UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2016

REPLY TO THE ATTENTION OF:

VIA EMAIL: robin.callaghan@linde.com and msagesse@psrb.com

Robin Callaghan
Air Quality Manager
Health, Safety and Environment
Linde North America, Inc.
200 Somerset Corporate Blvd.
Bridgewater, NJ 08807

Dear Ms. Callaghan:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves case docket no. **CAA-05-2016-0045**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2016.

Pursuant to paragraph 38 of the CAFO, Linde must pay the civil penalty within 30 days of **CAA-05-2016-0045**. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to William Wagner, Associate Regional Counsel, (312) 886-4684.

Sincerely,

Brian Dickens

Brian Dickens, Chief
MN/OH Section, Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
William Wagner/C-14J
Yasmine Keppner-Bauman/Yasmine.Keppner-Bauman@Illinois.gov

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2016-0045**
Linde Gas North America, LLC	)	**Proceeding to Assess a Civil Penalty**
Romeoville, Illinois	)	**Under Section 113(d) of the Clean Air Act,**
	)	**42 U.S.C. § 7413(d)**
Respondent.	)	

REGIONAL HEARING CLERK
RECEIVED
SEP 30 2016
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Acting Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Linde Gas North America, LLC (Linde), a corporation doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the Prevention of Significant Deterioration (PSD) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the national ambient air quality (NAAQS) standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the "PSD program."

10. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review (NSR) requirements for areas designated as being in nonattainment with the NAAQS standards. These provisions are referred to herein as the "Nonattainment NSR program." The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS.

11. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits, among other things, a "major emitting facility" from constructing a "major modification" in any area which is attaining

the NAAQS, unless it has obtained a pre-construction permit issued under the PSD regulations that applies "Best Available Control Technology" (BACT) to control emissions from the proposed modified emissions unit, and has conducted an analysis to determine the air quality impacts of the modification. See also, 40 C.F.R. § 52.21(a)(2)(iii).

12. Section 173(a) of the Act, 42 U.S.C. 7503(a), provides, among other things, that construction and operating permits may be issued if, among other things, sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the national ambient air quality standards is maintained, and the pollution controls to be employed will reduce emissions to the "lowest achievable emission rate" (LAER).

13. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable. The Administrator promulgated regulations at 40 C.F.R. § 51.166 setting forth state implementation plan (SIP) approval requirements for the prevention of significant deterioration of air quality.

14. Pursuant to Sections 110 and 172(c)(5) of the Act, 42 U.S.C. § 7410 and 7502(c)(5), each state is required to adopt Nonattainment NSR SIP rules that include provisions to require permits that conform to the requirements of Section 173 of the Act, 42 U.S.C. § 7503, for the construction and operation of modified major stationary sources within nonattainment areas. Section 173 of the Act, in turn, sets forth a series of minimum requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. EPA promulgated regulations at 40 C.F.R. § 51.165 to implement Nonattainment NSR

permit program requirements under Sections 172(c)(5) and 173 of the Act. *See* Fed. Reg. 40669 (November 7, 1986), and subsequent amendments.

15. On August 7, 1980, EPA disapproved Illinois' proposed PSD program and then incorporated by reference the PSD regulations of 40 C.F.R. § 52.21, except paragraph 40 C.F.R. § 52.21(a)(1), into the Illinois SIP. 40 C.F.R. § 52.738 (45 Fed. Reg. 52676, 52741). On January 29, 1981, EPA delegated to the Illinois Environmental Protection Agency (IEPA) the full authority to implement and enforce the federal PSD program. 46 Fed. Reg. 9584. On December 31, 2002, EPA published revisions to the PSD and nonattainment new source review (NSR) regulations in 40 C.F.R. Parts 51 and 52. 67 Fed. Reg. 80186. These revisions are referred to as "NSR Reform." On December 24, 2003, EPA issued a final rule incorporating the newly promulgated PSD provisions of NSR Reform into the Illinois SIP. 68 Fed. Reg. 74489. The NSR Reform provisions at 40 C.F.R. § 52.21 were incorporated into and were part of the Illinois SIP at the time of the major modifications alleged in this Order.

16. 40 C.F.R. § 52.23 provides that failure to comply with any permit limitation or permit condition contained within an operating permit issued under an EPA approved program that is incorporated into the SIP shall render the person so failing to comply in violation of a requirement of an applicable implementation plan.

