adjusted for limits) \$218

Economic Benefit Worksheet

Respondent Linde Gas North America LLC
Case ID No. 40896
Req. Ent. Reference No. RN100217207
Media Water Quality
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 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	\$250	8-Nov-2010	31-Aug-2011	0.81	\$10	n/a	\$10
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$20	8-Nov-2010	31-Aug-2011	0.81	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to prepare and submit a revised DMR for the month of December 2009 to include the results for pH and to update operational guidance and conduct training to ensure that DMR's are properly prepared. Date required is the investigation date. Final date is the projected 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

	\$270
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TOTAL

	\$11
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Screening Date 13-Dec-2010

Docket No. 2010-2061-IWD-E

PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 40896

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100217207

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and (17) and TPDES Permit No. WQ0004092000 Chronic Biomonitoring Requirements, Reporting No. 3

Violation Description Failed to submit monitoring results at the intervals specified in the permit. Specifically, the Respondent failed to submit the semiannual biomonitoring results for the monitoring period ending December 31, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

327 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$14

Violation Final Penalty Total \$2,180

This violation Final Assessed Penalty (adjusted for limits) \$2,180

Economic Benefit Worksheet

Respondent Linde Gas North America LLC
Case ID No. 40896
Req. Ent. Reference No. RN100217207
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$350	8-Nov-2010	31-Aug-2011	0.81	\$14	n/a	\$14

Notes for DELAYED costs

Estimated cost to submit the missing DMR (\$100) and to update the facility's operational guidance and to conduct employee training (\$250). Date required is the investigation date. Final date is the projected 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	\$350	TOTAL	\$14
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Compliance History

Customer/Respondent/Owner-Operator:	CN603335019	Linde Gas North America LLC	Classification: AVERAGE	Rating: 3.54
Regulated Entity:	RN100217207	LINDE GAS LA PORTE SYNGAS PLANT	Classification: AVERAGE	Site Rating: 2.16
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID		TXR000037499
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)		86545
	AIR OPERATING PERMITS	ACCOUNT NUMBER		HX2334A
	AIR OPERATING PERMITS	PERMIT		2290
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER		HX2334A
	AIR NEW SOURCE PERMITS	AFS NUM		4820101522
	AIR NEW SOURCE PERMITS	PERMIT		4773A
	AIR NEW SOURCE PERMITS	REGISTRATION		77732
	AIR NEW SOURCE PERMITS	REGISTRATION		87618
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION		1012682
	STORMWATER	PERMIT		TXR05U192
	WATER LICENSING	LICENSE		1012682
	WASTEWATER	EPA ID		TX0118389
	WASTEWATER	PERMIT		WQ0004092000
	PETROLEUM STORAGE TANK	REGISTRATION		77167
	REGISTRATION			
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER		HX2334A
Location:	located on Strang Road approximately one-half mile east of the intersection of Strang Road and Miller Cut off Road, Harris County, Texas			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	December 13, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 08, 2005 to December 08, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cheryl Thompson		Phone:	(817) 588-5886

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/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator?

OWNOPR	LINDE GAS USA LLC	
	N/A	
OWNOPR	Linde Gas North America LLC	
4. If Yes, who was/were the prior owner(s)/operator(s)?

OWN	LINDE GAS USA LLC	
	N/A	
OWNOPR	Linde Gas LLC	
OWNOPR	Linde Gas, Inc.	
5. When did the change(s) in owner or operator occur?

06/30/2007	OWNOPR	Linde Gas, Inc.
	N/A	
02/08/2010	OWNOPR	Linde Gas LLC
07/07/2010	OWN	LINDE GAS USA LLC
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 03/23/2009	ADMINORDER 2008-1455-AIR-E
Classification: Major	
Citation:	30 TAC Chapter 122, SubChapter B 122.143(4) 30 TAC Chapter 122, SubChapter B 122.146(2) 5C THSC Chapter 382.085(b)
Rqmt Prov:	O-02290 OP
Description:	As a result of Office Annual Compliance Certification Investigation No. 686724 conducted August 6, 2008, the Texas Commission on Environmental Quality (TCEQ) Houston Regional Office determined that Linde Gas LLC- La Porte Syngas Facility failed to submit an annual compliance certification for the period of October 1, 2006 through September 30, 2007 within the required time frame.

