



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

OCT 23 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Stagg
Waller, Lansden, Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219

Re: US Nitrogen LLC
Consent Agreement and Final Order
CAA-04-2018-8020(b)

Dear Mr. Stagg:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2018-8020(b)) involving US Nitrogen LLC. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing. As specified by the penalty payment instruction in Paragraph 19 of the CAFO, US Nitrogen LLC has agreed to pay the civil penalty within 30 calendar days of the effective date of the CAFO.

If you have any questions, please call Mrs. Lucia Mendez at (404) 562-9367.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief

Chemical Safety and Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)
)
US Nitrogen LLC)
)
Respondent.)
_____)

Docket No.
CAA-04-2018-8020(b)

2018 OCT 23 AM 8:33
HEARINGS CLERK
OFFICE OF REGIONAL
ADMINISTRATOR

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 CFR Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 4 (the EPA). The Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is US Nitrogen LLC, a corporation doing business in the State of Tennessee. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (Consent Agreement or Agreement) and the attached final order (Final Order or Order) without adjudication of any issue of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order (CAFO).

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 CFR Part 22. The alleged violations in this Consent Agreement are of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7).
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d).

7. On September 20, 2017, the EPA issued to Respondent a Notice of Potential Violation (NOPV), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section E of this Agreement and providing Respondent an opportunity to confer with the EPA. On November 15, 2017, representatives of Respondent and the EPA held a Show Cause meeting to discuss the September 20, 2017, NOPV.

8. The Regional Judicial Officer is authorized to ratify this Consent Agreement, which memorializes settlement between Complainant and Respondent. 40 CFR § 22.4(b) and 22.18(b).

9. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 CFR § 22.13(b).

C. GOVERNING LAW

10. Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and other extremely hazardous substances. The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

11. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 CFR Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the Risk Management Program (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 CFR § 68.130.

12. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 CFR §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 CFR § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

D. FACTUAL ALLEGATIONS

13. Respondent operates a “stationary source” as that term is defined by Section 302(z) of the Act, 42 U.S.C. § 7602(z). The Respondent’s stationary source is located at 471 Pottertown Road, Midway, Tennessee.

14. Respondent has registered an RMPlan with the EPA for its stationary source, and has developed an RMProgram accidental release prevention program for the stationary source.

15. For the purpose of this Agreement:

- (a) At its stationary source, the Respondent operates a chemical manufacturing facility.
- (b) At its stationary source, the Respondent has 2,400,000 pounds of ammonia in onsite storage.
- (c) At its stationary source, the Respondent has one RMP program level 3 covered process, which processes ammonia in an amount exceeding its applicable threshold of 10,000 pounds.
- (d) On August 16, 2017, the EPA conducted an onsite inspection of the RMP program related records and equipment for the purpose of assessing the Respondent's compliance with the RMP program requirements and the implemented recognized and generally accepted good engineering practices for its covered process at its stationary source.
- (e) At the time of the inspection, the process safety information did not contain an evaluation of consequences of deviation.
- (f) At the time of the inspection, the Respondent had a relief valve header positioned so that it would discharge downward. The ANSI/Compressed Gas Association, Inc., CGA 2.1-2014, Safety Requirements for the Storage and Handling of Anhydrous Ammonia (5.8.3), requires the discharge from pressure relieve valves be vented away from the container, upward and unobstructed to the atmosphere. The facility could not provide documentation that the discharge design for the relief valve complies with recognized and generally accepted good engineering practices.
- (g) At the time of the inspection, there was no documentation that the recommendations from the May or October 2015 process hazard analyses (PHAs) were addressed, or a schedule indicating when they were to be completed. One hundred ten (110) recommendations resulted from the Ammonia Plant PHA. Seven (7) recommendations resulted from the Ammonia Storage and Loading HAZOP.
- (h) At the time of the inspection, the written operating procedures did not contain procedures that addressed consequences of deviation.
- (i) At the time of the inspection, the written operating procedures did not contain steps to correct or avoid the deviation.
- (j) At the time of the inspection, the prestart up safety review did not confirm that the PHA was performed and that the PHA recommendations had been completed since unresolved recommendations were still outstanding items at the time of the inspection.

