



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

REPLY TO THE ATTENTION OF:

SC-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ken Tummel, Vice President  
Continental Nitrogen & Resources Corp.  
12955 Courthouse Blvd.  
Rosemount, MN 55068

Re: Consent Agreement and Final Order  
Docket No. CAA-05-2008-0012 *JDW*

Dear Mr. Tummel:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on March 31, 2008. Please pay the civil penalty in the amount of \$28,814 in the manner prescribed in paragraph 52 and reference your check with the number BD 2750803012 and docket number CAA-05-2008-0012 your payment is due on April 30, 2008.

Please feel free to contact Greg Chomycia at 312-353-8217, if you have any questions regarding the enclosed documents. Please direct any legal questions to Cynthia King, Associate Regional Counsel, at 312-886-6831.

Sincerely yours,

A handwritten signature in cursive script that reads "Mark J. Horwitz".

Mark J. Horwitz, Chief  
Chemical Emergency  
Preparedness & Prevention Section

Enclosure

cc: Mick Hans (w/enclosure)  
Office of Public Affairs

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	<b>Docket No. CAA-05-2008-0012</b>
	)	
Continental Nitrogen & Resources Corporation	)	<b>Proceeding to Assess a Civil Penalty under Section 113 of the Clean Air Act, 42 U.S.C. § 7413</b>
Rosemount, Minnesota,	)	
	)	
<b>Respondent.</b>	)	

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**Consent Agreement and Final Order**

**I. Preliminary Statement**

1. This is an administrative action commenced and concluded under Sections 113(a)(3)(A) and (d) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(3)(A) and (d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) 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 (2006).
2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency, Region 5 (EPA).
3. Respondent is Continental Nitrogen & Resources Corporation (CNR or Respondent), a corporation doing business in Minnesota.
4. In accordance with 40 C.F.R. § 22.13(b), 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).

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. CNR consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

## **II. Jurisdiction and Waiver of Right to Hearing**

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

8. CNR 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.

## **III. Statutory and Regulatory Background**

9. In accordance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), on June 20, 1996, EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.

10. The Risk Management Program regulations apply to all stationary sources that have more than a threshold quantity of a regulated substance in a process. The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R. § 68.130, Table 1. Procedures to determine whether a threshold quantity of a regulated substance is present at a stationary source are codified at 40 C.F.R. § 68.115.

11. Anhydrous ammonia is a "regulated substance," as that term is defined in Section 112(r)(3) of the Act, 40 C.F.R. § 68.3, and 40 C.F.R. § 68.130, Table 1.

12. The "threshold quantity," as that term is defined in 40 C.F.R. § 68.3 and 40 C.F.R.

§ 68.130, Table 1, for anhydrous ammonia is 10,000 pounds.

13. "Process" as defined at 40 C.F.R. § 68.3, means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such a substance.

14. Pursuant to 40 C.F.R. §§ 68.10(a) and 68.150, an owner or operator of a stationary source subject to the Risk Management Program regulations must comply with the requirements of 40 C.F.R. Part 68 by no later than the latest of the following dates: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process.

15. The Risk Management Program regulations at 40 C.F.R. §§ 68.12 and 68.150-68.185, require that the owner or operator of a facility subject to the regulations develop and implement a Risk Management Plan (RMP) for preventing accidental releases to the air and minimizing the consequences of releases that do occur.

16. Under 40 C.F.R. § 68.10, the processes subject to these requirements are divided into three tiers of eligibility: Programs 1, 2, and 3.

17. Program 3 applies to all processes which do not meet the requirements of Program 1 eligibility, as set forth at 40 C.F.R. § 68.10(b), and are subject to the OSHA Process Safety Management (PSM) standard set forth at 29 C.F.R. § 1910.119.

18. Under 40 C.F.R. § 68.155(b), the owner or operator of a stationary source with a process subject to Program 3 requirements, must provide an executive summary which describes the stationary source and regulated substances handled at the facility.

19. As provided in 40 C.F.R. § 68.15, the owner or operator of a stationary source with a process subject to Program 3 requirements shall develop and implement a management system.

20. 40 C.F.R. §§ 60.20 through 68.87 directs that the owner or operator of a stationary source with a process subject to Program 3 requirements shall conduct a hazard assessment.

21. The owner or operator of a stationary source with a process subject to Program 3 requirements must implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87.

22. As provided in 40 C.F.R. § 68.175, the owner or operator of a stationary source with a process subject to Program 3 requirements must submit, as part of the RMP, the data on the prevention program elements.

#### **IV. Factual Allegations**

23. CNR operates an ammonia storage facility located at 12955 Courthouse Boulevard, Rosemount, Minnesota (the facility). At the facility, CNR sells anhydrous ammonia in bulk.

24. CNR is a “person,” as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

25. The facility is a “stationary source,” as that term is defined at 40 C.F.R. § 68.3.

26. CNR is the “owner or operator” of the facility.

27. The facility is subject to the requirements of 40 C.F.R. Part 68.

28. The facility stores more than 10,000 pounds of anhydrous ammonia in its ammonia storage process and more than 10,000 pounds of anhydrous ammonia in its ammonium hydroxide process.

