

**Executive Summary – Enforcement Matter – Case No. 41179**  
**Linde Gas North America LLC**  
**RN103080487**  
**Docket No. 2011-0271-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Linde Gas Clear Lake Plant, 9502 Bayport Boulevard, Suite A, Harris County

**Type of Operation:**

Carbon monoxide production plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** May 27, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$5,074

**Amount Deferred for Expedited Settlement:** \$1,014

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$4,060

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

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**Linde Gas North America LLC**  
**RN103080487**  
**Docket No. 2011-0271-AIR-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** September 30, 2010

**Date(s) of NOE(s):** February 9, 2011

***Violation Information***

1. Failed to prepare and maintain an emission reduction plan within six months after any air contaminant specified in 30 TEX. ADMIN. CODE § 118.1 exceeds 100 tons per year. Specifically, carbon monoxide emissions were 448 tons in 2008 and 188 tons in 2009, but an emission reduction plan was not prepared [30 TEX. ADMIN. CODE § 118.5 and TEX. HEALTH & SAFETY CODE § 382.085(b)].

2. Failed to timely submit an Annual Compliance Certification (“ACC”) within 30 days after the end of the certification period. Specifically, the ACC for the period April 4, 2009 through April 3, 2010 was due May 3, 2010, but was not submitted until June 9, 2010 (37 days late) [30 TEX. ADMIN. CODE § 122.146(2), Federal Operating Permit No. O-01329, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

3. Failed to report a deviation. Specifically, the deviation for failing to prepare and maintain an emissions reduction plan by June 30, 2009 was not included on the deviation report submitted for the April 4, 2009 through October 3, 2009 deviation reporting period [30 TEX. ADMIN. CODE § 122.145(2)(A), Federal Operating Permit No. O-01329, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

1. Submitted the ACC for the ACC period of April 4, 2009 through April 3, 2010 on June 9, 2010; and
2. Submitted an Emissions Reduction Plan on November 12, 2010.

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days, implement procedures to ensure all deviations are reported in the deviation reports; and

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b. Within 45 days, submit written certification demonstrating compliance.

***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:** Trina Grieco, Enforcement Division,  
Enforcement Team 5, MC R-13, (210) 403-4006; Laurie Eaves, Enforcement Division,  
MC 219, (512) 239-4495  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Jake Leavins, Site Director, Linde Gas North America LLC, 9502  
Bayport Boulevard, Pasadena, Texas 77507-1402  
Richard L. McFall, Process Engineering and Environmental Manager, Linde Gas North  
America LLC, 9502 Bayport Boulevard, Pasadena, Texas 77507-1402  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	14-Feb-2011	<b>Screening</b>	16-Feb-2011	<b>EPA Due</b>	6-Nov-2011
	<b>PCW</b>	16-Feb-2011				

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

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	41179	<b>No. of Violations</b>	3
<b>Docket No.</b>	2011-0271-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Trina Grieco
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$5,100**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **24.0%** Enhancement **Subtotals 2, 3, & 7** **\$1,224**

Notes: Enhancement for two NOVs with dissimilar violations, and one order with denial of liability.

**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** **\$1,250**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts: \$281  
Approx. Cost of Compliance: \$3,750  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$5,074**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$5,074**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$5,074**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$1,014**

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** **\$4,060**

Screening Date 16-Feb-2011

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PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 41179

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103080487

Media [Statute] Air

Enf. Coordinator Trina Grieco

### 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> )	0	0%
	Other written NOVs	2	4%
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%
<i>Please Enter Yes or No</i>			
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)** 24%

>> 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 two NOVs with dissimilar violations, and one order with denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 24%

Screening Date 16-Feb-2011

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PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 41179

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103080487

Media [Statute] Air

Enf. Coordinator Trina Grieco

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 118.5 and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prepare and maintain an emission reduction plan within six months after any air contaminant specified in 30 Tex. Admin. Code § 118.1 exceeds 100 tons per year. Specifically, carbon monoxide emissions were 448 tons in 2008 and 188 tons in 2009, but an emission reduction plan was not prepared.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (25%). Includes Matrix Notes: The Respondent failed to comply with 100% of the rule requirements.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 597

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$2,500

One single event is recommended for the one plan that was not prepared.