E. ALLEGED VIOLATIONS OF LAW

16. Based on the EPA's compliance monitoring investigation, the EPA alleges that the Respondent violated the codified rules governing the Act's Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 CFR Part 68 when it:

- (a) Failed to compile written process safety information documentation for the technology of the process which includes an evaluation of the consequences of deviation (relative to the process technology), as required by 40 CFR § 68.65(c)(1)(v);
- (b) Failed to document that equipment complies with recognized and generally accepted good engineering practices as required by 40 CFR § 68.65(d)(2);
- (c) Failed to establish a system to promptly address the team's findings and recommendations (of the PHA); assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions as required by 40 CFR § 68.67(e);
- (d) Failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information that address consequences of deviation as required by 40 CFR § 68.69(a)(2)(i);
- (e) Failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information that address steps required to correct or avoid deviation as required by 40 CFR § 68.69(a)(2)(ii); and
- (f) Failed to confirm, for new stationary sources, a PHA has been performed and recommendations have been resolved or implemented before startup as required by 40 CFR § 68.77(b)(3).

F. TERMS OF CONSENT AGREEMENT

17. For the purpose of this proceeding, as required by 40 CFR § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the factual allegations stated above;
- (c) consents to the assessment of a civil penalty as stated below;

- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this Agreement;
- (f) consents to any Permit Action;
- (g) waives any rights to contest the alleged violations of law set forth in Section E of this Consent Agreement; and
- (h) waives its rights to appeal the Order accompanying this Agreement.

18. For the purpose of this Agreement, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Middle District of Tennessee;
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and
- (f) certifies that as of its execution of this Agreement, it is in compliance with all relevant requirements of 40 CFR Part 68.

19. Penalty Payment. Respondent agrees to:

- (a) pay the civil penalty of **TWENTY THOUSAND THREE HUNDRED SEVENTY-SEVEN DOLLARS (\$20,377)** ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement;
- (b) pay the EPA Penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

For payment sent via electronic transfer

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Beneficiary: "U.S. Environmental Protection Agency";

For payment sent via standard delivery

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

St. Louis, MO 63197-9000; or

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

1005 Convention Plaza

SL-MO-C2-GL

St. Louis, MO 63101 (Delivery Location Phone Number: 314-425-1819).

The check shall reference on its face the name and the Docket Number of the CAFO. Within 24 hours of payment of the EPA Penalty, Respondent shall send a separate copy of the check or confirmation of electronic transfer, and a written statement that payment has been made in accordance with this Agreement, to the following persons at the following addresses:

Regional Hearing Clerk

U.S. EPA Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

Jordan Noles

U.S. EPA, Region 4

Air, Pesticides and Toxics Management Division

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

20. If Respondent fails to timely pay any portion of the EPA Penalty assessed under this Agreement, the EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 CFR §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 CFR Part 13, Subparts C and H; and,
- (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 CFR § 13.17.

21. Supplemental Environmental Project.

- (a) Respondent shall undertake and complete the following Emergency Planning and Preparedness Supplemental Environmental Project (SEP) within 45 days of the effective date of this CAFO. Respondent shall expend no less than **SEVENTY-SIX THOUSAND FOUR HUNDRED FIFTEEN DOLLARS, (\$76,415)** for the purchase of five (5) years of Emergency Services Marketing Corp. Inc.'s, "I Am Responding System", forty-six (46) Motorola radios, and fifty (50) Motorola pagers for the following agencies:

Camp Creek Volunteer Fire Department
 Caneybranch Volunteer Fire Department
 Cedar Creek Volunteer Fire Department
 Debusk Volunteer Fire Department
 Greeneville-Green County Emergency and Rescue Squad
 McDonald Volunteer Fire Department
 Midway Volunteer Fire Department
 Mosheim Volunteer Fire Department
 Newmansville Volunteer Fire Department
 Orebank Volunteer Fire Department
 South Greene Volunteer Fire Department
 St. James Volunteer Fire Department
 Sunnyside Volunteer Fire Department
 Town of Mosheim Volunteer Fire Department
 Tusculum Volunteer Fire Department
 United Volunteer Fire Department

