



May 5, 2023

**VIA EMAIL TO [bryan.lethcoe@dot.gov]**

Bryan Lethcoe  
Director, Southwest Region  
Pipeline and Hazardous Materials Safety Administration

**Re: CPF 4-2023-005-NOPV**

Dear Mr. Lethcoe:

This correspondence responds to the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order, CPF 4-2023-005-NOPV, dated February 22, 2023 (NOPV), which alleges probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations, stemming from PHMSA's inspection of Linde's Gulf Coast Pipeline Operations (GCPO) Pipeline (the Pipeline) from March 30 to September 6, 2022. Linde received an extension until May 7, 2023, to provide a written response to the NOPV, which Linde has timely done by way of this correspondence.

Please note that certain attachments to this response are Linde's internally developed standards and procedures, and each page is marked as business confidential. Linde requests that the entirety of these materials be treated as confidential and exempt from disclosure under the Freedom of Information Act. The attachments include commercial/business information that is proprietary and confidential, the release of which could cause harm to Linde's competitive position.

**1. Item 1: 49 C.F.R. § 191.22(c)(1)(ii)**

NOPV Item 1 notes that Linde failed to notify PHMSA 60 days prior to the construction of 10 or more miles of new pipeline when it constructed approximately 17.39 miles of new 14-inch hydrogen pipeline between March 15, 2020 and July 21, 2021. Linde was preliminarily assessed a civil penalty of \$20,400 for this item. Linde is not contesting NOPV Item 1, but requests PHMSA



reduce Item 1 to a Warning Item and withdraw the proposed civil penalty based upon the following explanation.

At the outset Linde notes that pipeline safety was not significantly affected by the delay in notifying PHMSA of the new construction. This is also the first instance in which Linde has failed to provide notice in accordance with § 191.22(c)(1)(ii). As soon as it became aware of the violation, Linde took swift corrective action, and notice of the prior construction was submitted to PHMSA on September 9, 2022. Additionally, Linde updated its existing construction and operation standard procedures to incorporate the 60-day notice requirement in 49 C.F.R. § 191.22(c)(1)(ii), to ensure timely notice to PHMSA of any construction of 10 or more miles of pipeline in the future. See Attachment 1 - "Work Instruction &CM-V-PE-2650.030.016 R6A" section 2.2.3 (construction standard), and Attachment 2 - "SOP-226 Attachment 1: DOT MOC Process" (operations standard).

Lastly, the agency's decision in *In The Matter of Tristate NLA, LLC*, CPF No. 4-2020-006-NOPV, 2021 WL 4055261 (Aug. 9, 2021) (relating to a failure to notify PHMSA of a 100-mile gas transmission pipeline acquisition), PHMSA only included the item as a warning and did not propose any civil penalty. While there are several factual differences surrounding the notification trigger and length of non-compliance, none of these factors would substantively affect the proposed penalty calculation. For administrative consistency, Linde requests PHMSA to reduce Item 1 to a Warning Item. If PHMSA determines it cannot reduce Item 1 to a Warning, then Linde respectfully requests the assessed penalty be reduced.

Linde maintains a robust safety and compliance program, and is committed to the protection of its employees, the environment, and the communities in which we operate. Since Linde's temporary oversight did not substantively impact pipeline safety, and considering Linde's dedication to compliance, lack of prior violations, and prompt corrective action, we respectfully request PHMSA to reduce Item 1 to a Warning Item and withdraw the proposed civil penalty, or reduce the proposed civil penalty according to the foregoing.

## **2. Item 2: 49 C.F.R. § 192.459**

NOPV Item 2 is a Warning Item; however, Linde would like to note it has taken prompt corrective action to ensure future compliance. Earlier this year, Linde Gulf Coast Pipeline management voluntarily conducted additional training on Linde OM-2287 sec. 32.2 "External Inspection of



Exposed Pipe” specifically to address Item 2. See Attachment 3 – “March 3, 2023 Monthly Safety Meeting Sign-in re: IM-2287 Section 32.2”.

**3. Item 3: 49 C.F.R. § 192.937(b)**

Linde disputes the allegations in NOPV Item 3, and requests PHMSA to withdraw the item. NOPV Item 3 claims Linde’s procedures failed to include a requirement to conduct a periodic evaluation as frequently as needed to assure the integrity of each covered segment, that Linde failed to conduct a risk analysis of its covered pipeline, and that Linde failed to conduct a risk analysis of the newly constructed 17-miles of pipeline discussed in Item 1 in accordance with §192.937(b). NOPV Item 3 also claims that Linde has not conducted a risk analysis since 2010. These claims are inaccurate. As provided below, Linde’s procedures adequately require periodic evaluations to assure the integrity of covered segments consistent with §192.937(b), and include specific timeframes for subsequent analyses. Also, Linde routinely conducts risks analyses for covered pipeline segments, the most recent of which was completed in 2022.