- 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	02/27/2006	
2	02/23/2006	(455887)
3	02/25/2006	(456919)
4	02/28/2006	(457034)
5	02/28/2006	(457169)

6	05/30/2006	(480120)
7	02/28/2006	(492287)
8	03/24/2006	(492288)
9	12/27/2005	(492290)
10	02/22/2006	(492291)
11	04/17/2006	(506187)
12	05/25/2006	(506188)
13	06/26/2006	(506189)
14	06/26/2006	(506190)
15	08/21/2006	(528435)
16	09/22/2006	(528436)
17	09/22/2006	(528437)
18	04/08/2007	(532659)
19	02/22/2007	(551805)
20	11/21/2006	(551806)
21	02/22/2007	(551807)
22	02/22/2007	(551808)
23	03/22/2007	(589020)
24	04/20/2007	(589021)
25	05/18/2007	(589022)
26	06/20/2007	(589023)
27	07/20/2007	(589024)
28	08/20/2007	(605683)
29	09/13/2007	(605684)
30	09/13/2007	(605685)
31	01/17/2008	(613908)
32	11/19/2007	(631133)
33	12/18/2007	(631134)
34	01/22/2008	(631135)
35	02/20/2008	(677235)
36	03/20/2008	(677236)
37	04/21/2008	(677237)
38	08/26/2008	(686724)
39	05/20/2008	(695905)
40	06/20/2008	(695906)
41	06/20/2008	(695907)
42	09/18/2008	(717495)
43	09/18/2008	(717496)
44	10/17/2008	(717497)
45	04/20/2009	(725304)
46	11/17/2008	(732837)
47	01/13/2009	(732838)
48	02/26/2009	(756074)
49	03/23/2009	(756075)
50	02/26/2009	(756076)
51	12/16/2008	(756077)
52	05/20/2009	(773053)
53	06/12/2009	(773054)
54	06/12/2009	(773055)
55	12/13/2009	(780293)
56	07/07/2010	(790219)
57	02/19/2010	(819331)
58	08/19/2009	(819332)
59	09/21/2009	(819333)
60	09/21/2009	(819334)
61	11/20/2009	(819335)
62	12/21/2009	(819336)
63	12/21/2009	(819337)
64	03/23/2010	(836029)
65	03/23/2010	(836030)
66	05/18/2010	(836031)
67	06/20/2010	(847852)

68 07/20/2010 (862261)
 69 10/25/2010 (865866)
 70 08/20/2010 (868865)
 71 12/03/2010 (873519)
 72 09/20/2010 (875731)
 73 10/19/2010 (883289)

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

Date: 02/28/2006 (492288) CN603335019
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 10/31/2006 (551806) CN603335019
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 01/31/2007 (551805) CN603335019
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 04/09/2007 (532659) CN603335019
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THC Chapter 382, SubChapter A 382.085(b)
 FOP O-02290, SC # 9 OP
 Permit 4773A GC # 8 PERMIT
 Permit 4773A, SC # 1 PERMIT
 Description: Failure to prevent the SGCT cooling tower from exceeding the VOC emission limit of 2.33 lb/hr.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THC Chapter 382, SubChapter A 382.085(b)
 FOP O-02290, SC # 9 OP
 Permit 4773A, SC # 2F PERMIT
 Description: Failure to monitor all accessible valves at least quarterly using an approved gas analyzer.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THC Chapter 382, SubChapter A 382.085(b)
 FOP O-02290, SC # 9 OP
 Permit 4773A, SC # 2E PERMIT
 Description: Failure to plug or cap open-ended lines in VOC service
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT D 60.44(a)(1)
 5C THC Chapter 382, SubChapter A 382.085(b)
 FOP O-02290, SC # 1A OP
 Description: Failure to prevent the CE Boiler SG23-50-1 from exceeding the permitted NOx emission rate of 0.20 lbs/MMBtu.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THC Chapter 382, SubChapter A 382.085(b)
 FOP O-02290, SC #9 OP
 Permit 4773A, SC #4B PERMIT
 Description: Failure to maintain a constant pilot flame at all times for the high pressure flare (SG21-1-1) on May 4, 2005.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
 30 TAC Chapter 122, SubChapter B 122.145(2)(A)
 5C THC Chapter 382, SubChapter A 382.085(b)
 FOP O-02290, General Conditions OP
 Description: Failure to include the open-ended lines in VOC service occurring from May 16, 2005 at 0000 to May 18, 2005 at 2359, and the loss of pilot for the high pressure flare (SG21-1-1) on May 4, 2005 from 1620 to 1630, in the deviation report for the reporting period of December 6, 2004 to June 5, 2005.
 Date: 08/31/2007 (605684) CN603335019
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 01/31/2008 (677235) CN603335019
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 05/31/2008 (695906) CN603335019
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)