- (b) Respondent agrees, in the event that Respondent's actual purchase of equipment deviates from the equipment specified above, Respondent shall provide information to the EPA explaining the reason(s) for any such deviation. So long as the amount that Respondent spends equals or exceeds \$76,415, and the explanation for the deviation is acceptable to the EPA, this provision shall be deemed to be satisfied. This CAFO shall

not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

- (c) Respondent certifies the truth and accuracy of each of the following:
- (1) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$76,415;
 - (2) That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
 - (3) That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this CAFO;
 - (4) That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
 - (5) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - (6) That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
 - (7) That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
 - (8) That Respondent has inquired of the agencies listed in Paragraph 21(a) whether they are a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the agencies listed in Paragraph 21(a) that they are not a party to such a transaction.
- (d) Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 21(a). If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraph 21(h).
- (e) Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

- (f) Respondent shall submit to the EPA a SEP Completion Report, no later than sixty (60) calendar days after the Effective Date of this CAFO. The Report shall be sent to the Chemical Management and Emergency Planning Section, to the attention of Jordan Noles at the address provided above. The Report shall include the following:
- (1) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
 - (2) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than \$76,415, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 21(a).

Upon request, Respondent shall send the EPA any additional documentation requested by the EPA.

- (g) In making any reference to the SEP, any public statement, oral or written, Respondent shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 112(r)(7) of the Clean Air Act (CAA).”

- (h) Respondent shall pay to the United States a stipulated penalty of the difference between \$61,132 and the actual SEP expenditure if Respondent fails to timely and fully complete the activities described in Paragraph 21(a), including failure to spend the minimum amount of **SEVENTY-SIX THOUSAND FOUR HUNDRED FIFTEEN (\$76,415)**.
- (i) For purposes of Paragraph 21(h), whether Respondent has fully and timely completed the SEP shall be in the sole discretion of the EPA.
- (j) Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late if Respondent fails to timely submit a SEP Completion Report as required by this CAFO.

22. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

23. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

24. By signing this CAFO, both parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.

25. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

26. Except as qualified by Paragraph 20, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

27. In accordance with 40 CFR § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

28. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

29. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

30. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon written agreement of both parties, and approval of the Regional Judicial Officer.

31. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and pursuant to 40 CFR Part 19, as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

32. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

33. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

34. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

35. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement in the Matter of US Nitrogen LLC, Docket No. CAA-04-2018-8020(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

US Nitrogen LLC

By:  Date: 9-20-18

Name: Andrew W. Velo (Typed or Printed)

Title: Director of Manufacturing (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By:  Date: 10-11-18

Beverly H. Banister

Director

Air, Pesticides and Toxics Management Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)

US Nitrogen LLC)

Respondent.)
_____)

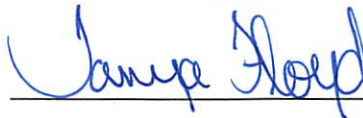
Docket No.
CAA-04-2018-8020(b)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective on the date that the Consent Agreement and Final Order are filed by the Regional Hearing Clerk.

SO ORDERED this 22nd day of October, 20 18.



Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of US Nitrogen LLC CAA-04-2018-8020(b), on the parties listed below in the manner indicated:

Jordan Noles
U. S. EPA, Region 4
Air, Pesticides and Toxics
Management Division

(Via EPA's internal mail)

Lucia Mendez
U. S. EPA, Region 4
Office of Regional Counsel

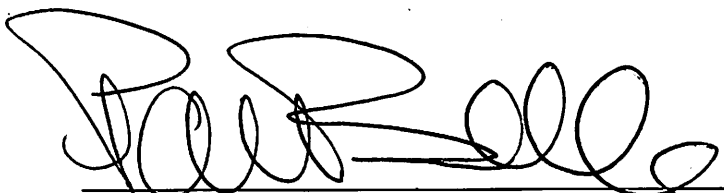
(Via EPA's internal mail)

Mr. Michael Stagg
Waller, Lansden, Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219

(Via Certified Mail - Return Receipt Requested)

Date:

10-23-18



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511