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $37,500 per day of violation up to a total of $295,000 for violations that occurred after January 12, 2009 through December 6, 2013 and may assess a civil penalty of up to $37,500 per day of violation up to a total of $320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

18. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

19. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

20. Linde has owned and operated a hydrogen plant (Lemont Hydrogen Plant I) located in Romeoville, Will County, Illinois, which is adjacent to a refinery owned and operated by the Citgo Petroleum Corporation (Citgo) and located at 135th Street and New Avenue in Lemont, Will County, Illinois (Citgo Refinery or Lemont Refinery). For Title V purposes, the Lemont Hydrogen Plant I and the Citgo Refinery are considered one Title V Source. The combined Title V Source including the Linde Hydrogen Plant I and the Citgo Refinery has the potential to emit nitrogen oxides (NO_X) in excess of 250 tpy, making it a major stationary source under the New Source Review Program.

21. At all times relevant to this Notice, Will County has been part of an air quality control region (AQCR) designated as nonattainment for particulate matter less than or equal to 2.5 microns in diameter ($PM_{2.5}$) (*see*, 70 Fed. Reg. 944 (January 5, 2005), 74 Fed. Reg. 58688 (November 13, 2009), and 74 Fed. Reg. 62243 (November 27, 2009); *but see*, 78 Fed. Reg. 48103 (August 7, 2013)), and classified as attainment or unclassifiable for NO_X and particulate matter less than or equal to 10 microns in diameter (PM_{10}).

22. Based on Linde's permit application number 07120053, Illinois EPA issued a construction permit to Linde on June 16, 2008, granting Linde approval to construct emission source(s) and/or air pollution control equipment consisting of the Lemont Hydrogen Plant II using certain emission reduction credits as described in Paragraphs 25-27.

23. Linde constructed the Lemont Hydrogen Plant II to service new emission units being constructed as part of an Ultra Low Sulfur Diesel Project at the adjacent Citgo Refinery (the Citgo ULSD Project). The construction of the new Lemont Hydrogen Plant II combined with the Citgo ULSD Project constituted construction at an existing major stationary source.

24. On December 29, 2009, Illinois approved revisions to Linde's construction permit for the construction of Selective Catalytic Reduction (SCR) control equipment for the reduction of NOx emissions.

25. For the combined Linde and Citgo projects, Linde and Citgo sought to use emission reduction credits totaling 300 tpy NO_X, 300 tpy SO_2 and 20 tpy PM. The emission reductions which Linde sought to use as netting credits allegedly arose pursuant to Paragraph 137 of a global refinery Consent Decree between U.S. EPA *et al.* and Citgo Petroleum Corporation, *et al.*, which was entered in the United States District Court of the Southern District of Texas, on October 6, 2004 (Citgo Consent Decree). However, the Citgo Consent Decree provides at Paragraph 137 that "CD Emissions Reductions may only be used at the refinery that generated them." Paragraph 10.GG of the Citgo Consent Decree defines the "Lemont Refinery" as "the refinery owned and operated by Citgo and located in Lemont, Illinois." Because Linde is not "the refinery owned and operated by Citgo," it is not part of the Citgo Refinery and thus any netting credits generated under the Citgo Consent Decree were not available to Linde for use. Furthermore, as described in Notice and Finding of Violation EPA-5-11-IL-10, issued to Citgo

on September 30, 2011, Citgo failed to meet the requirements of Paragraph 137.i of the Consent Decree, such that no netting credits were generated for use.

26. The Illinois EPA issued Construction Permit No. 197090ABF applying the emission reduction credits requested by Linde and Citgo as described in Paragraph 25. The net emissions change due to the entire ULSD Project from the combined Linde and Citgo netting analysis with the inclusion of the CD-related emission reductions was -65.12 tpy NO_X, -457.83 tpy SO_2 and +6.62 tpy PM_{10} under the PSD program, -446.20 tpy NO_X and +11.33 tpy $PM_{2.5}$ under non-attainment NSR.

27. The combined Linde and Citgo netting analysis, excluding the 300 tpy NO_X credit, 300 tpy SO_2 credit and 20 tpy PM credit, results in a net emissions increase of 234.88 tpy NO_X, -157.83 tpy of SO_2, and 26.62 tpy of PM_{10} under the PSD program, and -146.20 tpy NO_X and 31.33 tpy of $PM_{2.5}$ under non-attainment NSR, thus making Linde and Citgo's combined ULSD Project a major modification for NO_X and PM_{10} under the PSD program and for $PM_{2.5}$ under non-attainment NSR.

28. On September 27, 2013, EPA issued to Linde a Notice and Finding of Violation alleging that it violated the PSD and Non-attainment NSR programs by constructing a major modification without installing BACT or LAER with offsets, as applicable, as set forth in further detail in Paragraphs 30 – 32, below.

29. On February 21, 2014, representatives of Linde and EPA discussed the September 27, 2013 Notice and Finding of Violation.