Description:	Failure to meet the limit for one or more permit parameter		
Date:	06/30/2008 (695907)	CN603335019	
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	07/31/2008 (717495)	CN603335019	
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	03/31/2009 (756076)	CN603335019	
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	04/20/2009 (725304)	CN603335019	
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.246(6) 30 TAC Chapter 122, SubChapter B 122.143(4) 5C THSC Chapter 382 382.085(b) Special Terms and Conditions 4(B)(vi) OP		
Description:	Failure to maintain daily inspection records for the gasoline storage tank, Unit ID SG930-U. (CATEGORY B3 Violation)		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 111, SubChapter A 111.111(a)(4)(A) 30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 4773A, Special Condition 4C PERMIT 5C THSC Chapter 382 382.085(b) Special Condition 10 OP Special Condition 1A OP		
Description:	Failure to maintain HP Flare, Unit ID SG21-1-1 resulting in a smoking flare. (CATEGORY C4 Violation)		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 30 TAC Chapter 122, SubChapter B 122.143(4) 40 CFR Chapter 60, SubChapter C, PT 60, SubPT A 60.18(c)(2) 4773A, Special Condition 4A PERMIT 4773A, Special Condition 4B PERMIT 5C THSC Chapter 382 382.085(b) Special Condition 10 OP		
Description:	Failure to maintain the HP Flare, Unit ID SG21-1-1, resulting in the pilot light being out. (CATEGORY C4 Violation)		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 122, SubChapter B 122.143(4) 30 TAC Chapter 122, SubChapter B 122.145(2)(A) 5C THSC Chapter 382 382.085(b) General Terms and Conditions OP		
Description:	Failure to report all deviations during the correct deviation reporting period. (CATEGORY B3 Violation)		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 122, SubChapter B 122.143(4) 30 TAC Chapter 122, SubChapter B 122.146(2) 5C THSC Chapter 382 382.085(b) General Terms and Conditions OP		
Description:	Failure to submit the PCC within 30 days of end of reporting period. (CATEGORY B3 Violation)		
Date:	05/31/2009 (773054)	CN603335019	
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	12/31/2009 (819337)	CN603335019	
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	01/31/2010 (819331)	CN603335019	
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	02/28/2010 (836029)	CN603335019	
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	03/31/2010 (836030)	CN603335019	
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	05/31/2010 (847852)	CN603335019	
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		

Date:	06/30/2010	(862261)	CN603335019	
Self Report?	YES			Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	07/07/2010	(790219)	CN603335019	
Self Report?	NO			Classification: Minor
Citation:	30 TAC Chapter 122, SubChapter B 122.143(4) 30 TAC Chapter 122, SubChapter B 122.145(2)(A) 5C THSC Chapter 382 382.085(b) GT&C OP			
Description:	Failure to report all deviations occurring during the deviation reporting period. [Category B3]			
Date:	07/31/2010	(868865)	CN603335019	
Self Report?	YES			Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	08/31/2010	(875731)	CN603335019	
Self Report?	YES			Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	10/29/2010	(865866)		
Self Report?	NO			Classification: Moderate
Citation:	30 TAC Chapter 116, SubChapter B 116.115(c) 5C THSC Chapter 382 382.085(b) No. 4773A, Special Condition No. 1 PERMIT			
Description:	Linde Gas failed to close a manual bypass block valve on the drain tank relief valve which resulted in the atmospheric release of 443 lbs. of unauthorized HRVOC being released for a duration of 2 hour and 40 minutes.			
Self Report?	NO			Classification: Minor
Citation:	30 TAC Chapter 101, SubChapter F 101.201(b) 5C THSC Chapter 382 382.085(b)			
Description:	Linde Gas failed to submit the final notification report for incident 142195 within two weeks after the end of the emissions event.			