Linde’s periodic evaluation procedure is set forth in Linde’s Integrity Management Plan (IMP) P-15-560-R. See Attachment 4 – “IMP-P-15-560-R, Section 1.6.6 Periodic Evaluation “. Linde’s IMP P-15-560 requires periodic evaluations to assure the integrity of covered segments by confirming the adequacy of pipeline data, and verifying for each covered segment that the reassessment interval and method selected for assessment are appropriate. Linde performs additional periodic evaluations utilizing a “Threat Identification and Risk Analysis” work process discussed in section 3 of IMP P-15-560. See Attachment 5 – “IMP-P-15-560-R, Section 3 Threat Identification and Risk Analysis”, and Attachment 6 – “Covered Segment Example of Integrity Assessment Workbook”.

Under IMP P-15-560 section 1.6.6, Linde performs periodic evaluations “as often as necessary to assure pipeline integrity...at least once each calendar year, not to exceed 15 months.” The evaluation procedures comply with the requirements of §192.937(b) and include evaluating effectiveness of preventative or mitigative measures. Linde’s IMP P-15-560 section 3.1.4 requires risk analyses to be performed not less than every four years. Currently, the oldest risk analysis for a covered segment was completed in June 2019, but is scheduled for an assessment later this year in June 2023. See Attachment 7 – “Oldest HCA Approval”, and Attachment 8 – “HCA Risk Analysis Due Date List”. Linde’s procedures also require risk assessments within six months of the completion of an integrity assessment of a covered segment, implementation or termination of any preventative and mitigation actions, when the risk model has been changed, or if pipeline



maintenance or other activities identify inaccuracies in the characterization of the risk for the segment.

While Linde believes the foregoing is adequate to comply with PHMSA's regulations, Linde has made additional, voluntarily revisions to SOP-226 Attachment 1: DOT Pipeline MOC Process to include a section requiring consideration as to whether periodic assessments of newly constructed pipelines are required as described in Linde IMP section 1.6.6 "Periodic Evaluation", to assure that periodic evaluations of new covered segments are completed timely and as frequently as needed to assure the integrity of each covered segment. See Attachment 2, Part B. Therefore, Linde's procedures comply with the requirements of §192.937(b), and Linde requests PHMSA to withdraw the alleged violation.

Linde has also substantively complied with its own procedures. NOPV Item 3 claims Linde has not completed a risk assessment since 2010, and that Linde has not performed a risk assessment on the new 17-miles of pipeline mentioned in Item 1. As provided above, Linde routinely performs risk assessments as required under §192.937(b). The most recent risk analyses of covered segments were complete in January 2022. See Attachment 8. PHMSA's claim that Linde has not conducted an analysis for a covered segment since 2010 is simply not accurate.

Moreover, a risk assessment under §192.937(b) is not required for the newly constructed 17-mile pipeline. Under §192.937(b), "An operator must conduct a periodic evaluation as frequently as needed to assure the integrity of *each covered segment*." (emphasis added). A "covered segment" "means a segment of gas transmission pipeline located in a high consequence area." 49 CFR §192.903. The new pipeline is not a "covered segment" under §192.937(b). PHMSA acknowledged as much by finding the new pipeline is not in a high-consequence area in the proposed civil penalty worksheet for Item 1. See Attachment 9 – "Proposed Civil Penalty Worksheet". In fact, the new pipeline is only in Class 1 and Class 2 locations, with an impact circle that does not contain an identified site, or 20 or more buildings intended for human occupancy as required to be an HCA under PHMSA's regulations. Therefore, Linde is not required to perform a risk analysis under §192.937(b) as the newly constructed 17-mile pipeline is not a covered segment.

Linde's procedures and risk assessments comply with PHMSA's requirements under §192.937(b). Linde therefore requests PHMSA to withdraw Item 3 and the associated Proposed Compliance Order (PCO). The PCO for Item 3 would require Linde to conduct and submit a risk analysis to



PHMSA within 60 days of the issuance of the Final Order, revise its procedures to include a requirement to conduct a periodic evaluation, at a specified interval, and to submit the revised procedures to PHMSA within 60 days of the issuance of the Final Order. As discussed above, Linde's current procedures adequately comply with § 192.937(b) obviating the need for the proposed amendment, and Linde has routinely conducted risk analyses for covered segments as required under §192.937(b). Linde respectfully requests PHMSA to withdraw Item 3 and the associated PCO.

Linde appreciates PHMSA's consideration of our response. Please contact me at 346-489-4305 with any questions or to further discuss this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Maitino". The signature is fluid and cursive, with a large loop at the end.

John Maitino  
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Linde Inc.  
Email: john.maitino@linde.com

Cc: Todd Dunn  
Shannon Hensarling  
James Willis  
Sean Bingham