Good Faith Efforts to Comply

25.0% Reduction \$625

Table for Good Faith Efforts: Extraordinary, Ordinary (marked with x), N/A (marked with x).

Notes: The Respondent completed corrective actions on November 12, 2010, prior to the February 9, 2011 NOE.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$137

Violation Final Penalty Total \$2,475

This violation Final Assessed Penalty (adjusted for limits) \$2,475

# Economic Benefit Worksheet

**Respondent** Linde Gas North America LLC  
**Case ID No.** 41179  
**Reg. Ent. Reference No.** RN103080487  
**Media** Air  
**Violation No.** 1

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)	\$2,000	30-Jun-2009	12-Nov-2010	1.37	\$137	n/a	\$137

**Notes for DELAYED costs**

Estimated cost to prepare and maintain an emission reduction plan. The date required is the date the plan was required to be prepared and the final date is the date corrective actions were completed.

### 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

\$2,000

**TOTAL**

\$137

Screening Date 16-Feb-2011

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PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 41179

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103080487

Media [Statute] Air

Enf. Coordinator Trina Grieco

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 122.146(2), Federal Operating Permit No. O-01329, General Terms and Conditions, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to timely submit an annual compliance certification ("ACC") within 30 days after the end of the certification period. Specifically, the ACC for the period April 4, 2009 through April 3, 2010 was due May 3, 2010, but was not submitted until June 9, 2010 (37 days late).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			25%

Matrix Notes The Respondent failed to comply with 100% of the rule requirements.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 37

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

Violation Base Penalty \$2,500

One single event is recommended for the one late report.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes The Respondent completed corrective actions on June 9, 2009, prior to the February 9, 2011 NOE.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$2,475

This violation Final Assessed Penalty (adjusted for limits) \$2,475

# Economic Benefit Worksheet

**Respondent** Linde Gas North America LLC  
**Case ID No.** 41179  
**Reg. Ent. Reference No.** RN103080487  
**Media** Air  
**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				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)	\$250	3-May-2010	9-Jun-2010	0.10	\$1	n/a	\$1

Notes for DELAYED costs

Estimated costs for plant personnel to submit the ACC. The date required is the date the ACC was due and the final date is the date corrective actions were completed.

### 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

\$250

**TOTAL**

\$1

Screening Date 16-Feb-2011

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PCW

Respondent Linde Gas North America LLC

Policy Revision 2 (September 2002)

Case ID No. 41179

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103080487

Media [Statute] Air

Enf. Coordinator Trina Grieco

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 122.145(2)(A), Federal Operating Permit No. O-01329, General Terms and Conditions, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to report a deviation. Specifically, the deviation for failing to prepare and maintain an emissions reduction plan by June 30, 2009 was not included on the deviation report submitted for the April 4, 2009 through October 3, 2009 deviation reporting period.

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 1%

Matrix Notes

The Respondent failed to comply with approximately two percent of the rule requirement. Specifically, one out of 41 deviations was not reported.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

471 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 for the one deficient report.

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 \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$143

Violation Final Penalty Total \$124

This violation Final Assessed Penalty (adjusted for limits) \$124

## Economic Benefit Worksheet

**Respondent** Linde Gas North America LLC  
**Case ID No.** 41179  
**Reg. Ent. Reference No.** RN103080487  
**Media** Air  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$1,500	3-Nov-2009	1-Oct-2011	1.91	\$143	n/a	\$143
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs for the implementation of procedures to ensure all deviations are reported in the deviation reports. The date required is the date the deviation was due to be reported and the final date is the date corrective actions are projected to be completed.

