

**Statement of David Joyner  
On Behalf of:**

**Air Liquide Helium America, Inc.  
Airgas, Inc.  
Matheson Tri-Gas, Inc.**

**Consideration of S. 783: Helium Stewardship Act of 2013  
U.S. Senate Committee on Energy and Natural Resources  
U.S. Senate**

**May 7, 2013**



**Tom Thoman  
Airgas, Inc.  
908-991-9263  
[tom.thoman@airgas.com](mailto:tom.thoman@airgas.com)**



**David Joyner  
Air Liquide Helium America, Inc  
713-402-2112  
[David.Joyner@Airliquide.com](mailto:David.Joyner@Airliquide.com)**



**Kevin Lynch  
Matheson Tri-Gas  
908-991-9263  
[klynch@mathesongas.com](mailto:klynch@mathesongas.com)**

**Statement of David Joyner  
On Behalf of:**

**Air Liquide Helium America, Inc.  
Airgas, Inc.  
Matheson Tri-Gas, Inc.**

**Consideration of S. 783: Helium Stewardship Act of 2013  
U.S. Senate Committee on Energy and Natural Resources  
U.S. Senate**

**May 7, 2013**

Good morning Chairman Wyden, Ranking Member Murkowski, and members of the Committee. My name is David Joyner, and I am the President of Air Liquide Helium America, Inc., the helium company for American Air Liquide. I appear today on behalf of American Air Liquide, Airgas Inc. and Matheson Tri-Gas, Inc., who are the major participants in the domestic helium market that do not operate helium refineries on the federal helium pipeline. Collectively, despite being practically shut out of the market for federal crude helium, our companies serve a significant portion of the U.S. helium market. We are deeply appreciative of the work of this Committee and its staff in ensuring our participation as you consider this legislation and at a level consistent with our involvement and importance to the U.S. helium market.

As you would expect, our companies are different, and each of us has views on the pending legislation which are specific to our individual corporations. *See* individual company statements attached hereto as **Appendix A**. We have each submitted statements reflecting those views. I am here today to share with you those core principles upon which we all profoundly agree:

- **Extending the Operation of the Federal Helium Reserve;**
- **Expanded Market Access and Transparency; and**
- **Enactment of the Conditional Tolling Provision**

First, we all agree that legislation to extend operation of the Federal Helium Reserve is vital to the U.S. economy. Failure to continue operation of the reserve would remove close to one-third of global helium supplies and almost half the domestic supply from the market. Accordingly, we appreciate the amount of time and energy you have devoted to achieving this vital goal.

Second, we strongly endorse the expanded access and market transparency that your legislation seeks to foster. Three companies who operate refineries on the federal helium pipeline have enjoyed near exclusive access to the reserve for almost 20 years. As documented by the Department of the Interior's Inspector General, this arrangement has potentially cost the U.S. taxpayer \$100 million over the life of the program. It has also distorted markets and, in some cases, led to supply shortages. Expanded access and market transparency are items that are long overdue.

To achieve these goals, you have included an auction provision. While our companies have some difference of opinion about auctions, for this auction to be most meaningful, we believe it should begin much sooner than the 2014 date specified. Auction of federal helium is not a complex process. The auction involves the sale of a single commodity to a limited number of bidders on an annual basis. This is far less complex than many other auction processes which routinely occur in different markets, and we fully believe that the Bureau of Land Management is well equipped to get the process underway in short order. Accordingly, we believe a workable auction process can be put into place within 180 days of enactment. Alternatively, if the current timeline is to be kept, it is imperative that, in the intervening year, the current allocation system employed by the BLM must be modified to ensure greater access. Another year of 100% allocation to three companies is antithetical to the goals supported in this legislation and would again postpone any benefits that would accrue to U.S. taxpayers and end-users by increasing competition and access.

While our companies have some difference of opinion on the precise allocation percentages, we all agree that the non-allocated share of annual volumes should be increased substantially—something much closer to the significant portion of the market we serve. I reiterate, the auction process is not so complex that it necessitates the continuation of a near 100% allocation to the three refiners. We believe that if refiners are to be guaranteed access to percentage volumes then non-refiners should also be guaranteed a percentage of volumes. On a related matter, we believe the inclusion in the bill of language related to the refiners' existing contracts is unwarranted, and provides them protections which go beyond those in the contracts themselves. The U.S. House of Representatives agreed with this position and overwhelmingly defeated an amendment (312-87) offered by Reps. Charles Dent (R-PA) and Elizabeth Esty (D-CT) that would provide such additional protection. *See* Joint Letter from Non-Refiners attached hereto as **Appendix B**.

In support of this principle, we believe that the auction percentages not reserved for refiners should be restricted to non-refiners who own and maintain “adequate facilities and equipment to meet delivery schedules and quality standards” for delivery to end-users. This would both promote open competition and ensure that the market will not be subjected to the actions of outside speculators. In the same vein, we believe that no participant in the auction process should be permitted to acquire more than 30% of auction volumes.

Finally, our companies strongly support the provision calling for conditional tolling services both for the auction process as well as for any federal crude helium purchased prior to the time when the auctions begin. We appreciate the Committee’s recognition that the goals of increased competition and greater return to the taxpayer cannot be achieved without some certainty of access to tolling services.

