



**U.S. Department of Justice**

Criminal Division

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*Fraud Section  
1400 New York Ave., NW  
Washington, D.C. 20005*

June 16, 2017

Lucinda Low, Esq.  
Thomas Best, Esq.  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036

Re: *Linde North America Inc., Linde Gas North America LLC*

Dear Ms. Low and Mr. Best:

Consistent with the FCPA Pilot Program announced April 5, 2016, the Department of Justice, Criminal Division, Fraud Section and the United States Attorney's Office for the District of New Jersey (collectively, the "Department") are closing their investigation of your clients, Linde North America Inc. and Linde Gas North America LLC (collectively, "Linde" or the "Company") and certain of their subsidiaries and affiliates concerning violations of the Foreign Corrupt Practices Act (the "FCPA"), 15 U.S.C. §§ 78dd-2.

The Department's investigation found that from approximately November 2006 to December 2009 Linde, through Spectra Gases, Inc. ("Spectra Gases"), a New Jersey company that Linde acquired in October 2006, made corrupt payments to high-level officials at the National High Technology Center ("NHTC") of the Republic of Georgia ("Georgia"), a 100% state-owned and -controlled entity, in connection with its purchase of certain income-producing assets from the NHTC. Specifically, on or about November 13, 2006, Spectra Gases purchased from the NHTC assets and equipment, most notably the "boron column," which were used to produce boron gas. In advance of the boron column purchase and prior to Linde's acquisition of Spectra Gases, three high-level executives who were the principal shareholders and managers of Spectra Gases (the "Spectra Executives"), and who continued to manage Spectra Gases for three years following Linde's acquisition pursuant to a so-called "Earn-Out" arrangement, agreed to share the profits earned from the sale of the boron gas with certain high-level officials at the NHTC and a third-party intermediary with close connections to the officials (collectively the "NHTC Officials") in return for the NHTC Officials' assistance in ensuring that Spectra Gases be selected as the purchaser of the boron column (which agreement followed a previous corrupt arrangement between the same parties for a similar purpose).

In order to effectuate this corrupt agreement and funnel monies to the NHTC Officials the Spectra Executives and the NHTC Officials agreed to form, and did form, two new companies, Spectra Investors, LLC ("Spectra Investors"), a New Jersey limited liability company which

purchased the boron column from the NHTC, and Spectra Gases Georgia, a Georgian company which was 100%-owned by Spectra Investors, and was the company through which the boron column was operated. Spectra Investors entered into a "management agreement" with a company owned and operated by the NHTC Officials (the "management company"), pursuant to which the management company purportedly provided services (although there is no evidence of any services being performed) and received 49% of the profits of Spectra Investors. Spectra Investors' remaining profits were distributed in accordance with the respective parties' ownership interests in Spectra Investors: 51% to another company owned and operated by the NHTC Officials, and 49% to Spectra Gases. The net result of the corrupt arrangements was that the NHTC Officials owned 51% of Spectra Investors and received approximately 75% of the profits generated by the boron column, while Spectra Gases owned 49% of Spectra Investors and received approximately 25% of the profits. In January 2010, prior to Linde's discovery of the corrupt conduct, Linde dissolved Spectra Gases and became its successor-in-interest. Prior to the dissolution of Spectra Gases, Spectra Gases received approximately \$6,390,000 as a result of the corrupt conduct, which profit was a driving force in the determination of the "Earn-Out" amount described above. After Spectra Gases was dissolved, Linde received approximately \$1,430,000 as a result of the corrupt conduct.

Upon discovery of the corrupt arrangements, Linde withheld \$10 million of the "Earn-Out" payment purportedly due to the Spectra Executives and deposited it in a segregated account holding only those funds pending the results of its investigation. It also withheld further payments to companies owned or controlled by the NHTC Officials.

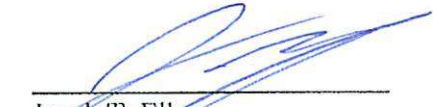
The Department's decision to close its investigation into this matter is based on a number of factors, including but not limited to: (1) Linde's timely, voluntary self-disclosure of the matter; (2) the thorough, comprehensive and proactive investigation undertaken by Linde; (3) Linde's full cooperation in this matter (including its provision of all known relevant facts about the individuals involved in or responsible for the misconduct) and its agreement to continue to cooperate in any ongoing investigations of individuals; (4) Linde's agreement to disgorge the profits Spectra Gases and it received from the improper conduct and forfeit to the United States the corrupt proceeds it has withheld from companies owned or controlled by the NHTC Officials; (5) the steps Linde has taken and continues to take to enhance its compliance program and its internal accounting controls; and (6) Linde's full remediation (including terminating and/or taking disciplinary action against the employees involved in the misconduct, including the Spectra Executives and lower-level employees involved in the misconduct; terminating the agreement with the "management company" owned by the NHTC Officials; withholding "Earn-Out" payments attributable to the corrupt conduct from the Spectra Executives; and withholding payments due to companies owned or controlled by the NHTC Officials).

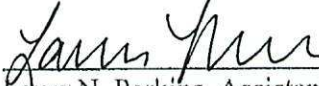
Pursuant to this letter agreement, Linde agrees to (1) disgorge \$1,430,000 (the "Linde Disgorgement Amount"), which represents the profit received by Linde from the improperly obtained sales of boron gas after the dissolution of Spectra Gases and Linde's having become Spectra Gases' successor-in-interest; (2) disgorge \$6,390,000 which represents the benefits received by Spectra Gases from the improperly obtained sales of boron gas from 2007 through December 2009 (the "Spectra Disgorgement Amount") (collectively with the Linde Disgorgement Amount, the "Total Disgorgement Amount"); and (3) forfeit to the United States

the sum of \$3,415,000 (the "Forfeiture Amount"), which constitutes corrupt proceeds owed to companies owned or controlled by the NHTC Officials, which Linde withheld upon discovery of the corrupt conduct. The Company shall pay the Total Disgorgement Amounts to the United States Treasury and shall separately turn over the Forfeiture Amount by check payable to the United States Marshals Service and delivered to the United States Attorney's Office, District of New Jersey, 970 Broad Street, Newark, NJ 07102, Attn: Asset Forfeiture and Money Laundering Unit. Both payments shall be made within ten business days of its execution of this letter. The Company acknowledges that it will not take any deductions on its tax returns, or seek any other tax related benefit, in connection with any part of its payment of the Total Disgorgement Amounts or the Forfeiture Amount.

This letter agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with the Company, nor does it provide any protection for individuals against forfeiture claims by the Department for assets in those individuals' control. If the Department learns information that changes any of the factors outlined above, we may reopen our inquiry.

Sincerely,

  
\_\_\_\_\_  
Jacob T. Elberg  
Chief, Health Care & Government Fraud Unit  
United States Attorney's Office  
District of New Jersey


  
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Laura N. Perkins, Assistant Chief  
Nicholas Acker, Senior Trial Attorney  
United States Department of Justice  
Criminal Division, Fraud Section

The Company agrees and consents to the facts and conditions set forth herein:

Date:

6/16/17

BY:

  
\_\_\_\_\_  
Lucinda Low, Esq.  
Thomas Best, Esq.  
Steptoe & Johnson LLP  
Counsel to Linde North America Inc., and  
Linde Gas North America LLC

