

February 13, 2018

Mr. Jason Cooper  
President and CEO  
Linde North America, LLC  
200 Somerset Corporate Boulevard  
Bridgewater, New Jersey 08807

**Re: CPF No. 5-2017-6016**

Dear Mr. Cooper:

Enclosed please find the Final Order issued in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$43,200. This is to acknowledge receipt of payment of the full penalty amount, by wire transfer dated August 21, 2017. The Final Order further finds that Linde North America, LLC, has completed the actions specified in the Notice to comply with the pipeline safety regulations. This enforcement action is now closed. Service of the Final Order is deemed effective as provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Director, Western Region, Office of Pipeline Safety, PHMSA  
Mr. Ray Carr, Head of Regional Operations, Linde North America, LLC  
Mr. Andy Gutacker, Head of Onsite Bulk & U.S. Onsite Production, Linde North America, LLC

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

In the Matter of	)	
	)	
Linde North America, LLC,	)	CPF No. 5-2017-6016
a division of The Linde Group,	)	
	)	
Respondent.	)	
	)	

**FINAL ORDER**

From November 7 through 8, 2016, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of the facilities of Linde North America, LLC (Linde or Respondent), near Green River, Wyoming. Respondent is a division of The Linde Group, an international company headquartered in Munich, Germany, that manufactures and supplies industrial, specialty and medical gases as well as related equipment.<sup>1</sup> Linde operates a pipeline facility and 8.1-mile hazardous liquid pipeline that transports carbon dioxide in the vicinity of Green River, Wyoming.<sup>2</sup>

As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated May 24, 2017, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.452 and 191.22 and proposed assessing a civil penalty of \$43,200 for one of the alleged violations. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violations. The warning items required no further action, but warned the operator to correct the probable violations or face possible future enforcement action.

Linde responded to the Notice by email dated June 14, 2017 (Response). The company did not contest the allegations of violation, but provided an explanation of its actions and requested that the proposed civil penalty be eliminated or reduced. Respondent subsequently paid the civil

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<sup>1</sup> See, [http://www.lindeus.com/en/about the linde group/linde north america/index.html](http://www.lindeus.com/en/about_the_linde_group/linde_north_america/index.html) (last accessed October 30, 2017);

<sup>2</sup> Pipeline Safety Violation Report (Violation Report), (May 23, 2017) (on file with PHMSA), at 1.

penalty of \$43,200 by wire transfer dated August 31, 2017. Payment of the civil penalty authorizes PHMSA to make findings of violation and to issue this final order without further proceedings pursuant to § 190.208(a)(1).

### **FINDINGS OF VIOLATION**

In its Response, Linde did not contest the allegations in the Notice that it violated 49 C.F.R. Parts 195 and 191, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 195.452(j)(3), which states:

**§ 195.452 Pipeline integrity management in high consequence areas.**

(a) . . . .

(j) *What is a continual process of evaluation and assessment to maintain a pipeline's integrity?*— (1) *General.* After completing the baseline integrity assessment, an operator must continue to assess the line pipe at specified intervals and periodically evaluate the integrity of each pipeline segment that could affect a high consequence area.

(2) . . . .

(3) *Assessment intervals.* An operator must establish five-year intervals, not to exceed 68 months, for continually assessing the line pipe's integrity. An operator must base the assessment intervals on the risk the line pipe poses to the high consequence area to determine the priority for assessing the pipeline segments. An operator must establish the assessment intervals based on the factors specified in paragraph (e) of this section, the analysis of the results from the last integrity assessment, and the information analysis required by paragraph (g) of this section.

The Notice alleged that Linde violated 49 C.F.R. § 195.452(j)(3), by failing to establish five-year intervals, not to exceed 68 months, for continually assessing each pipeline segment that could affect a high consequence area. Specifically, the Notice alleged that, during the PHMSA inspection, Respondent presented documentation showing that it had assessed the line pipe in 2006 with a pressure test but could not show that it had reassessed the pipeline's integrity within the required five-year interval.

Respondent did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Linde violated 49 C.F.R. § 195.452(j)(3) by failing to continually assess each pipeline segment that could affect a high consequence area within five years, not to exceed 68 months.

**Item 2:** The Notice alleged that Respondent violated 49 C.F.R. § 191.22(c)(2)(i), which states:

**§ 191.22 National Registry of Pipeline and LNG operators.**

(a) . . . .

(c) *Changes.* Each operator of a gas pipeline, gas pipeline facility,

underground natural gas storage facility, LNG plant, or LNG facility must notify PHMSA electronically through the National Registry of Pipeline, Underground Natural Gas Storage Facility, and LNG Operators at <http://opsweb.phmsa.dot.gov> of certain events.

(1) . . . .

(2) An operator must notify PHMSA of any of the following events not later than 60 days after the event occurs:

(i) A change in the primary entity responsible (*i.e.*, with an assigned OPID) for managing or administering a safety program required by this part covering pipeline facilities operated under multiple OPIDs.

The Notice alleged that Respondent violated 49 C.F.R. § 191.22(c)(2)(i), by failing to notify PHMSA of a change in the primary entity responsible for managing or administering a safety program required by Part 191 covering pipeline facilities operated under multiple Operator Identification Numbers (OPIDs). Specifically, the Notice alleged that Linde acquired BOC Gases in 2006, resulting in a change in the primary entity responsible for managing or administering the safety program required by Part 191, but Linde did not notify PHMSA of the change in ownership within 60 days.

