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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2012 SEP 26 PM 5: 07
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:)	EPA Docket Nos.: CERCLA-03-2012-0213
)	EPCRA-03-2012-0213
Dyno Nobel, Inc.)	
2795 East Cottonwood Parkway)	
Suite 500)	
Salt Lake City, Utah 84121)	
)	
Respondent.)	
)	Proceedings Pursuant to Sections 304 and 325
)	of the Emergency Planning and Community
Dyno Nobel, Inc.)	Right-to-Know Act of 1986, 42 U.S.C. §§ 11004
1320 Galiffa Drive)	and 11045, and Sections 103 and 109 of the
Donora, Pennsylvania 15033)	Comprehensive Environmental Response,
)	Compensation, and Liability Act, 42 U.S.C.
)	§§ 9603 and 9609.
Facility.)	
)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency Region III (“EPA” or “Complainant”), and Dyno Nobel, Inc. (“Dyno Nobel” or “Respondent”), in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (“CAFO”).

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9609. The President has delegated this authority to the Administrator of the United States Environmental Protection Agency (“EPA”), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has delegated this authority to the Director, Hazardous Site Cleanup Division, EPA Region III (“Complainant”). This Consent Agreement is also proposed and entered into pursuant to the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, delegated to the Regional Administrator by EPA Delegation No. 22-3-A, and delegated to Complainant by the Regional Administrator. Furthermore, this Consent Agreement is proposed and entered into under the authority provided by the “Consolidated Rules of Practice Governing

the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (“Part 22”). The parties agree to commence and conclude this proceeding by issuance of this Consent Agreement and the attached Final Order pursuant to 40 C.F.R. § 22.13(b), consent to its entry, and agree to comply with its terms.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(7) and 22.1(a)(8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this CAFO and agrees not to contest EPA’s jurisdiction with respect to the execution or enforcement of this Consent Agreement.

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

4. For the purpose of this proceeding, and except for paragraph 3 above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.
5. Respondent has represented to EPA that Respondent intends to install an ammonia detection system at its manufacturing facility located at 1320 Galiffa Drive, Donora, Pennsylvania (“the Facility”).
6. Respondent is a corporation with its principal place of business located at 2795 East Cottonwood Parkway, Suite 500, Salt Lake City, Utah.
7. As a corporation, Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
8. At all times relevant to this Consent Agreement, Respondent has been a person “in charge of” the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and an “operator” of the Facility, within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004.
9. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and its regulations, 40 C.F.R. § 302.3. The Facility is also a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. §355.61.
10. On May 6, 2010, EPA conducted an inspection of the Facility to determine the Respondent’s compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections

302-312 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11002-11022.

11. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances and their respective RQs is codified at 40 C.F.R. § 302.4.
12. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c), (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.
13. At all times relevant to this Consent Agreement, the Facility was a facility at which a “hazardous chemical” was produced, used or stored, as that term is defined at Section 311(e) of EPCRA, 42 U.S.C. § 11021(e)
14. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.
15. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the State Emergency Response Commission (“SERC”) and the Local Emergency Planning Committee (“LEPC”) immediately following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.
16. The SERC for the Facility for the purpose of emergency release notification is, and has been at all times relevant to this Consent Agreement, the Pennsylvania Emergency Management Agency, located at 2605 Interstate Drive in Harrisburg, Pennsylvania.
17. The LEPC for the Facility for the purpose of emergency release notification is, and has been at all times relevant to this Consent Agreement, the Washington County Local Emergency Planning Committee, located at 100 West Beau Street, C-10 in Washington, Pennsylvania.

February 5, 2010 Release

18. Paragraphs 4 through 17 are incorporated herein by reference.

19. On February 5, 2010 at 10:39 p.m., Respondent released from the Facility an estimated 265 pounds of anhydrous ammonia (“the 2010 Release”).
20. Ammonia is an EHS as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 355.61, with an RQ of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.
21. The 2010 Release of 265 pounds of anhydrous ammonia from the Facility constitutes a release of an EHS in a quantity equal to or exceeding its RQ.
22. The 2010 Release required immediate notification of the SERC and the LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C.
23. Respondent did not immediately notify the SERC of the 2010 Release, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C.
24. Respondent did not immediately notify the LEPC of the 2010 Release, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C.
25. Respondent has represented that the circumstances surrounding the 2010 Release (blizzard, employee injury and hospitalization, and power loss) prevented Respondent from notifying the required authorities immediately.
26. Respondent’s failure to notify the SERC immediately of the release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.
27. Respondent’s failure to notify the LEPC immediately of the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

November 17, 2011 Release

28. Paragraphs 4 through 27 are incorporated herein by reference
29. On November 17, 2011 at 5:30 a.m. there was a release of 1900 pounds of anhydrous ammonia from the Facility (“the 2011 Release”).
30. The ongoing release of ammonia at the Facility was discovered by a Facility operator at 5:30 a.m. The release was terminated 20 minutes later at 5:50 a.m.
31. Respondent notified the NRC at 10:19 a.m.
32. Respondent notified the LEPC at 11:24 a.m.