Mr. Chairman, as documented by the reports issued by the DOI Inspector General and the National Academy of Sciences, the existing regime for federal helium sales is deeply flawed. In extending the operation of the reserve, this is a one-time opportunity to correct the flaws of that regime by ensuring greater competition which will help ensure security of supply for end-users and a fair return to the U.S. taxpayer. We appreciate the many positive changes that your legislation makes to the current situation and believe that with the suggestions we have made your legislation will more fully accomplish the goals that you have set forth.

I look forward to answering your questions and our group looks forward to working with you throughout this process.

# **APPENDIX A**

United States Senate Committee on Energy and Natural Resources  
*"To Consider the Helium Stewardship Act of 2013"*  
Washington, D.C.  
May 7, 2013

Statement Submitted for the Record  
By  
Airgas, Inc.

Helium is a vitally important strategic resource with numerous scientific, manufacturing, and industrial applications. The United States taxpayer-owned Federal Helium Reserve currently provides over 40% of the domestic supply and roughly 30% of the global supply, and therefore must continue to operate in order to avoid a significant market disruption. The recently introduced "*Helium Stewardship Act of 2013*" (the "Act") takes some important steps to address many seriously-needed changes to the operation of the Reserve. As the largest domestic distributor of helium in the U.S., Airgas, Inc. believes that with some revisions to promote more meaningful access and competition, the bill can be strengthened to provide for a more stable supply of the resource and an improved return to the taxpayer.

Founded in 1982 and headquartered in Radnor, Pennsylvania, Airgas operates the largest domestic infrastructure and supply chain for delivering helium in the United States, with more than 80,000 customers accounting for 22% of the domestic market. We are therefore in a unique position to attest to both the vital role that this limited resource plays in our economy, and the disruptive effects that the current sales regime is having on our customers. Along with Air Liquide and Matheson Tri-Gas, we are considered the "non-refiners" in this debate, and together we supply roughly 40% of the domestic helium market. Therefore, our interest in this legislation is profound and our ability to compete on a level playing field is critical to the security and improved stability of supply for the end-use community.

Before addressing the new legislation, it is important to understand how the current situation developed and why the sales regime must be overhauled. As the Committee knows well, the Helium Privatization Act of 1996 established a pricing mechanism based on debt repayment instead of the commodity's market value, and a sales construct whereby the taxpayer-owned crude helium can effectively only enter the marketplace after first being allocated to one of the four companies (one of which has contracted its output to one of the refiners) with pre-existing refining facilities on the BLM pipeline. Taken together, the manufactured price and the restricted access to the resource created a warped situation and the domestic end user community and the U.S. taxpayer are suffering the negative supply and pricing consequences.

In reviewing operations of the Reserve, a 2010 report from the National Academy of Sciences' (NAS) National Research Council (NRC) stated, "The managers of the Reserve should shift to a market-based pricing policy to improve the exploitation of this important national asset."<sup>1</sup> The report goes on to state, "[h]owever, one complicating factor is that before federally owned

---

<sup>1</sup>Committee on Understanding the Impact of Selling the Helium Reserve; National Materials Advisory Board; National Research Council; National Academy of Sciences. 2010. "*Selling the Nation's Helium Reserve.*" Page 8.

helium can be used, it must be refined, and the refining capacity linked to the Reserve is owned by four companies. The committee believes that market-based pricing of crude helium from the Reserve will require that purchasers other than those four companies have access to refining capacity linked to the Reserve.”<sup>2</sup>

We applaud the authors of the recently introduced Act for agreeing with the National Academy addressing the serious inequities resident in the current BLM Federal Helium Reserve Sales Program. In particular, we appreciate the effort to provide increased access for non-refiners, the vitally important transparency provisions, and the recognition that mandatory tolling services are a requirement for any alternative sales regime to be effective.

However, as a general proposition, we are concerned that this Act adopts a number of anti-competitive, refiner-friendly provisions that more than likely will cause the bill’s most important goals to go unrealized. Recognizing the fact that, as of the most recently published BLM Storage Information, there are 12,374,626,000 cubic feet of helium in storage of which 10,819,156,000 cubic feet (about 88%) is taxpayer-owned and 1,505,486,000 cubic feet (about 12%) is privately owned and that helium is being removed from storage at the rate of approximately 2 billion cubic feet per year, the combination of (i) delaying implementation of Phase B until October 1, 2014, (ii) providing for a painfully slow ramp up in the amount of helium available for purchase by qualified bidders (10% beginning October 1, 2014 increasing by 10 percentage points each year thereafter), and (iii) requiring refiners to refine for others only to the extent they have “excess refining capacity”, means that by the time non-refiners are given meaningful access to the taxpayer-owned helium, little if any of that helium will remain to be purchased and the goal of facilitating a competitive market-based sales regime will go unachieved.

With those challenges in mind, we offer the following recommendations which we believe will enable the Act’s good ideas and intentions to become real world, market-driven solutions.

### Sales of Crude Helium

Regrettably, as currently constructed, the Phase A Allocation Transition will not facilitate meaningful access or competition for the helium resources. Though we do not understand the interest in continuing a preferential allocation regime which has benefited only three companies at the expense of the rest of the industry (and the end-users), we have nonetheless sought to make recommended changes within the confines of the legislation’s structure. Presumably, the idea of a transition is to bring fairness, competition, and market forces into play over a time frame that is least disruptive to the market. Unfortunately, a drawn out transition with limited access to minimal volumes for a declining resource is effectively no transition at all and instead represents a continuance of the status quo.