30. Linde failed to obtain a PSD/non-attainment NSR permit for the construction of the Hydrogen Plant II described in Paragraphs 22 – 27, as required by Sections 165(a) and 173(a)

of the Act, 40 C.F.R. §§ 52.21 and 51.165, 40 C.F.R. Part 51, Appendix S. IV.A., and the Illinois SIP, including 35 IAC § 203.201.

31. Linde violated Sections 165(a) and 173(a) of the Act, 40 C.F.R. §§ 52.21 and 51.165, 40 C.F.R. Part 51, Appendix S.IV.A., and the Illinois SIP, including 35 IAC § 203.201, by constructing the Hydrogen Plant II without applying for or obtaining a PSD/non-attainment NSR permit, operating the modified facility without installing BACT and LAER for the control of such pollutants prior to commencing construction of such activities, and continuing to operate the hydrogen plant without BACT/LAER and obtaining Federally enforceable emission offsets as great or greater as the new or modified source's emissions. Linde violated these provisions by failing to take appropriate emission control limits in accordance with BACT and LAER analyses, certifying that all other major sources that it owns or operates within Illinois are in compliance with the Act, and demonstrating that the benefits of the proposed source or modification significantly outweigh the environmental and social costs imposed as a result of its construction or modification.

32. Linde has failed to submit a timely and complete Title V permit application with information pertaining to the major modification that occurred due to the construction of the Hydrogen Plant II described in Paragraphs 22 – 27 and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install and operate BACT for NO_X and PM_{10} and LAER with offsets for $PM_{2.5}$ and also failed to supplement or correct the Title V permit applications in violation of Sections 502, 503 and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5(a), (b) and (c), 70.6 and 70.7(b); and the Illinois Title V provisions at 415 ILCS 5/39.5.35, and the Illinois Administrative Code Part 254, Section

254.103, which provides that actual emissions reported in annual reports must contain emissions information for each emissions unit, including startup, shutdown and malfunction (SSM) emissions.

33. 35 Illinois Administrative Code Part 254, Section 254.103 provides that actual emissions reported in annual reports must contain emissions information for each emissions unit, including startup, shutdown and malfunction (SSM) emissions.

34. On December 31, 2002, Illinois EPA issued a Joint Construction and Operating Permit, Number 197090ABF, to Linde. The permit included the following conditions:

a. Condition 1.1.12(b)(ii) identifies how to determine compliance with emission limits listed in the permit during periods of startup, malfunction and breakdown;

b. Condition 1.4.1(a)-(c) provides requirements to notify Illinois EPA prior to emissions testing, submit a written test plan prior to testing, and submit copies of final test reports after testing;

c. Condition 2.1.3(b)(ii)(B) provides that NOx emissions from the affected heater cannot exceed 40 ppmv on a 24-hour rolling average basis;

d. Condition 2.2.8(a) provides that Linde must comply with the recordkeeping requirements in 40 C.F.R. § 60.486(a);

e. Condition 2.4.9(a)(iii) provides that Linde must maintain records of certain items for each exceedance of the limits set forth in Conditions 2.4.3, 2.4.5, and 2.4.6;

f. Conditions 2.4.10(a)(i)-(ii) require reporting of any exceedances of the emission limits set forth in Conditions 2.4.3 and 2.4.5;

g. Condition 2.4.9(b)(ii) requires Linde to maintain certain records of emissions for each month and year; and,

h. Condition 2.4.3(d)(iii) and Condition 2.4.9(a)(iii) require Linde's flares to be operated to comply with either the heat content specifications in 40 C.F.R. § 60.18(c)(3)(ii) and the maximum tip velocity specifications at 40 C.F.R. § 60.18(c)(4) or the requirements in 40 C.F.R. § 60.18(c)(3)(i).

35. On November 4, 2014, Linde submitted a self-disclosure to Illinois EPA and EPA following a Voluntary Environmental Audit of its facilities. The self-disclosure identified potential violations of Permit Number 197090ABF. Linde identified in its self-disclosure letter that preliminary audit findings were first presented to Linde on October 6, 2014, and EPA thus determined that Linde disclosed them outside the time period allowed under EPA's Audit Policy. These findings included the following potential violations of Permit Number 19709ABF:

a. The normal heat content of Linde's flare gas is 290 Btu/scf and had events which exceeded the maximum flare tip velocity;

b. Linde failed to include SSM emissions when reporting annual emissions from heaters and boilers;

c. Linde failed to include SSM emissions when reporting annual emissions from their flares;

d. Out of approximately 300 valves, 19 were not included in the LDAR monitoring program;

e. Linde failed to notify IEPA before several emission tests, failed to submit test plans and failed to submit the final test reports;

f. Linde did not maintain hourly average data on NOx emissions from August 2010 through January 2011;

g. Flaring emissions reports didn't total the emissions for each month; and,

h. Linde failed to notify IEPA of all violations of flare gas heat content and/or maximum tip velocity violations.

