

## **PUBLIC NOTICE**

### **ENVIRONMENTAL PROTECTION**

### **SITE REMEDIATION PROGRAM**

**Notice to Receive Interested Party Comments on Proposed Settlement Agreement in the Matter of NJDEP, et al. v. Linde LLC, et al./ NEC Holdings Corp., et al. v. Linde, LLC, et al., Civil Action No. 11-3457 (ES) (JAD).**

**Take notice** that the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund (NJDEP) hereby give notice of a proposed Settlement Agreement between Alfred T. Giuliano, Chapter 7 Trustee of the Estate of National Envelope Corporation – East, Successor by Merger with National Equities Corporation (the Trustee), Linde LLC f/k/a Linde, Inc., f/k/a The BOC Group, Inc., f/k/a Airco, Inc., f/k/a Air Reduction Company, Inc. (collectively Linde) and NJDEP, which would resolve *NJDEP, et al. v. Linde LLC, et al./ NEC Holdings Corp., et al. v. Linde, LLC, et al.*, Civil Action No. 11-3457, in its entirety.

NEC Holdings Corp. and its affiliates (the NEC Debtors) commenced their respective bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code on June 10, 2010, in the bankruptcy case styled *In re NEC Holdings Corp., et al.*, Bankruptcy Case No. 10-11890 (Bankr. D. Del.), which was subsequently converted to a chapter 7 bankruptcy proceeding on December 13, 2011.

The NEC Debtors filed an adversary proceeding, Adv. Pro. No. 11-51129 (Bankr. D. Del.) (the Adversary Proceeding) in the NEC Bankruptcy Case against Linde and its predecessors seeking cost recovery under the Comprehensive Environmental Response,

Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9601 to 9628, declaratory relief that Linde is liable for cost recovery under CERCLA, and contribution under the New Jersey Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11 to -23.24. Linde denied any liability to the NEC Debtors and asserted counterclaims against the NEC Debtors. The Adversary Proceeding was transferred from the United States Bankruptcy Court for the District of Delaware (Bankruptcy Court) to the United States District Court for the District of New Jersey, Newark Vicinage, where it is styled *NEC Holdings Corp., et al. v. Linde, LLC, et al.*, Civil Action No. 11-3457.

The Trustee, by operation of the conversion of the NEC Bankruptcy Case from a Chapter 11 proceeding to a Chapter 7 proceeding, became the successor to the NEC Debtors for all matters, including, but not limited to, all rights with respect to the NEC v. Linde case, in the case styled *Alfred T. Giuliano v. Linde LLC, et al.*, Civil Action No. 11-3457.

The NJDEP intervened as plaintiffs in *NEC Holdings Corp., et al. v. Linde, LLC, et al.*, Civil Action No. 11-3457, in March 2014.

Linde operated at the facility located at 400 Clermont Terrace, Union Township, Union County, New Jersey, this property being also known and designated as Block 606, Lot 3, on the Tax Map of Union Township (the Union Facility), from approximately 1959 until the late 1970's. The NEC Debtors owned the Union Facility from 1980 until the ownership, rights and claims with respect to the Union Facility were transferred by operation of law to the Trustee when Debtors' Chapter 11 case was converted to a Chapter 7 bankruptcy proceeding. In April 2013 the Union Facility was sold by the Trustee to EFG – Clermont Terrace, LLC (EFG).

Linde used chlorinated volatile organic compounds (CVOCs), including trichloroethene (TCE), 1,1,1-trichloroethane (TCA), and tetrachlorethylene (PCE) in their manufacturing operations at the Union Facility.

The NEC Debtors also used CVOCs, including TCE, TCA, and PCE, in their manufacturing operations at the Union Facility.

Groundwater in the vicinity of the Union Facility is contaminated with CVOCs (primarily TCE and TCA) in concentrations exceeding the New Jersey Ground Water Remediation Standards, N.J.A.C. 7:26D-2.2. Soil at the Union Facility was contaminated with CVOCs at concentrations exceeding the applicable soil quality standards. Sub-slab CVOC vapors are present at the Union Facility at concentrations exceeding the applicable screening levels.

While EFG has conducted a remediation of the soil at the Union Facility, and its Licensed Site Remediation Professional has issued a Response Action Outcome document to that effect, groundwater remediation remains to be done at the Union Facility. NJDEP believes that Linde and the NEC Debtors are responsible to pay for the remediation of the Union Facility due to the fact that they were dischargers or are in any way responsible for hazardous substances discharged at the Union Facility.

Pursuant to the Spill Act and CERCLA, Linde and the NEC Debtors must remediate the Union Facility, the Department is entitled to recover money from Linde and the NEC Debtors to reimburse the Department for its costs remediating discharges at the Union Facility, and the Department is entitled to Natural Resource Damages, and penalties, from Linde and the NEC Debtors.

The Trustee, Linde, and the NJDEP seek to achieve the following by entering into the Settlement Agreement, which was approved by the Bankruptcy Court on January 9, 2014: they

wish to resolve all claims that the NJDEP has or could have in the future against Linde and the Trustee relating in any way to the discharges of hazardous substances at the Union Facility prior to the Settlement Agreement; the Trustee and Linde, without admitting any responsibility or liability with respect to the Union Facility or to each other, will resolve all claims that have been or could be asserted by and among them in *NEC Holdings Corp., et al. v. Linde, LLC, et al*; and, Linde, pursuant to the Settlement Agreement, is paying a fixed and specific collective sum to the Trustee and NJDEP to fully, completely and finally settle its alleged liability for any and all claims, as defined in the Settlement Agreement, of the Trustee and the NJDEP. By entering into the Settlement Agreement, the Department is receiving \$1 million to assist in the remediation of the Union Facility.

The Settlement Agreement would constitute an administratively approved settlement under the Spill Act, N.J.S.A. 58:10-23.11f(b), and CERCLA, 42 U.S.C. §9613(f)(2), for the purpose of providing protection from contribution actions or claims for matters addressed in this Settlement Agreement.

Copies of the proposed Settlement Agreement are available for inspection at the NJDEP's main office at 401 East State Street, in Trenton, NJ and via the Internet at [www.nj.gov/dep/nrr/settlements](http://www.nj.gov/dep/nrr/settlements). A copy of NJDEP's files concerning the Union Facility is available for review by contacting the Office of the Records Custodian, NJDEP, P.O. Box 442, Trenton, NJ 08625-0442 or via email at [records.custodian@dep.state.nj.us](mailto:records.custodian@dep.state.nj.us).

Interested persons may submit comments on the entry of this Settlement Agreement to Kevin Kratina, Assistant Director, NJDEP, Site Remediation Program, Enforcement Information Support Element, 401 East State Street, P.O. Box 420, Mail Code 401-06A, Trenton, NJ 08625-0420. All comments must be submitted within 30 calendar days of the date of this public notice.

NJDEP will consider all comments received and may decide to withdraw or withhold consent to the entry of the Settlement Agreement if comments received disclose facts or considerations that show that the Settlement Agreement is inappropriate, improper or inadequate.

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Date

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Anthony Farro, Director  
Division of Enforcement Technology and Financial  
Support