### 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

\$1,500

**TOTAL**

\$143

# Compliance History

Customer/Respondent/Owner-Operator:	CN603335019 Linde Gas North America LLC	Classification: AVERAGE	Rating: 3.54
Regulated Entity:	RN103080487 LINDE GAS CLEAR LAKE PLANT	Classification: AVERAGE	Site Rating: 5.47
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
	POLLUTION PREVENTION PLANNING	ID NUMBER	P06862
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HGA002B
Location:	9502 BAYPORT BLVD STE A, HARRIS COUNTY, TX, 77507		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	February 14, 2011		

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 14, 2005 to February 14, 2010

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

Name: Trina Grieco Phone: (210) 403-4006

## 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? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
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: 05/25/2007	ADMINORDER 2006-1834-AIR-E
Classification: Moderate	
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c) 5C THC Chapter 382, SubChapter D 382.085(b)	
Rqmt Prov: 4056 PERMIT	
Description: Failed to conduct the annual Relative Accuracy Test Audit ("RATA") on Process Heater MH-5A.	
Classification: Moderate	
Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(A) 5C THC Chapter 382, SubChapter D 382.085(b)	
Description: Failed to report all instances of deviation on the semi-annual deviation reports for the reporting periods of October 4, 2003 through April 3, 2004, April 4, 2004 through October 3, 2004, October 4, 2004 through April 3, 2005, April 4, 2005 through October 3, 2005, and October 4, 2005 through April 3, 2006.	

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 08/19/2005(397845)
- 2 06/09/2006 (465352)
- 3 06/09/2006 (465715)
- 4 10/06/2006 (510037)
- 5 03/30/2007 (543139)
- 6 07/03/2007 (566234)
- 7 10/12/2007 (572319)
- 8 02/11/2008 (612875)
- 9 02/20/2008 (612876)
- 10 02/20/2008 (612878)
- 11 02/22/2008 (612879)
- 12 06/24/2009 (748357)
- 13 12/02/2009 (767588)
- 14 10/14/2009 (777923)

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

Date: 08/19/2005 (397845) CN603335019  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 115, SubChapter E 115.412(1)(F)(ii)  
Description: Failure to keep the degreaser cover for Degreaser 51SK01 closed when parts were not being handled in the cleaner.

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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	
<b>LINDE GAS NORTH AMERICA</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>LLC</b>	<b>§</b>	
<b>RN103080487</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

## **AGREED ORDER DOCKET NO. 2011-0271-AIR-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. 382 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 production plant at 9502 Bayport Boulevard, Suite A in Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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 February 14, 2011.
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 Five Thousand Seventy-Four Dollars (\$5,074) is assessed by the Commission in settlement of the violations alleged in Section

II ("Allegations"). The Respondent has paid Four Thousand Sixty Dollars (\$4,060) of the administrative penalty and One Thousand Forteen Dollars (\$1,014) 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 completed the following corrective action measures:
  - a. Submitted the Annual Compliance Certification ("ACC") for the ACC period of April 4, 2009 through April 3, 2010 on June 9, 2010; and
  - b. Submitted an Emissions Reduction Plan on November 12, 2010.
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 prepare and maintain an emission reduction plan within six months after any air contaminant specified in 30 TEX. ADMIN. CODE § 118.1 exceeds 100 tons per year, in violation of 30 TEX. ADMIN. CODE § 118.5 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 30, 2010. Specifically, carbon monoxide emissions were 448 tons in 2008 and 188 tons in 2009, but an emission reduction plan was not prepared.

2. Failed to timely submit an ACC within 30 days after the end of the certification period, in violation of 30 TEX. ADMIN. CODE § 122.146(2), Federal Operating Permit No. O-01329, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 30, 2010. Specifically, the ACC for the period April 4, 2009 through April 3, 2010 was due May 3, 2010, but was not submitted until June 9, 2010 (37 days late).
3. Failed to report a deviation, in violation of 30 TEX. ADMIN. CODE § 122.145(2)(A), Federal Operating Permit No. O-01329, General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b) as documented during an investigation conducted on September 30, 2010. Specifically, the deviation for failing to prepare and maintain an emissions reduction plan by June 30, 2009 was not included on the deviation report submitted for the April 4, 2009 through October 3, 2009 deviation reporting period.

### 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. 2011-0271-AIR-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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, implement procedures to ensure all deviations are reported in the deviation reports, in accordance with 30 TEX. ADMIN. CODE § 122.145; and
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance

with Ordering Provision No. 2.a. 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:

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

3. 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.
4. 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.
5. 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.

6. 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.
7. 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.
8. 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

John Ordlie  
\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date 6/2/2011

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.

Richard L McFall  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date April 26, 2011

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.