The bill proposes that the auction mechanism not begin until October 1, 2014. In the absence of any changes to the current allocation methodology, between now and then another 2 to 3 billion cubic feet of helium will be allocated to the refiners. That leaves only 4-5 billion cubic feet (allowing for the 3 billion cubic feet reserved for Federal Users) available for disbursement

---

<sup>2</sup> Ibid.

under the new regime contemplated in the Act. Given the reduced volumes, and considering that with every reduction in volume there is a reduction in pressure and a commensurate increased difficulty in extracting future molecules, the Phase A Allocation should end much sooner and the transition to the auction period should be accelerated.

Regarding the auction, we believe a fair and effective bill would facilitate a regime more reflective of the domestic market-share, wherein 50% of the auctioned volumes would be reserved for the refiners, and the other 50% would be auctioned off to qualified participants other than the refiners. Any available amounts not acquired by the refiners would be available to non-refiners and after the non-refiners auction, any remaining amounts would again be made available to the refiners. Keeping in mind that the refiners have benefited greatly through the years thanks to their guaranteed allocation, it should not be too much to ask that a percentage of the available resource reflecting the rest of the marketplace be subject to meaningful competition between parties other than the refiners who will nonetheless continue to receive a guaranteed set-aside.

Given the limited and diminishing resources, it is vitally important to make available significant volumes of helium as early in the process as possible, otherwise the goal of achieving market reform will not be realized. We believe that such a program will enable fair competition, rigorous participation, a superior return to the taxpayer, and a vastly improved security of supply for domestic end-users.

#### Conditional Tolling Requirement

We applaud the sponsors of the Act for supporting the National Academy's recommendation to facilitate the availability of tolling services for the non-refiners. In the absence of such a requirement, all alternative regimes to the current status quo will fail because of the inability of non-refiners to secure tolling agreements on a commercially reasonable and non-discriminatory basis.

Unfortunately, we believe the current language in the bill will allow the refiners to avoid providing services to non-refiners by claiming they do not have excess refining capacity. Therefore, we believe that as a condition of sale to a refiner, the refiner must make sufficient refining capacity of helium available to non-refiner parties prevailing in auctions under terms that are just, reasonable and non-discriminatory (both commercially and with respect to the operational delivery of helium to non-refiners) The specifics of how to define sufficient capacity could be relegated to BLM rulemaking, but one option would be to define it as a percentage of a refiner's refining capacity that is not less than the percentage of its capacity represented by the helium it purchases from the BLM. For example, if a refiner's BLM purchases of helium represent 20% of its capacity, that refiner should make at least 20% of its capacity available to non-refiners.

We believe strongly that in the absence of a strengthened (and more operationally representative) definition of available/sufficient refining capacity, the auction mechanism will not be effective and a primary goal of the legislation will go unmet.

## Contracts

As currently written, the bill extends special treatment to some of the BLM contracts held by the refiners. Not only would such treatment disregard the legal conditions resident in each contract related to contingencies based upon requisite congressional authorizations and appropriations, but it would also gut the intent of the legislation to create a fairer, more competitive, and more transparent federal helium sales regime. A similar provision was overwhelmingly rejected by the full House of Representatives, and we steadfastly oppose any attempt to include such detrimental and anti-competitive language.

## Helium Purchase Limit and Removal from Storage

Lastly, we believe a new paragraph should be added to Section 5 to direct that no winning bidder may purchase more than 30% in the aggregate of the helium sold at an annual auction and to require that such helium be promptly removed from storage. This will further facilitate competition, prevent hoarding, and ensure that the end-use community has the ability to compete and choose from among a more diverse group of qualified suppliers.

For nearly two decades the helium industry, the end-use community, and the taxpayer have suffered under a monopolistic regime that led to supply shortages and market distortions. The “*Helium Stewardship Act of 2013*” is a commendable attempt to correct a fatally flawed privatization process from 17 years ago and we applaud the sponsors’ efforts to right a wrong. With the addition of our recommended changes, we believe the Act will succeed in achieving its goals of fairness, competition, and an improved return to the taxpayer. Given the opportunity to compete for the nation’s helium resources, Airgas, along with others in the industry who are currently excluded from the process, will readily participate in the auction and potentially invest in new capital projects associated with the open market; and, by de-linking the Reserve helium from the artificial pricing mechanism, Congress can unlock additional investment in private sector helium development which is otherwise reluctant to engage in a distorted market. If Airgas is successful in competing for some of the nation’s helium resources, its domestic packaged helium supply chain would be able to more fully meet the requirements of U.S. businesses.

By increasing market competition, allowing commercial forces to take root, and enabling private sector judgments to spur economic development and greater investment, an amended version of the *Helium Stewardship Act of 2013* will greatly benefit the industry, the end-user community, and the American taxpayer.