33. Respondent notified the SERC at 11:25 a.m.
34. The 2011 Release of 1,900 pounds of anhydrous ammonia from the Facility constitutes a release of an EHS in a quantity equal to or exceeding its RQ.
35. The 2011 Release required immediate notification of the NRC, pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302.
36. The 2011 Release required immediate notification of the SERC and the LEPC, pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C.
37. Respondent failed to immediately notify the NRC, as required by Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302.
38. Respondent failed to immediately notify the SRC and the LEPC of the release of ammonia, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R., Part 355, Subpart C.
39. Respondent's failure to immediately notify the NRC of the 2011 Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.
40. Respondent's failure to immediately notify the SERC of the 2011 Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.
41. Respondent's failure to immediately notify the LEPC of the 2011 Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

42. In full and final settlement of all allegations referenced in the foregoing Factual Allegations and Conclusions of Law, and in full satisfaction of all civil penalty claims set forth above, the Respondent consents to the assessment of a civil penalty for the violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304(a) and (b) of EPCRA, 42 U.S.C. §§ 11004(a) and (b), in the amount of **\$59,810**, consisting of **\$17,264** for the CERCLA civil penalty and **\$42,546** for the EPCRA civil penalty.

PAYMENT TERMS

43. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this Agreement, Respondent shall pay the CERCLA civil penalty of \$17,264, and EPCRA civil penalty of \$42,546, no later than 30 days after the effective date of the Final Order.

A. Payment of the CERCLA civil penalty shall be made in the following manner:

1. All payments by Respondent shall reference Respondent's name and address, and the Docket Numbers of this action. The docket number for the CERCLA Civil Penalty is **CERCLA-03-2012-0213** and the docket number for the EPCRA Civil Penalty is **EPCRA-03-2012-0213**
2. All checks for the CERCLA civil penalty shall be made payable to EPA-Hazardous Substances Superfund; all checks for the EPCRA civil penalty shall be made payable to United States Treasury;
3. All payments for the CERCLA civil penalty made by check and sent by regular mail shall be addressed to:

U.S. EPA
ATTN: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000
4. All payments for the CERCLA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
5. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001
6. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

7. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

8. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

B. Payment of the EPCRA civil penalty shall be made in the following manner:

1. All payments by Respondent shall reference Respondent's name and address, and the Docket Numbers of this action. The docket number for the CERCLA Civil Penalty is **CERCLA-03-2012-0213** and the docket number for the EPCRA Civil Penalty is **EPCRA-03-2012-0213**
2. All checks for the CERCLA civil penalty shall be made payable to EPA-Hazardous Substances Superfund; all checks for the EPCRA civil penalty shall be made payable to United States Treasury;
3. All payments for the EPCRA civil penalty made by check and sent by regular mail shall be addressed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Heather Russell (513) 487-2044

4. All payments for the EPCRA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: 314-418-1028

5. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

6. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

7. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

8. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

- C. The Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

Jacquín Milhouse
U.S. Environmental Protection Agency
Office of Regional counsel
Region III (Mail Code 3RC41)
1650 Arch Street
Philadelphia, PA 19103-2029

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

- D. The CERCLA civil penalty and EPCRA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and are consistent with 40 C.F.R. Part 19 and the Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999).
- E. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this Agreement shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.
- F. Pursuant to 40 C.F.R. § 13.11(a)(1), interest begins to accrue on the penalty in paragraph 42 from the date that Respondent receives a copy of the filed and fully executed Consent Agreement and Final Order. However, EPA will not recover interest on any portion of the penalty paid within 30 days of this date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
- G. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.
- H. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).
- I. Failure by the Respondent to pay the \$17,264 CERCLA civil penalty and the \$42,546 EPCRA civil penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.
- J. Respondent shall not deduct any penalties paid under this Consent Agreement in calculating its federal income tax.

GENERAL PROVISIONS

- K. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.
- L. The provisions of this Consent Agreement shall be binding upon Respondent and its successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.
- M. This Consent Agreement resolves only those civil claims that are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this Consent Agreement shall be construed to limit the United States' authority to pursue criminal sanctions.
- N. Each party to this action shall bear its own costs and attorney's fees.

FOR DYNO NOBEL, INC.



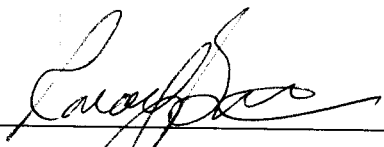
Tim McDaniel
Vice President / Nitrogen Manufacturing

8/9/2012

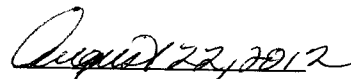
DATE

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division



DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

Dyno Nobel, Inc.
2795 East Cottonwood Parkway
Suite 500
Salt Lake City, Utah 84121

Respondent.

Dyno Nobel, Inc.
1320 Galiffa Drive
Donora, Pennsylvania 15033

Facility.

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-) Right-to-Know Act of 1986, 42 U.S.C.
-) §§ 11004(a)-(b) and 11045, and Section 103 and
-) 109 of the Comprehensive Environmental
-) Response, Compensation, and Liability Act, 42
-) U.S.C. §§ 9603 and 9609
-)

FINAL ORDER

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement. The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. Environmental Protection Agency, Region III.

9/26/12
Date

Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

