



**Statement of David Joyner
Air Liquide Helium America, Inc.
Implementation of the Helium Stewardship Act
U.S. House Committee on Natural Resources:
Subcommittee on Energy & Minerals**

July 8, 2015

Chairman Lamborn, Ranking Member Lowenthal, and Members of the Committee, I appreciate the opportunity to testify today on the implementation of the Helium Stewardship Act (HSA or the “Act”) 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.

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. 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 say that we deeply appreciate the careful attention the Committee has given under your leadership to the operation of the Federal Helium Reserve. Over the last three years, we have been privileged to work with your Members and dedicated Committee staff to consider and later pass the HSA.

Congress passed and the President signed into law the HSA to encourage more competition in the market for crude helium sold from the Federal Helium Reserve in a manner that would ensure stability for helium end-users and a fairer return for taxpayers. Unfortunately, we appear here again today to report to the Committee that unless BLM makes certain necessary changes we are concerned that these goals will not be met.

As the Committee is aware through its work over the last three years, increasing access to federal crude helium requires 3 basic elements:

- (1) increasing the opportunity for non-refiners to purchase federal crude helium;
- (2) increasing the ability of non-refiners to get delivery of purchased helium; and
- (3) ensuring that non-refiners who purchase federal crude helium can have that helium tolled at commercially reasonable rates.

My testimony today focuses on steps BLM must take to ensure these elements are satisfied so that the goals of the HSA can be achieved.

1. BLM SHOULD RESTORE THE 10 PERCENT NON-ALLOCATED SALE

Chairman Lamborn, at a hearing here last July, framed BLM's implementation challenge perfectly when he stated the following:

BLM's "primary challenge is breaking the hold that helium refiners located along the pipeline have had on access to the helium reserve. For more than a decade, BLM has actively collaborated with the helium refiners to deny access to the pipeline and eliminate competition for federal helium. This has allowed a small handful of refiners to limit access, depress prices, and stifle competition."

We completely agree with this assessment and that is why we strenuously objected to BLM's decision to eliminate the non-allocated crude helium sale for non-refiners. The non-allocated sale for non-refiners had been in place for years prior to the Act specifically to increase participation in the federal helium market. The volumes available were then increased after the Act's enactment in accordance with Congress' intent to establish a more competitive market. The HSA specifically envisioned the non-allocated sale remaining in place. As stated in

Chairman Bishop and Ranking Member Grijalva’s June 30th letter to BLM, “[t]he Act states clearly that the BLM was to continue nonallocated sales and ensure refining access to the nonrefiners.”

In 2014, by excluding non-refiners from the Phase B non-auction sale that constituted 90 percent of the federal crude helium being sold, BLM once again allocated 100 percent of federal crude helium to a handful of refiners. These refiners took the fixed price allocation and bid on the remaining 10 percent available in the auction using the built-in price advantages of the lower price paid for non-auction volumes plus their lack of tolling costs. Accordingly, at the first-ever helium auction in July 2014, the entire auction amount was purchased by two refiners.

While the auction did increase the government’s revenue over prior sales, there should be no doubt that what took place last July was anything but an open and competitive market sale. If no changes are made to restore the non-allocated sale, BLM’s federal helium sales will continue to remain a closed and non-competitive market. Such a result is the opposite of what Congress intended, is harmful to end-users seeking supply diversity, and will not maximize potential returns for taxpayers.

Fortunately, we believe that time remains for BLM to alter its course and establish the type of open and transparent system that Congress envisioned. To achieve this, we completely endorse the recommendation contained in Chairman Bishop and Ranking Member Grijalva’s June 30th letter to BLM that calls for immediately reinstating a 10 percent non-allocated sale portion of any future Phase B non-auction sales. This will ensure the federal helium market is populated by more than three private companies and establish some competitive balance to future auction sales.