**Statement of David Joyner**  
**President**  
**Air Liquide Helium America, Inc.**  
**Consideration of S. 783: Helium Stewardship Act of 2013**  
**U.S. Senate Committee on Energy and Natural Resources**  
**U.S. Senate**  
**May 7, 2013**

Chairman Wyden, Ranking Member Murkowski, and Members of the Committee, I appreciate the opportunity to testify today on S. 783: The Helium Stewardship Act of 2013 and generally on issues relating to the domestic helium industry and the Federal Helium Reserve. My name is David Joyner, and I am the President of Air Liquide Helium America, Inc., the helium company for American Air Liquide, one of the Nation's leading industrial and medical gas companies. Headquartered in Houston, Texas, Air Liquide has over 5,000 U.S. employees in more than 200 locations throughout the country. For decades, Air Liquide has offered industrial and medical gases and related services to the Nation's largest industries including manufacturing, electronics and healthcare. As a company, Air Liquide is focused on technological innovation to help make our Nation's manufacturing and industrial sectors more efficient, environmentally friendly and productive.

I have been with Air Liquide working in the industrial gas sector for over twenty years, most recently as President of Air Liquide Helium America. In this role, I have gained an appreciation for the complexities of the helium market as well as the importance of helium to a variety of end-users. At the outset, I want to commend and thank you all for your hard work and that of your staff in considering this important issue and in crafting legislation to extend the operation of the Federal Helium Reserve. It is Air Liquide's highest priority to assist you in continuing the operation of the Federal Helium Reserve in a manner that creates a stable and reliable helium supply capable of supporting the needs of end-users as well as providing an appropriate and reliable return on a Federal resource for U.S. taxpayers.

Air Liquide is a major supplier of refined helium in the United States and globally to customers that range from companies on the cutting edge of the electronics industry to health researchers, automotive suppliers, laboratories and manufacturing facilities all over the world. When Congress passed the 1996 Helium Privatization Act (the 1996 Act), it was expected that the supply of crude helium in the Federal Helium Reserve would last until 2015 and the Act along with any associated contracts would end. It is now possible that the Federal Helium Reserve's supply of helium could last much longer if properly managed. Despite the amount of remaining helium, the funding mechanism in the current law could lead to the closure of the Federal Helium Reserve in the Fall of 2013. This closure would effectively take close to a third of the global supply and half of the domestic supply of helium offline, creating shortages and substantially increasing the cost of helium for end-users. Accordingly, your actions on this legislation are critically important as Congress must act in order to ensure access to the helium remaining in the Federal Helium Reserve.

A stable supply of helium is important to our Nation's economy as it is a vital component in products ranging from magnetic resonance imaging (MRI) machines to airbags for the automotive sector. Helium is also important to our Nation's security as it is used in a variety of military and defense surveillance programs. Finally, the reliability of our helium supply is important for the Nation's research efforts such as those being undertaken at our Nation's national laboratories and at our own Delaware Research and Technology Center. These important efforts would be threatened by any sustained shortage in the domestic helium supply, particularly one that can be largely avoided by responsible management practices.

As we work together to extend the operation of the Reserve, it is also important to consider what changes can be made to create a more open and competitive helium market that would improve reliability and benefit end-users. To that end, I would like to focus on two specific issues as S. 783 is considered: (1) accessibility; and (2) global price impact and qualified bidders.

## **I. INCREASING ACCESS AND CREATING A MORE COMPETITIVE AND TRANSPARENT MARKET FOR FEDERAL CRUDE HELIUM**

### **A. Background on the Federal Helium Reserve**

As the Committee is aware, the helium stored at the Federal Helium Reserve and sold to private industry is “crude” helium which must first be separated from natural gas and then refined (i.e. “tolled”) into liquid before it is transported to other facilities around the country for additional processing and then on to end-users. The process resulting in refined helium involves the BLM separating the crude helium from the natural gas in the Federal Helium Reserve, transporting the crude helium from the Federal Helium Reserve through the Helium Pipeline—a system that runs through Kansas, Oklahoma, and Texas—to one of six refining facilities that are located on the pipeline. These six refining facilities are owned by just four<sup>3</sup> companies and were established by those companies in the last century to take advantage of privately-owned crude helium supplies. In fact, these refineries were built up to 31 years before the 1996 Act and prior to any expectation of a future government decision to sell crude helium from the Federal Helium Reserve to private industry. Nevertheless, with the enactment of the 1996 Act and the resulting use of the federal government’s infrastructure to sell crude helium from the Reserve, these companies gained the unexpected windfall advantage of controlling access to the public’s stockpile of crude helium due to their preexisting refineries.

### **B. Air Liquide Supports Conditional Tolling Agreements**

Air Liquide is a so-called “non-refiner” on the BLM system and, as such, we must contract with the Refiners—*who are also our competitors in the sales market*—to be able to distribute any helium purchased from the BLM. Without such “tolling” contracts, non-refiners are effectively prohibited from utilizing the BLM source. In recent years, the BLM has contractually committed 94 percent of the captive deliverable volumes to these refineries. The remaining six percent has been allocated in equal shares to refiners and non-refiners to bid upon, however, since the refining capacity is captive to these refineries and tolling for other private bidders is solely at a

---

<sup>3</sup> While there are four companies who operate refineries on the federal pipeline, one of those refiners solely supplies one of the other three companies. Effectively, there are three companies who operate refineries on the federal pipeline.

refiner's discretion, the existing helium refiners have effective control over the remaining six percent of helium capacity and an additional market advantage that was surely not envisioned by the 1996 Act. Moreover, any amount of crude helium that remains unsold reverts back to the refiners for purchase—another disincentive for the four companies to provide tolling services.

