

August 3, 2022

VIA ELECTRONIC MAIL TO: MSmith@freeportlng.com

Mr. Michael Smith
Chairman and Chief Executive Officer
Freeport LNG Development, LP
333 Clay Street, Suite 5050
Houston, Texas 77002

Re: CPF 4-2022-051-NOPSO

Dear Mr. Smith:

Enclosed please find a Consent Order incorporating the terms of the fully executed Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Freeport LNG Development, LP, which was executed on August 2, 2022. Service of the Consent Order and Consent Agreement by e-mail is deemed effective upon the date of transmission, or as otherwise 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

Enclosures: Consent Order and Consent Agreement

cc: Ms. Mary McDaniel, P.E., Director, Southwest Region, Office of Pipeline Safety, PHMSA
Mr. Michael Stephenson, Regulatory Compliance Manager, Freeport LNG Development, LP, MStephenson@freeportlng.com
Mr. Mark Mallett, P.E, Vice President of Operations and Engineering, Freeport LNG Development, LP, MMallett@freeportlng.com

Mr. Shaw Ottis, Vice President, General Counsel & Secretary, Freeport LNG
Development, LP, SOttis@freeportlng.com

CONFIRMATION OF RECEIPT REQUESTED

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In the Matter of	)	
	)	
Freeport LNG Development, LP,	)	CPF No. 4-2022-051-NOPSO
	)	
Respondent.	)	
	)	

Date _____

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

In the Matter of

Freeport LNG Development, LP,

Respondent.

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CPF No. 4-2022-051-NOPSO

CONSENT AGREEMENT

On June 30, 2022, pursuant to 49 C.F.R. § 190.239, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety, Southwest Region, issued a Notice of Proposed Safety Order (Notice) to Freeport LNG Development, LP (Freeport or Respondent). The Notice was issued after a reportable incident¹ occurred on June 8, 2022, at Freeport's liquefied natural gas (LNG) export facility (Export Facility) located on Quintana Island, Texas.

At approximately 11:40 a.m. Central Daylight Time (CDT), an explosion and associated fire occurred in a pipe rack located near the LNG storage tanks at Freeport's Export Facility. It was reported an estimated 0.12 million cubic feet of LNG was released. There were no injuries or fatalities, nor were there any direct physical impacts offsite. Freeport notified PHMSA of the incident via the National Response Center (NRC) (NRC Report 1338144) at 12:36 p.m. CDT. PHMSA subsequently deployed personnel to Freeport's Export Facility to gain additional situational awareness and initiate its investigation. The cause of the explosion and subsequent fire is currently under investigation.

As a result of a preliminary investigation, PHMSA issued the Notice, which alleged that conditions exist on Freeport's Export Facility that pose a pipeline integrity risk to public safety, property, or the environment, and proposed that Respondent take certain corrective measures to remedy the alleged conditions to ensure that the public, property, and the environment are protected from the potential risk.

On July 1, 2022, Freeport responded to the Notice requesting an informal consultation. An informal consultation was held virtually on July 6, 2022. As a result of the informal consultation, PHMSA and Respondent (the Parties) agreed that settlement of this proceeding will avoid further administrative proceedings or litigation of the Notice and that entry into this Consent Agreement (Agreement) is the most appropriate means of resolving the issues raised in the Notice and is generally in the public interest. Therefore, pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, PHMSA and Freeport agree as follows:

¹ See 49 C.F.R. § 191.3.

I. General Provisions

1. Respondent acknowledges that as the operator of the Export Facility, Respondent and the Export Facility are subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA's action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder.

2. Respondent does not admit or deny any of the alleged integrity risks identified in the Notice but agrees, for purposes of this Agreement, to address the alleged integrity risks identified in the Notice by completing the actions specified in Section II of this agreement (Corrective Measures) and to abide by the terms of this Agreement. This Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement.

3. After Respondent returns this signed Agreement, a representative of PHMSA will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

4. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except as set forth herein.

5. This Agreement will apply to and be binding upon PHMSA, and upon Respondent, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of Respondent's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

6. For all transfers of ownership or operating responsibility of Respondent's Export Facility, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer and provide written notice of the transfer within 30 days after the transfer to the PHMSA Southwest Region Director (Director) who issued the Notice.

7. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

8. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against Respondent pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

9. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. Respondent remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

10. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. Respondent agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

II. Corrective Measures

11. Upon issuance of the Consent Order, Respondent agrees to perform the Corrective Measures set forth below.

12. ***Return to Normal Operations.*** Freeport may not return its Export Facility to normal operations until it receives written approval from the Director. Freeport may submit requests to incrementally resume production as part of its process to return its Export Facility to normal operations and the Director may approve accordingly. Until it receives the Director's written approval, Freeport must provide weekly updates to the Director on the temperature and density of the LNG stored in the three LNG storage tanks. If Freeport must transfer LNG from one storage tank to another or recirculate LNG to the loading dock, Freeport must notify the Director within 24 hours after completion of the operation.

13. ***Qualified Independent Third-Party.*** Freeport has submitted a proposed consultant and their qualifications to act as an independent third-party for the Director's approval. Once approved, the third-party must perform the evaluations and assessments described in Corrective Actions Nos. 16, 17, and 18.

14. ***Root Cause Failure Analysis (RCFA).*** Within 90 days of issuance of the Order, Freeport must have its previously selected independent third-party (IFO Group) complete a RCFA and submit its RCFA report to the Director. The RCFA must be provided to Freeport and the Director concurrently. The RCFA must document the decision-making process used in the analysis and all factors contributing to the explosion and fire. The final report must include findings, any lessons learned, and whether the findings and any lessons learned are applicable to the entirety of Freeport's operations.

15. **Assessment and Inspection.** Within 60 days of issuance of the Order, Freeport must submit to the Director for its approval a complete plan and schedule of inspection to determine the full extent of damage caused by the explosion and associated fire. The plan, at a minimum, must include an assessment of all piping, pipe supports, steel pipe racks, cables and cable tray, valves, instruments, fire and gas detection, fire suppression systems, and LNG impoundment to detect any defects that would affect the integrity of the components resulting from the explosion and fire. The Parties acknowledge that Freeport has already performed, and continues to perform, certain assessments within the facility. The plan submitted by Freeport pursuant to this Corrective Action No. 15 must incorporate the work already performed. Freeport acknowledges that any assessments performed prior to the Director's approval may require additional evaluations to be performed in order to meet the requirements of the approved plan. Freeport must implement the approved plan according to the schedule therein and provide weekly written reports of findings to the Director until a final report is prepared and submitted.

16. **Operating Procedures.** Within 30 days of the Director's approval of an independent third-party pursuant to Corrective Action No. 13, Freeport must submit to the Director for review and written approval an evaluation of the LNG storage tanks operating modes including transfer to the loading docks, recirculating LNG throughout the transfer area, and loading tanks from the liquefaction trains. The evaluation must be performed by the approved independent third-party.

17. **Control System Procedures.** Within 30 days of the Director's approval of an independent third-party pursuant to Corrective Action No. 13, Freeport must submit to the Director for review and written approval an evaluation of inspection and testing procedures for all control systems as covered in 49 C.F.R. § 193.2619. The evaluation must be performed by the approved independent third-party. The evaluation will include a review of what standards Freeport follows for inspection and testing, how Freeport's procedures compare to the requirements in these standards, and the methods of returning a control system to service after inspection and testing is completed.

18. **Assessment of Personnel Qualifications and Training.** Within 60 days of the Director's approval of an independent third-party pursuant to Corrective Action No. 13, Freeport must submit to the Director for review and written approval an assessment of the qualifications and training of operations, maintenance, and supervisory personnel. The assessment must be performed by the approved independent third-party. The assessment must include a review of: (1) Freeport's training program for all operations, maintenance, and supervisory personnel and whether these personnel are capable of performing their assigned functions through Freeport's training program; (2) any experience of the personnel related to their assigned operation or maintenance function; and (3) records to ascertain whether there is acceptable performance on a proficiency test relevant to the assigned function. In addition, the assessment must determine whether all supervisory personnel, up to initial managers, have a thorough knowledge of the instructions for facility operations, including controls, functions, and operating procedures including LNG transfer procedures.