36. Pursuant to 40 C.F.R. § 52.23 Linde violated the Illinois SIP by failing to comply with the provisions of its Permit Number 197090ABF.

Civil Penalty

37. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Linde's cooperation, prompt return to compliance, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is $93,707.

38. Within 30 days after the effective date of this CAFO, Respondent must pay a $93,707 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

39. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

William Wagner (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5

77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

40. This civil penalty is not deductible for federal tax purposes.

41. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 54, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

42. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environment Project

43. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by the installation of carbon monoxide (CO) monitors around the pressure swing absorbers (PSAs) at Lemont Hydrogen Plants I and II. The CO monitors will allow for faster identification of leaks in the PSA, thus allowing leaks to be addressed sooner,

and is expected to reduce emissions of CO, hydrogen, carbon dioxide, methane and nitrogen oxides.

44. At its Romeoville facility, Respondent must complete the SEP as follows. Respondent must install 2 CO monitors within 30 feet of a potential leak point at the Lemont I PSA and 3 CO monitors within 30 feet of a potential leak point at the Lemont II PSA. The CO monitors must be able to detect CO in the range of 0 – 100 ppm, with a range of at least 30 feet. The CO monitors must be installed and calibrated no later than four months after the effective date of this CAFO. Respondent must develop and implement a written CO Monitor Implementation Plan that addresses: (1) proper operation and maintenance of the monitors, and (2) procedures for responding to an alarm. Linde must submit a notification to EPA within 30 days of installation and calibration of the monitors. Linde shall attach a copy of its CO Monitor Implementation Plan to this notification. The notification must be submitted to EPA by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 39, above.

45. Respondent must spend at least $18,000 to purchase and install the CO monitors.

46. Respondent must continuously use or operate the CO monitors and respond to alarms per the procedure developed in accordance with Paragraph 44, for 3 year(s) following their installation.

47. Respondent certifies as follows:

> I certify that Linde is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Linde has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
>
> I certify that Linde is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the

SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

48. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

49. Respondent must submit a SEP completion report to EPA by 30 days after the expiration of the initial three year operation period of the CO Monitors. This report must contain the following information:

a. Detailed description of the SEP as completed;

b. Description of any operating problems and the actions taken to correct the problems;

c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;

d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

e. Description of the environmental and public health benefits resulting from the SEP.

50. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 39, above.

51. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

52. Following receipt of the SEP completion report described in paragraph 49, above, EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 54.

53. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 15 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 54, below.

54. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 44, Respondent must pay a penalty of $6,000.

b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 45, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 45, Respondent must pay a penalty of $1,000.

d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

Penalty per violation per day	Period of violation
$100	1st through 14th day
$200	15th through 30th day
$300	31st day and beyond

55. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

56. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 38, above, and will pay interest and nonpayment penalties on any overdue amounts.

57. Any public statement that Respondent makes referring to the SEP must include the following language: "Linde undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Linde for alleged violations of the Clean Air Act."

58. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Respondent must notify EPA in writing within 15 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

59. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

60. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: wagner.william@epa.gov (for Complainant), and robin.callaghan@linde.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

61. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

62. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

63. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 61, above,

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

64. Respondent certifies that it is complying fully with the provisions of Permit Number 197090ABF which are identified in Paragraph 19, above, except for Condition 2.4.3(d)(iii) and Condition 2.4.9(a)(iii), for which Linde has submitted a Permit Modification Application due to changes at the facility.

65. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

66. The terms of this CAFO bind Respondent, its successors and assigns.

67. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

68. Each party agrees to bear its own costs and attorney's fees in this action.

69. This CAFO constitutes the entire agreement between the parties.

Linde Gas North America, LLC, Respondent

09/23/16

Date

TJ Phipps

Terry J. Phipps, HyCO SMR Operations/ROC Head
Linde Gas North America, LLC

United States Environmental Protection Agency, Complainant

9/28/16
Date

Edward Nam
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-29-16
Date

Robert A. Kaplan
Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: **Linde Gas North America, LLC.**
Docket Number: **CAA-05-2016-0045**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2016-0045**, which was filed on September 30, 2016 in the following manner to the following addressees:

Copy by E-Mail to Respondent:	Robin Callaghan robin.callaghan@linde.com
Copy by E-mail to Attorney for Complainant:	William Wagner wagner.william@epa.gov
Copy by E-mail to Attorney for Respondent:	Mary Ann Saggese msaggese@psrb.com
Copy by E-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: September 30, 2016

L Whitehead

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5