This current system's drawbacks were noted by the National Research Council's 2010 report, *Selling the Nation's Helium Reserve*, (the "NRC 2010 Report") which stated: "given that refining the helium must take place at one of the facilities connected to the Helium Pipeline, the limited number of potential processors of federally owned crude helium place significant restrictions on alternatives to the current sale procedures being followed by BLM."<sup>4</sup>

Proof that this system does not promote a competitive market can be seen in the fact that, in the last five years, Air Liquide has been the only non-refiner to purchase any amount of the six percent allocation. The consequences of the situation described above have important implications for end-users of helium. Adopting a more market-based approach was recommended by the NRC 2010 Report which stated the following:

The Bureau of Land Management (BLM) should adopt policies that open its crude helium sales to a broader array of buyers and make the process for establishing the selling price of crude helium from the Federal Helium Reserve more transparent. Such policies are likely to require that BLM negotiate with the companies owning helium refining facilities connected to the Helium Pipeline the conditions under which unused refining capacity at those facilities will be made available to all buyers of federally owned crude helium, thereby allowing them to process the crude helium they purchase into refined helium for commercial sale.<sup>5</sup>

Utilizing this approach would result in a more accurate and transparent BLM system and would benefit consumers by increasing the number of suppliers competing for the business of federal users and open market users with helium from the BLM. In an analogous situation, the United States has recognized the benefits of opening privately owned interstate pipeline capacity to the market in the natural gas industry where ownership of transportation capacity rights is held

---

<sup>4</sup> *Selling the Nation's Helium Reserve*, National Research Council: Committee on Understanding the Impact of Selling the Helium Reserve, The National Academies Press (2010).

<sup>5</sup> *Id.* at 8.

separate from ownership of the actual gas pipeline.<sup>6</sup> Noting the impact this system has had on the domestic market, the report states: “[u]nbundling of capacity rights from facility ownership makes it possible for a producer to access markets through a competitive bid for pipeline capacity.”<sup>7</sup> Arguably, “[i]f such a regulatory structure were not in place...shale gas developments would not have occurred at their recent pace.”<sup>8</sup>

We greatly appreciate the efforts of Members of this Committee and Committee staff to meet the goal of increasing access to federal helium in S. 783. In particular, we fully support the conditional tolling provision that requires participants in the federal helium auction to provide tolling services for parties that purchase federal crude helium. By ensuring that tolling services are available to non-refiners, the market for federal helium will be more competitive and provide a better return for the U.S. taxpayer.

### **C. Allowing an Intervening Year of 100% Allocation to Refiners is Antithetical to the Goals of S. 783**

While these steps are crucial, we remain concerned that S. 783 would allow the current allocation system to remain in place for another year and that significant portions of the federal helium supply will remain captive to the same four companies for even longer. It is our strong view that actions should be taken immediately to increase access to federal helium and, in turn, increase returns for U.S. taxpayers.

First, if, as currently drafted, the open auction system is not put in place for another year, it is imperative that, in the intervening year, the current allocation system employed by the BLM must be modified to ensure greater access. In our view, the current six percent that is allocated by BLM for non-refiners should be exclusive for non-refiners and immediately raised by a significant enough margin to stimulate participation by a greater number of parties; thereby creating the robust market for taxpayer helium that the bill seeks. Another year of 100% allocation to four companies is antithetical to the goals supported in this legislation and would

---

<sup>6</sup> *Shale Gas and U.S. National Security*, Kenneth B. Medlock, et al., James A. Baker III Institute for Public Policy (July 2011).

<sup>7</sup> *Id.* at 12.

<sup>8</sup> *Id.*

again postpone any benefits that would accrue to U.S. taxpayers and end-users by increasing competition and access.

Second, once the open auction process starts, it is our view that the percentage subject to the auction should be measurably higher than the current 10 percent in the bill. While Air Liquide would not presume to set this percentage, we agree with others in the industry who have advocated for increased access.

Failure to make these changes to the allocation system would obviate much of the bill's goals for increased competition and greater returns for taxpayers. There is simply no reason for Congress to allow four companies to gain one more year of near-total dominance over the market.

## **II. GLOBAL PRICE IMPACTS AND QUALIFIED BIDDERS**

We commend the Committee's efforts to include methodology that can achieve a more accurate minimum price for BLM crude. As the parties work towards achieving the most appropriate return to the U.S. taxpayer, we also ask the Committee to be cognizant of the impact that future changes to the BLM posted crude price will have on the global helium market. As Air Liquide has previously testified, a predictable, repeatable and verifiable BLM crude price will carry lasting, stabilizing effects for not only the domestic but also the global helium community. By maintaining a posted sales price based upon real market data as stipulated in S. 783, a standard market-based index will be maintained in the global marketplace. This index will not be distorted by short-term auction style bids that are unprecedented in the industry and not reflective of the long-term market price at other sources in the U.S. and worldwide.

### **Air Liquide's goal is to ensure a stable and reliable supply of helium for end-users.**

Accordingly, as S. 783 opens up access to federal crude helium for more bidders, we also recommend ensuring that only persons with an infrastructure capable of accepting and delivering vast quantities of helium (we have recommended a minimum threshold of 750,000 standard cubic feet delivery increments and prorated 10,000,000 standard cubic feet quarterly lots) be allowed to participate in the auction process. Doing so allows the BLM to manage its sales of federal crude helium effectively and efficiently while ensuring that the broadest base of end-users will be able to rely on a broader base of bidders to service their helium needs.