29. CNR submitted a RMP on June 21, 1999. The RMP submittal listed two processes, ammonia storage and ammonium hydroxide storage. The submittal defined each process as subject to Program 3 requirements.

30. On August 28, 2003, EPA performed an inspection at the facility for compliance with 40 C.F.R. Part 68.

31. CNR resubmitted a RMP on June 21, 2004 as required by 40 C.F.R. § 68.190(b)(1).

32. CNR resubmitted a RMP on June 22, 2007 to make corrections to the RMP submitted on June 21, 2004.

33. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

34. 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.

35. 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.

**V. Violations**

36. CNR failed to develop and implement written procedures to maintain the ongoing integrity of process equipment, train employees involved in process maintenance activities, and perform inspections and testing on process equipment in violation of the requirements at 40 C.F.R. § 68.73(b)-(d) and 42 U.S.C. § 7412(r).

37. CNR failed to compile process safety information regarding the hazards of ammonia, the hazards of the technology in the process, document that equipment complies with recognized and generally accepted good engineering practices and is designed, maintained, inspected, tested, and operating in a safe manner in violation of the requirements at 40 C.F.R. § 68.65(a)-(d) and 42 U.S.C. § 7412(r).

38. CNR failed to conduct a compliance audit in violation of the requirements at 40 C.F.R. § 68.79 and 42 U.S.C. § 7412(r).

39. CNR failed since 1999 to review and certify its written operating procedures are current and accurate on an annual basis in violation of the requirements at 40 C.F.R. § 68.69(c) and 42 U.S.C. § 7412(r).

40. CNR's process hazard assessment (PHA) failed to address the engineering and administrative controls applicable to the hazards and their interrelationships to provide early warning of releases, stationary source siting, and an evaluation of a range of possible safety and

health effects of the failure of controls in violation of the requirements at 40 C.F.R. § 68.67(c)(3), (5) and (7) and 42 U.S.C. § 7412(r).

41. CNR has not documented that any of the findings and recommendations of the PHA team have been addressed in violation of the requirements at 40 C.F.R. § 68.67(e) and 42 U.S.C. § 7412(r).

42. CNR's PHA has not been updated within the last five years in violation of the requirements at 40 C.F.R. § 68.67(g) and 42 U.S.C. § 7412(r).

43. CNR has no written plan regarding implementation of employee participation in violation of the requirements at 40 C.F.R. § 68.83(a) and 42 U.S.C. § 7412(r).

44. CNR has no written plan that includes procedures to review and update its emergency response plan in violation of the requirements at 40 C.F.R. § 68.95(a)(4) and 42 U.S.C. § 7412(r).

45. When selecting contractors, CNR failed to obtain and evaluate information regarding the contractor's safety performance and programs in violation of the requirements at 40 C.F.R. § 68.87(b)(1) and 42 U.S.C. § 7412(r).

46. CNR does not document that the fire prevention and protection requirements in 29 C.F.R. § 1910.25(a) have been implemented prior to beginning hot work operations in violation of the requirements at 40 C.F.R. § 68.85(b) and 42 U.S.C. § 7412(r).

47. CNR's accident investigation policy does not require the documentation of the duration of the release, an estimate of the quantity released, or the NAICS code of the process, in violation of the requirements at 40 C.F.R. § 68.42(b)(1) and 42 U.S.C. § 7412(r).



48. In its RMP submittal of June 21, 2004, CNR failed to submit a scenario that is estimated to create the greatest distance to the endpoint provided in 40 C.F.R. Part 68 Appendix A resulting from an accidental release of ammonia in violation of 40 C.F.R. § 68.25(b)(2)(i) and 42 U.S.C. § 7412(r).

49. In its RMP submittals of June 21, 2004 and June 22, 2007, CNR failed to estimate the population using a circle with its center at the point of release and a radius determined by the distance to endpoint defined in 40 C.F.R.68.22(a) in violation of the requirements at 40 C.F.R. § 68.30(a) and 42 U.S.C. § 7412(r).

## **VI. Civil Penalty**

50. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation, prompt return to compliance, and agreement to perform an supplemental environmental project, EPA has determined that an appropriate civil penalty to settle this action is \$103,702.

51. In consideration of CNR's agreement to perform a supplemental environmental project, EPA agreed to mitigate the penalty of \$103,702 to \$28,814.

52. CNR must pay the \$28,814 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

53. CNR must send the check to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

54. A transmittal letter, stating CNR's name, complete address, the case docket number, and the billing document number must accompany the payment. CNR must write the case docket number and the billing document number on the face of the check. CNR must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Attn: Greg Chomycia, (SC-6J)  
Superfund Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Cynthia A. King, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

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

56. If CNR does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

57. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. CNR will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. CNR will pay a quarterly nonpayment

penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

## **VII. Supplemental Environmental Project**

58. CNR has agreed to decommission its ammonia and transfer operations at the facility as a supplemental environmental project (SEP) designed to protect the environment and public health by reducing the potential for releases of hazardous substances into the environment.