19. **Remedial Work Plan.** Within 30 days following the completion of Corrective Actions Nos. 14-18, Freeport must submit a Remedial Work Plan (RWP) to the Director for review and approval. Freeport may submit the RWP incrementally and the Director may approve the RWP accordingly without approving the entire RWP. Freeport must incorporate information

obtained and recommendations from the RCFA, the evaluation of operating procedures, the evaluation of the testing and inspecting procedures of control system, an assessment and inspection of affected components, and the assessment of personnel qualifications and training results into the RWP. Freeport may revise the RWP as necessary to incorporate new information obtained during remedial activities as long as the revisions are first approved by the Director. Freeport must implement the RWP as approved by the Director, including any revisions to the plan. The RWP must include:

- a. A procedure or process to determine if conditions similar to those contributing to the explosion are likely to exist elsewhere in the facility.
- b. Develop a plan to test and inspect all pressure safety valves prior to returning to normal operations pursuant to Correction Action No. 1.
- c. Define and implement long-term periodic verification measures to ensure effectiveness of testing and inspecting the control systems program and training for individuals who conduct those activities.
- d. Include a proposed schedule to complete all repairs, inspections, and tests in order to resume normal operations.
- e. All inspection, test, and repair records that demonstrate the RWP was executed as approved by the Director.

20. **Monthly Reports.** Freeport must submit monthly reports to the Director that: (1) include analysis of all available data and results of the testing and evaluations required by the Order; (2) describe the progress of actions being undertaken; and (3) document all mandated actions and management of change plans to ensure that all procedural modifications are incorporated into Freeport procedures. The first report will be due 30 days from issuance of the Order. The Director may extend the interval between reports if warranted.

21. **Extensions of Time.** The Director may grant an extension of time for compliance with any of the terms of the Agreement upon a written request timely submitted demonstrating good cause for an extension. The Director shall respond in writing to any such request.

III. Review and Approval Process

22. With respect to any submission under Section II (Corrective Measures) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission, (b) approve the submission on specified, reasonable conditions, (c) disapprove, in whole or in part, the submission, or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, Respondent will take all action as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide Respondent with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

IV. Dispute Resolution

23. The Director and Respondent will informally attempt to resolve any disputes arising under this Agreement, including, but not limited to, any decision of the Director. If Respondent and the Director are unable to informally resolve the dispute within 15 calendar days after

Respondent invokes the dispute resolution provision in writing, Respondent may submit a written request for a determination resolving the dispute from the Associate Administrator for Pipeline Safety. The written request for a determination must be provided to the Director, counsel for Southwest Region, and the Associate Administrator no later than 10 calendar days after the 15-day deadline for the informal resolution referenced in this paragraph. Along with its request, Respondent must provide the Associate Administrator with all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing. Determinations of the Associate Administrator under this paragraph constitute final agency action. The existence of a dispute and PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during pendency of the dispute resolution process except as agreed by the Director or the Associate Administrator in writing.

V. Enforcement

24. This Agreement, as adopted by the Consent Order, is subject to all enforcement authorities available to the PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190. All work plans and associated schedules set forth or referenced in Section II will be automatically incorporated into this Agreement and are enforceable in the same manner.

VI. Recordkeeping and Information Disclosure

25. Unless otherwise required in this Agreement, Respondent agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five years following completion of all work to be performed. For any reports, plans, or other deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

VII. Effective Date

26. The term "Effective Date," as used herein, is the date on which the Consent Order is issued by the Associate Administrator incorporating the terms of this Agreement. Unless specified to the contrary, all deadlines for actions required by this Agreement run from the Effective Date.

VIII. Modification

27. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

IX. Termination

28. This Agreement will remain in effect until the Corrective Measures in Section II are satisfied, as determined by the Director. Respondent may request written confirmation from PHMSA when this Consent Agreement is terminated, and the Director will provide such confirmation. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

X. Ratification

29. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

30. The Parties hereby agree to all conditions and terms of this Agreement.

[Signature Lines on Following Page]

For FREEPORT LNG DEVELOPMENT, L.P.:

Sigmund L. Cornelius
President, Freeport LNG Development, L.P.

Date

For PHMSA:

Mary L. McDaniel, P.E.
Director, Southwest Region, Office of Pipeline Safety

Date