Air Liquide appreciates the Committee's attention to this important issue and supports the goal of ensuring the continuing viability of the Nation's helium supply. We believe the changes to the current system are achievable without disrupting supply and would do much to add competition to the market and benefit consumers. I thank the Committee for inviting me to testify, and I would be pleased to answer any questions you may have.

**Statement of Kevin Lynch**  
**Senior Vice President, Matheson Tri-Gas**  
**Hearing on the Helium Stewardship Act of 2013**  
**U.S. Senate Committee on Energy and Natural Resources**  
**May 7, 2013**

Mr. Chairman and Members of the Committee, thank you for allowing Matheson Tri-Gas to share its views on the Helium Stewardship Act of 2013.

Founded in New Jersey in 1927, Matheson Tri-Gas is a global leader in the industrial gases industry.

Today, Matheson is a subsidiary of Tokyo-based Taiyo Nippon Sanso Corporation, which is the fifth largest industrial gases company in the world. Matheson has helium operations within the U.S. in Wyoming, Texas, Nebraska, California, Florida, and Pennsylvania, and we have retail locations in 40 states. We are the sixth-largest supplier of helium within the US, and globally.

Matheson is a “Non-Refiner” of helium – meaning that we do not have a helium purification plant connected to the BLM crude helium pipeline system. Instead, we receive our refined helium through transactions with private parties that are unconnected to the Federal Helium Reserve or the BLM Pipeline.

Therefore, while we are a significant player in the global helium industry, our interests in the debate over the fate of the helium in the Federal Helium Reserve are slightly different from those of some of the organizations represented at the hearing. Of course, like all industrial gases companies, we are concerned about global helium supply, and as a good corporate citizen we want a fair and efficient helium market worldwide. However, the fortunes of our company are not tied so directly to the continued operation of the Federal Helium Reserve and the Pipeline System.

Matheson supports the core principles embodied in the oral testimony of David Joyner of American Air Liquide, who is presenting the shared views of the three major non-refiners of helium in the U.S. While we are competitors in the industry, Matheson, American Air Liquide and Airgas all agree on the need to extend the operations of the BLM Pipeline and Reserve, to increase access to federal crude helium and to improve the transparency of BLM helium operations.

We are hopeful that the Helium Stewardship Act of 2013 will help us achieve these important goals.

As you know, today the operation of the Federal Helium Reserve and BLM Pipeline System is governed by provisions set out in the Helium Privatization Act of 1996.

The 1996 Act has largely achieved its purpose of selling down the Federal stockpile of crude helium, and it has by and large created conditions of stability and predictability in the helium market. On the negative side, the global helium market has developed considerably since the passage of the 1996 Act. Shortages have pushed crude helium prices up globally, and the BLM's method for pricing its sales of crude helium has become detached from global market conditions. The 1996 Act has resulted in the existence of a cost advantage for the four companies buying crude helium from the Federal Helium Reserve for purification in their refining facilities along the pipeline. This represents a significant cost advantage by these helium Refiners, and a significant disadvantage for their competitors. Worse, it means that the American taxpayer is shortchanged as well.

With the legislative authority in the 1996 Helium Privatization Act about to sunset later this year, Congress has a chance to ensure that sales from the Federal Helium Reserve are conducted in a fair and efficient manner following the passage of new legislation. Since the BLM Pipeline System supports two-thirds of world supply with nearly a third of global helium supply coming directly from the Federal Helium Reserve, the new legislation enacted this year will have a profound effect on the global helium industry for at least the rest of the decade.

As introduced, the Helium Stewardship Act goes a long way towards correcting long-standing inequalities and distortions in the helium marketplace. We support many aspects of the legislation as introduced, and we recommend a number of adjustments and points of clarification in order to improve the bill's workability and results.

**Auctions:**

We agree with the general approach taken in the bill to draw down the helium remaining in the Reserve – an allocated sale to the Refiners at pre-set prices, and an unallocated sale via auction to non-refiners and other potential buyers. The auction provision in particular will dramatically increase access to the Federal crude helium stockpile, and we agree substantially with the structured, gradual approach to the auctions themselves. In the first year, the amount to be auctioned in the unallocated sale would be 10 percent of the total volume available in the Reserve.

While the provisions in the bill to gradually increase the amount to be auctioned in the unallocated sale are helpful, we would suggest an overall cap be placed on the amount to be auctioned. A cap on maximum auction volume as a percentage of total volume in the range of 20 percent to 30 percent would be optimum.

An auction of this amount would provide increased access, aid in price-discovery, and yet maintain a high degree of stability in price and supply volume by ensuring that Refiners have predictable access to the majority of supply. This will aid long-term planning by suppliers and customers alike.

Matheson would not support an auction of an amount greater than 40 percent of the total volume. We believe auctions on that scale would create too much supply uncertainty in the helium market place.

**Tolling:**

Of course, if the auction provisions in the bill are to have any practical effect, the bill **must** include unambiguous incentives for tolling by the Refiners at reasonable market rates. It does little good for a non-refiner to acquire federal helium at auction if the Refiners refuse to refine the crude helium through workable tolling arrangements.