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
RN100217207

§
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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2010-2061-IWD-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. WATER CODE chs. 7 and 26. 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 methanol carbon monoxide and hydrogen manufacturing facility located on Strang Road approximately one-half mile east of the intersection of Strang Road and Miller Cut-off Road in Harris County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 December 8, 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 Eleven Thousand One Hundred Eighteen Dollars (\$11,118) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Four Hundred Forty-Eight Dollars (\$4,448) of the administrative penalty and Two Thousand Two Hundred Twenty-Three Dollars (\$2,223) 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. Four Thousand Four Hundred Forty-Seven Dollars (\$4,447) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").
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 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.
10. 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.
11. 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 Facility, the Respondent is alleged to have:

1. Failed to comply with permitted effluent limits, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004092000, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 001 and No. 2 for Outfall 002, 30 TEX. ADMIN. CODE § 305.125(1) and TEX. WATER CODE § 26.121(a)(1), as documented during a record review conducted on November 8, 2010, as shown in the table below:

	Total Organic Carbon Daily Maximum Concentration	TSS Daily Average Loading	TSS Daily Maximum Loading	Total Zinc Daily Average Concentration	pH Minimum Outfall No. 002
<i>Month/Year</i>	75 mg/L	125.2 lbs/day	250.4 lbs/day	1 mg/L	5 standard units
December 2009	c	c	c	c	3.4
January 2010	78	c	c	c	c
February 2010	115	c	c	c	4
March 2010	c	c	254	c	c
May 2010	c	c	c	1.15	c
June 2010	c	151	385	c	c
July 2010	c	208	823	c	c

milligrams per liter = mg/L
compliant = c
lbs/day = pounds per day
TSS=total suspended solids

- Failed to submit a complete discharge monitoring report ("DMR") for the monitoring period ending December 31, 2009, in violation of TPDES Permit No. WQ0004092000 Monitoring and Reporting Requirements No. 1, and 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.1, as documented during a record review conducted on November 8, 2010. Specifically, the DMR failed to include the pH monthly total values for Outfall No. 001.
- Failed to submit monitoring results at the intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (17) and TPDES Permit No. WQ0004092000 Chronic Biomonitoring Requirements, Reporting No. 3, as documented during a record review conducted on November 8, 2010. Specifically, the Respondent failed to submit the semiannual biomonitoring results for the monitoring period ending December 31, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

- 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. 2010-2061-IWD-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I Paragraph 6 above, Four Thousand Four Hundred Forty-Seven Dollars (\$4,447) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 15 days after the effective date of this Agreed Order, submit a revised DMR for the monitoring period ending December 31, 2009 to include the missing data for pH monthly total value, in accordance with TPDES Permit No. WQ0004092000;
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Submit the semiannual biomonitoring results for the monitoring period ending December 31, 2009 to:

Compliance Monitoring Section
Enforcement Division, MC 224
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - ii. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DMRs, in accordance with TPDES Permit No. WQ0004092000.

- c. Within 90 days after the effective date of this Agreed Order, submit certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0004092000 and Ordering Provision Nos. 3.a. and 3.b., including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

4. 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 Facility operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event

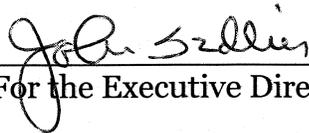
has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. 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

5/16/2011

Date

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

3/3/11

Date

J.H. Burnett

Name (Printed or typed)
Authorized Representative of
Linde Gas North America LLC

Cluster manager

Title

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.

Attachment A
Docket Number: 2010-2061-IWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Linde Gas North America LLC

Penalty Amount: Eight Thousand Eight Hundred Ninety-Five Dollars (\$8,895)

SEP Offset Amount: Four Thousand Four Hundred Forty-Seven Dollars (\$4,447)

Type of SEP: Pre-approved

Third-Party Recipient: Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash

Location of SEP: Harris County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Gulf Coast Waste Disposal Authority to be used for the River, Lakes, Bays, and Bayous Trash Bash Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Trash Bash is an annual event that entails the use of volunteers to clean up trash and pollutants from Galveston Bay and waterways in the San Jacinto watershed. The project has resulted in the removal of an average of 141.7 tons of trash and 729 abandoned tires annually from these waterways. SEP monies will be used to pay for materials, supplies, disposal cost and transportation cost directly associated with the clean up of trash and pollutants from the Galveston Bay and waterways in the San Jacinto watershed.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

The Project will provide a discernible environmental benefit by removing pollutants from the Galveston Bay and waterways in the San Jacinto watershed, which will improve water quality. The project will also help educate volunteers about non-point source pollution and what the volunteers can do to help keep the environment clean.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Gulf Coast Waste Disposal Authority
Rivers, Lakes, Bays, and Bayous Trash Bash
Attention: Lori Gernhardt
910 Bay Area Boulevard
Houston, TX 77052

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

Linde Gas North America LLC
Agreed Order - Attachment A

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.