Linde did not contest this allegation of violation. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 191.22(c)(2)(i) by failing to notify PHMSA of a change in the primary entity responsible for managing or administering a safety program required by Part 191 covering pipeline facilities operated under multiple OPIDs.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

### **ASSESSMENT OF PENALTY**

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations.<sup>3</sup>

In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$43,200 for the violation of § 195.452(j)(3) (Item 1).

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<sup>3</sup> These amounts are adjusted annually for inflation. *See, e.g.*, Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties, 82 Fed. Reg. 19325 (April 27, 2017).

**Item 1:** The Notice proposed a civil penalty of \$43,200 for Respondent's violation of 49 C.F.R. § 195.452(j)(3), for failing to establish five-year intervals, not to exceed 68 months, for continually assessing each pipeline segment that could affect a high consequence area. In its Response, Linde did not contest the allegation of violation but requested the penalty be waived or substantially reduced on the grounds that: (1) while the company did not undertake a complete reassessment of the pipeline within the required five-year interval, it did timely complete Close Interval Surveys (CISes) in 2011 and 2016, and conduct other inspections; (2) this was the first civil penalty Linde had received from PHMSA; (3) there was no "detrimental impact to public safety from the probable violations;" and (4) Linda had taken prompt action to ensure that there would be no future violations.

On August 3, 2017, in accordance with § 190.209(b)(7), the Regional Director submitted a written evaluation of the response material submitted by Respondent and recommended that the penalty be assessed in the amount proposed. Subsequently, on August 31, 2017, Respondent paid the proposed civil penalty in full. Under 49 C.F.R. § 190.208(a)(1), such payment waives Linde's opportunity to contest the penalty amount. Notwithstanding, I have considered Linde's arguments to reduce the penalty but find the proposed penalty amount to be appropriate.

With regard to the nature and circumstances of the violation, I find that PHMSA discovered the violation and that Respondent failed to perform a required pipeline-safety activity. With regard to the gravity of the violation, OPS alleged that pipeline safety was compromised in a high consequence area. While Respondent argued the gravity of the violation was less severe because it performed CISes in 2011 and 2016, such surveys are intended only to measure cathodic protection therefore are not a substitute for a comprehensive pipeline integrity assessment, as is required under § 195.452. Although Respondent also contended there were no impacts to public safety, I find the company's failure to comply with the integrity management regulations compromised safety, at a minimum, by delaying the performance of a pipeline integrity assessment beyond the maximum time permitted.

With respect to the degree of Respondent's culpability and good faith in attempting to comply with the pipeline safety regulations, Linde contended the penalty should be lowered because it took prompt action to ensure that no future violations would occur. While such actions are commendable, I do not find they warrant a penalty reduction, since they were taken subsequent to PHMSA identifying the violation. At that point, Respondent was already obligated to remediate the violation. Finally, with regard to Linde's compliance history and argument that it had never previously received a penalty from PHMSA, I have reviewed the company's enforcement history and can confirm this is correct. In fact, page two of the Pipeline Safety Violation Report in this case reflects no prior violations. This information was already considered in establishing the proposed penalty amount; therefore, I find no reason to reduce the penalty further.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$43,200 for violation of 49 C.F.R. § 195.452(j)(3).

In summary, having reviewed the record and considered the assessment criteria for the Item cited

above, I assess Respondent a total civil penalty of **\$43,200**, which amount has already been paid.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Items 1 and 2 in the Notice, for violations of 49 C.F.R. §§ 195.452(j)(3) and 191.22(c)(2)(i), respectively. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Director indicates that Respondent has taken the following actions specified in the proposed compliance order:

1. With respect to the violation of § 195.452(j)(3) (**Item 1**), on July 25, 2017, Respondent successfully completed an eight-hour test of the pipeline, witnessed by PHMSA.
2. With respect to the violation of § 191.22(c)(2)(i) (**Item 2**), Respondent filed the necessary paperwork to update its operator name and OPID. The operator is now “Linde North America, LLC” and its OPID is 31391.

Accordingly, I find that compliance has been achieved with respect to these violations. Therefore, the compliance terms proposed in the Notice are not included in this Order.

### **WARNING ITEMS**

With respect to Items 3, 4 and 5, the Notice alleged probable violations of Part 195, but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.403(c) (**Item 3**) — Respondent’s alleged failure to require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under § 195.402 for which they are responsible to ensure compliance;

49 C.F.R. § 195.420(b) (**Item 4**) — Respondent’s alleged failure to inspect each mainline valve to determine that it is functioning properly, at intervals not exceeding 7½ months, but at least twice each calendar year; and

49 C.F.R. § 195.583(a) (**Item 5**) — Respondent’s alleged failure to inspect each onshore pipeline or portion of pipeline exposed to the atmosphere, for evidence of atmospheric corrosion at least once every three calendar years, but with intervals not exceeding 39 months.

Respondent stated in its Response that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent may submit a petition for reconsideration of this Final Order to the Associate Administrator for Pipeline Safety, PHMSA, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, D.C. 20590, no later than 20 days after receipt of the Final Order by Respondent. Any petition submitted must contain a statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. The other terms of the order, including corrective action, remain in effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

February 13, 2018

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Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

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Date Issued