Matheson's views on this topic have been shaped from our own unhappy experience with third-party tolling. In 2007, Matheson successfully purchased crude helium from the Federal Helium Reserve. In 2009, we subsequently attempted to purchase tolling services from all of the helium Refiners. We received "NO BID" replies from each. Therefore, the crude helium that we purchased six years ago still sits in the Federal Helium Reserve and on Matheson's Balance Sheet as an unutilized asset today. Our unsuccessful attempt to secure third-party tolling is what gave rise to our decision in January, 2010 to file a "Petition for Rule Making" with the U.S. Department of Interior.

In order to strengthen the tolling provisions in the bill, we recommend there be an explicit distinction between refining for end customers and refining for Non-Refiner Resellers.

The goal of achieving greater access to the federal crude helium stockpile and increasing competition in the helium market is primarily achieved by increasing access to helium by parties equipped, experienced, and qualified to supply helium to end customers, but who have heretofore been blocked from access to BLM crude helium supply because they do not have helium refining plants connected to the BLM crude helium pipeline. That describes non-refiners of helium, not end users of helium.

We are concerned, however, that Refiners may satisfy their requirements to provide tolling to third-parties by making commercial agreements to "toll" for large end users. Such agreements are likely to include the supply of helium ISO containers, transportation services, and other services that are customarily found in contracts covering sales of helium to end customers. In effect, Refiners will simply be selling pure helium to end users, and their total profits will likely be very similar to the profits they make on traditional sales, as the scope of services supplied will likely be very similar. Refiners will claim to be "tolling" for these end users, when in fact they will be merely selling refined helium to them as they normally would. They would merely designate a portion of that normal transaction as "tolling" in order to satisfy their requirements under this bill.

If such is the case, the price charged to an end user for tolling becomes a fairly meaningless reference price, as tolling may be bundled with other services. Therefore, the provision in the bill requiring tolling at "commercially reasonable rates" is weakened, or perhaps even counter-productive to the goal of increasing access to the federal crude helium reserve by Non-refiners.

Non-refiners who intend to re-sell pure helium must make a profit, and they must provide other services to end customers that also have resulting costs. If the benchmark for “commercially reasonable rates” includes rates that end customers are willing to pay for tolling under a bundled offering of tolling and other services, the benchmark may be set at such a level that Non-refiners are effectively priced out of the market for tolling services.

We therefore recommend that the requirement for tolling be specifically written as an explicit requirement to toll for qualified Non-Refining Resellers of helium who own and maintain adequate facilities and equipment to meet delivery schedules and quality standards for delivery to end-users.

As an alternative to that approach, the bill could empower the Secretary of the Interior to establish explicitly the “reasonable commercial rates” for required tolling services. This could be done by calculating the average cost of refining crude helium by the refining plants connected to the BLM pipeline, and allowing reasonable profit margins for such services provided by the Refiners.

Additionally, each Refiner who tolls for third parties who buy helium from the BLM should be allocated additional pipeline deliveries on a 1:1 volume basis with any tolling services it provides, in order to be “kept whole” on its non-tolling volumes. If not handled properly, there is a possibility that Refiners will be “punished” by having the net volume of crude made available to them for resale to their end customers reduced by the amount they toll. This is a basic fairness provision, to ensure that Refiners that do agree to legitimate tolling for non-refiners will not be disadvantaged.

**Pricing:**

The bill requires that a minimum price for BLM crude helium be established through a survey of Qualifying Domestic Transactions. Significant improvements have been made in this area between the release of the discussion draft on March 22 and the introduction of the bill itself on April 23. In particular, we are pleased that prices for auctions will be established annually, and that the definition of Qualified Domestic Transactions includes transactions that are newly entered into or renegotiated during the prior twelve-month period.

We are also pleased that older helium royalties have been excluded from the survey of qualified transactions. Older agreements that include prices agreed to several years beforehand, with formulaic price adjustments to old prices, will distort the picture of current market price.

We also recommend a clarification by defining “bulk liquid helium” sales as sales of liquid helium in container loads with a nominal capacity of 11,000 gallons or more, in order to be clear that the price comparison excludes large volume sales of tube trailers, cylinders, or dewars, which carry additional costs, covered by higher prices.

To ensure that the transactions being captured in the survey are all large transactions occurring at similar levels in the supply chain with similar cost and profit structures, we suggest one of two options:

- Increase the threshold for qualifying transactions to 75 mmscf, from 20 mmscf; or
- Add clarifying language to the price determination guidelines to adjust prices occurring at different levels in the supply chain to account for average cost and profit differentials in order to “normalize” such prices back to the original wholesale transactions.

**Transparency:**

We also strongly support more transparency in the way information is shared between BLM and industry stakeholders. Information on resale, pricing and storage, for example, is of value to all market participants. It should be made available to all industry participants at the same time it is made available to the helium Refiners. Today, important data is made available to the Refiners well before the rest of the industry, thus giving those companies yet another advantage over their industry competitors.

We applaud the provisions of the bill that call for timely posting by BLM of important industry information online, and we are pleased that the bill directs the BLM to establish regular reporting processes on major issues affecting the Reserve and Pipeline, and that this information be shared with all stakeholders in the helium industry and not just a favored few.

**Additional Points of Comment and Clarification:**

Fees – Section 5.a. refers to the setting of fees to reflect the economic value of services provided. This is broad language. It will be helpful for market participants to understand what it implies in terms of pricing. Ideally, a standard schedule of prices for such services will be provided in advance of any federal crude helium auctions.