59. CNR may not operate its Rosemount, Minnesota ammonia storage and transfer operations at any time in the future following the successful completion of the SEP. Successful completion of the SEP shall be defined as occurring after CNR evacuates the system of ammonia, removes a section of the suction piping to the compressors, disconnects the electrical power to the compressors, and leaves the system open to the atmosphere.

60. CNR will complete this SEP by July 31, 2008.

61. CNR must spend at least \$168,740 to decommission its ammonia and transfer operations.

62. CNR certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. CNR further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

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

64. CNR must submit a SEP completion report to EPA within sixty (60) days of completion of the SEP. 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 costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that CNR has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

65. CNR must submit all notices and reports required by this CAFO by first class mail to Greg Chomycia of the Superfund Division.

66. In each report that CNR submits as required 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.

67. Following receipt of the SEP completion report described in Paragraph 64, above, EPA must notify CNR in writing that:

- a. CNR 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 CNR 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 70.

68. If EPA does not provide notice to CNR under the provisions of Paragraph 67, above, within 45 days from receipt of the SEP Completion Report, it shall be deemed that EPA has exercised option a. under Paragraph 67.

69. If EPA exercises option b, above, CNR may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from EPA's receipt of CNR's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give CNR a written decision on its objection. CNR will comply with any requirements that EPA imposes in its decision. If CNR does not complete the SEP as required by EPA's decision, CNR will pay stipulated penalties to the EPA under Paragraph 70, below.

70. If CNR violates any requirement of this CAFO relating to the SEP, CNR must pay stipulated penalties to the EPA as follows:

- a. Except as provided in subparagraph b, below, if CNR did not complete the SEP satisfactorily according to this CAFO, CNR must pay a stipulated penalty of \$74,888.
- b. If CNR did not complete the SEP satisfactorily, but EPA determines that CNR: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, CNR will not be liable for any stipulated penalty.
- c. If the SEP is satisfactorily completed, but the CNR spent less than 90 percent of the amount of money required to be spent for the project, a stipulated penalty of \$13,105 must be paid.
- d. If CNR fails to timely submit the SEP Completion report required by Paragraph 64, above, CNR must pay a stipulated penalty of \$50 for each day after the report

was due until it submits the report.

71. These penalties will accrue from the date CNR was required to submit the SEP Completion Report until the date the SEP Completion Report is received by EPA.

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

- a. CNR must notify EPA in writing within 10 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), CNR's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. CNR must take all reasonable actions to avoid or minimize any delay. If CNR fails to notify EPA according to this paragraph, CNR will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of CNR 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 CNR caused or may cause a delay in completing the SEP, EPA will notify CNR in writing of its decision and any delays in completing the SEP will not be excused.
- d. CNR 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.

The EPA's determination of whether CNR satisfactorily completed the SEP will bind CNR.

73. CNR must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. CNR will use the method of payment specified in Paragraphs 52 through 54, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

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

75. Nothing in this CAFO is intended to, nor will be construed to, constitute EPA approval of the equipment or technology installed by the CNR in connection with the SEP under the terms of this CAFO.

76. For federal income tax purposes, CAN agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing this SEP.

#### **VIII. Final Statement**

77. This CAFO resolves only CNR's liability for federal civil penalties for the violations alleged in Section V. of this CAFO.

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

79. This CAFO does not affect CNR's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in Paragraph 77, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

80. The terms of this CAFO bind CNR, and its successors, and assigns.

81. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind

that party to its terms.

82. Each party agrees to bear its own costs and attorneys' fees in this action.

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

84. The Effective Date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk.

**U.S. Environmental Protection Agency, Complainant**

3-24-08

Date

Richard C Karl

Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

**Continental Nitrogen & Resources Corporation, Respondent**

3/1/08

Date

Ken Tummel

Ken Tummel, Vice President and General Manager  
Continental Nitrogen & Resources Corporation

CAA-05-2008-0012

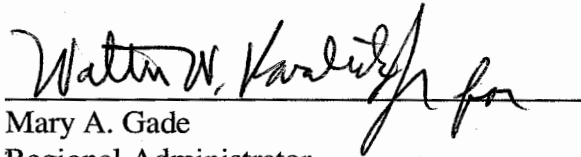
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OFFICE OF REGIONAL HEARING CLERK  
REGION 5 (A-18J)  
3/1/08



**CONSENT AGREEMENT AND FINAL ORDER**  
**In Re: Continental Nitrogen & Resources Corp.**  
**Docket No. CAA-05-2008-0012**

**Final Order**

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.



Mary A. Gade  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

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CERTIFICATE OF SERVICE

I, [name], certify that I hand delivered the original and one copy of the Consent Agreement  
**CAA-05-2008-0012**  
and Final Order, docket number [ ] to the Regional Hearing Clerk, Region 5, United States  
Environmental Protection Agency, and that I mailed correct copies by first-class, postage  
prepaid, certified mail, return receipt requested, to [names] by placing them in the custody of the  
United States Postal Service addressed as follows:

*Ken Tunnel, VP  
CNR  
12955 Courthouse Blvd  
Rosemount, MN 55068*

on the 31 day of March, 2008.

*[Signature]*  
[Name of Secretary]  
([Section]) *CEPPS/ERB#2/SFD*

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