2. TIMELY DELIVERY OF HELIUM PURCHASED BY NON-REFINERS

Section 5(e)(2)(B) of the HSA requires the Secretary to establish a schedule for the transportation and delivery of helium that “ensures timely delivery of helium acquired from the Secretary from the Federal Helium Reserve by means other than an auction ... *including non-allocated sales*[.]” (emphasis added). The congressional intent underlying this provision was plain and expressed in the House Committee Report on the Act which stated as follows:

One of the most detrimental decisions by BLM was the agreements signed in 2000 that locked in allotment capacity on the pipeline to specific refiners. These allotments have stifled competition and left only a small handful of companies as the gatekeepers of the helium from the Federal Helium Reserve. These gatekeepers have been the beneficiaries of the BLM's inability to track market pricing for helium and have reaped hundreds of millions of dollars in benefits from the sale of BLM helium at prices below market value. *The legislation directs BLM to guarantee pipeline access to helium purchasers to schedule delivery of their helium* and directs BLM to allow access to the pipeline system for new refining capacity to allow greater competition and ensure a better price for the taxpayer (**emphasis added**).

As BLM's negotiations on new storage contracts proceeded, we saw some hopeful signs that progress could be made to ensure a pipeline delivery allocation for non-refiner volumes which is a necessary prerequisite to being able to obtain tolling from refiners. We supported BLM's recent proposal for a delivery schedule that gives first priority to federal users; then to post-enactment volumes purchased by non-refiners; and finally allocates the remaining pipeline capacity on a pro-rata basis according to volumes held in storage. Such a delivery schedule would indeed incentivize tolling, allow greater competition, and ensure a better price for taxpayers.

We are therefore deeply disappointed by BLM's decision to back away from this proposal and return to the old system that allows refiners to, once more, be the gatekeepers of access to the Federal Helium Reserve. We urge BLM to fulfill its statutory obligations and Congress' intent and reinstate its previous proposal.

3. BLM MUST ENFORCE THE ACT'S TOLLING REQUIREMENT.

Section 6(b)(8)(B) of the Act requires refiners to, as a "condition of sale or auction" make excess refining capacity of helium available at commercially reasonable rates to parties purchasing crude helium at post-enactment sales. Congress' decision to make tolling a "condition of sale or auction" plainly means that if refiners are not in compliance they should be prevented from participating in federal helium sales.

Unfortunately, since enactment, refiners have plainly not complied with this condition and there has been no response from BLM. In the recent GAO report on HSA implementation, BLM officials first claimed that the tolling provision "does not specify what BLM should do if a refiner does not make excess capacity available at a commercially reasonable rate." This is

incorrect, as compliance is a *condition* of participation in the federal helium auction and allocated sales. As per the plain meaning of the word “condition”, when a party does not meet this condition, they cannot participate. BLM next claims to have considered following the statutory instruction to suspend refiners for not meeting the condition but then electing not to do so because it would “risk market disruption[.]” This, even though, in the very next statement, the officials acknowledge that “such disruption is currently unlikely” because all refiners have sufficient helium stored in the Reserve to meet their customer needs.

Failing to enforce the tolling condition is not only in contravention of the Act, it is enabling a non-competitive market. With no guarantee of tolling at a reasonable rate, non-refiners will have great difficulty competing for any federal crude helium. Chairman Lamborn stated last July that “BLM’s successful implementation of this law will be measured by the amount of competition in the helium sale, the helium price, and the ability by non-refiners to process and toll their purchased helium.” We wholeheartedly agree and therefore support Chairman Bishop and Ranking Member Grijalva’s recommendation in their June 30th letter to BLM that BLM enforce the tolling provisions contained in the Act.

4. PREVENTING DISRUPTIONS IN GLOBAL HELIUM PRICES

Finally, as the Committee is aware, the BLM posted price for crude helium has historically been used as a benchmark in the global helium market. The distortion in price related to the new helium program's one-of-a-kind sale process of federal crude helium reemphasizes the irrelevancy of this index for the industry. Within only weeks of a new posted price, the BLM is still changing the methodology and basis for determining the posted price each year which causes instability for end-users. As new and renewed sourcing agreements are implemented, the industry is clearly moving away from using the BLM as an index. However, during this transition period, Air Liquide strongly encourages BLM to implement the “posted” price provision of the Act in a way that will have lasting, stabilizing effects for the domestic and global helium community.

To prevent market disruption for end users, the BLM should be clear that any posted price going forward is in fact an entirely new type of price driven by the federal crude helium auction and

not a continuance of the old conservation helium price to further confirm the disconnection from its use as a helium index in global helium contracts.

Thank you very much for your invitation to appear today and I look forward to answering any questions you might have.