Storage – Section 5.c. refers to the increasing of storage fees over time to encourage withdrawal of stored helium. Matheson’s view is that this provision exists to discourage hoarding of crude helium purchased from the BLM. Accordingly, such increases in storage fees should not apply to any crude helium sourced from private sellers and stored within the BLM system. And, again, we believe that a schedule of such fees and how the increase over time should be published well in advance of any federal crude helium auctions.

Minimum quantities – We interpret Section 6.e to mean that the Secretary will endeavor to offer for sale each year approximately 2 bscf of crude helium, or whatever is the maximum volume available, given the condition of the federal crude helium storage and delivery system. Given our understanding of approximately 11 bscf in storage as of October 31, 2012 and the target minimum level of 3 bscf, this intention implies that crude helium sales to non-federal users will terminate around October 31, 2016. If that is the case, we recommend that the Secretary be given flexibility to decrease the amount of crude helium offered for sale in order to prolong sales of crude helium to non-federal users.

End-of-life issues – Some consideration should be given to how to account for and pay for crude helium purchased from the BLM. There is a possibility that as the BLM crude helium stockpile is further depleted, it may reach a point at which although there is nominally 3 bscf or more in storage, the crude helium storage and delivery system will no longer be capable of extracting crude helium and delivering to users who have already purchased it. If that proves to be the case, will the BLM reimburse buyers for “stranded” crude helium in their accounts? Or, should the payment mechanism be changed such that buyers only pay for BLM-supplied crude helium when it is metered through a refining plant, to prevent the problem of having paid for “stranded” helium? While that would not solve the problem of a “surprise” loss of expected volume, it would at least solve the problem of a buyer having paid the federal government money for helium he will never actually take delivery of.

In summary, Matheson believes the Helium Stewardship Act of 2013 provides a very useful framework for conducting the federal government’s crude helium program into the future. Some positive changes were made to the bill prior to its introduction last month, and we believe that a handful of other important changes will make it an even stronger legislative product. We would be happy to continue discussing and exploring various aspects of the bill as it moves through the committee process in the weeks ahead.

# **APPENDIX B**

April 25, 2013

The Honorable Doc Hastings  
Chairman  
House Natural Resources Committee  
1203 Longworth House Office Building  
Washington, DC 20515

The Honorable Edward Markey  
Ranking Member  
House Natural Resources Committee  
2108 Rayburn House Office Building  
Washington, DC 20515

**Re:   Opposition to the Dent Amendment to H.R. 527, the *Responsible Helium Administration and Stewardship Act***

Dear Chairman Hastings and Ranking Member Markey:

We the undersigned—Air Gas, American Air Liquide, and Matheson Trigas (“Non-Refiners”)—write to express our concerns about the amendment being offered by Rep. Charlie Dent (R-PA). Collectively, we serve a substantial portion of the end-user market in the U.S. While our companies have differing views on the various provisions of H.R. 527, we are united in our opposition to the Dent amendment. We strongly urge its defeat.

Under current law, three large companies (the helium “Refiners”) have almost exclusive access to the helium in the Federal Helium Reserve. Since new legislation is needed in order for the Federal Helium Reserve and pipeline to continue operations, H.R. 527 makes changes that would open up access to the Reserve, thereby increasing market forces and increasing the return to the U.S. taxpayer on the helium sold from the Reserve. The Dent amendment, on the other hand, perpetuates the status quo, giving the three Refiners a continuing distorted market advantage over others in the industry that would not exist in a free market. It undermines the goals we all share—ensuring a stable and reliable helium supply, increasing access to the Federal Helium Reserve, and providing an appropriate return to the U.S. taxpayer on a taxpayer-owned resource.

The Dent amendment is very broadly worded and gives the Refiners far greater protections than currently provided for in their existing contracts with BLM. By strengthening these contracts and perpetuating them for years to come, the Dent amendment essentially renders meaningless H.R. 527 because the contracts—as extended by this language—will largely prevent BLM from delivering product to anyone other than Refiners. Thus, even if a Non-Refiner could purchase crude helium in an auction, the Non-Refiner will not be able to take delivery.

By strengthening and extending these contracts for many years into the future, the Dent amendment leaves in place the same anti-competitive system that the DOI Inspector General determined in 2008 potentially cost taxpayers more than \$100 million.

For the same reasons, even expressly limiting the Dent amendment to the 2015 contracts should be rejected. Any delayed implementation of H.R. 527—which already contains a grace period—provides more time to draw down the taxpayer-owned resource by the same three companies who have enjoyed almost exclusive access for nearly 20 years and reduces the return to U.S. taxpayers.

Through the 1996 Helium Privatization Act which governs the operation of the Reserve and pipeline system today, Congress intended the Federal Helium Reserve to end in 2014. Therefore, Refiners had no expectation that contracts would run beyond that date. Moreover, the BLM standard contract states that contract performance is contingent upon acts of Congress. The Dent amendment perpetuates the closed market that has benefitted the Refiners for many years at the expense of the American taxpayer. This is antithetical to the open access and market transparency goals of the bill, as well as the recommendations of numerous studies by the General Accounting Office and the National Academy of Sciences.

For these reasons, we urge the defeat of the Dent amendment.

Sincerely,

