UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: Dyno Nobel, Inc. – Cheyenne Plant 8305 Otto Road Cheyenne, Wyoming 82009 Respondent.	)	**CONSENT AGREEMENT** **Docket No.:** CAA-08-2024-0002

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.

2. Dyno Nobel, Inc. (Respondent) owns and/or operates the Dyno Nobel Cheyenne Plant located at 8305 Otto Road, Cheyenne, Wyoming (the Facility).

3. The EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this Consent Agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d). The undersigned EPA official has been duly authorized to institute this action.

5. 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 the initiation of this proceeding, is appropriate for administrative penalty assessment. 42 U.S.C. § 7413(d).

6. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

7. The Final Order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

8. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), requires the Administrator of the EPA to, among other things, promulgate regulations to prevent accidental releases of certain regulated substances.

9. Section 112(r)(7) of the CAA provides that the owners and operators of stationary sources where a regulated substance is present above a threshold quantity must develop and implement a risk management plan (RMP) that includes a hazard assessment, a prevention program, and an emergency response program. 42 U.S.C. § 7412(r)(7).

10. Pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the EPA promulgated chemical accident prevention regulations at 40 C.F.R. part 68 (Part 68).

11. 40 C.F.R. § 68.3 defines the term "Stationary source" to mean "any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur." *See also* 42 U.S.C. § 7412(2)(C) (defining "Stationary Source").

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term "person" to include in relevant part, an individual, corporation, or partnership.

13. 40 C.F.R. § 68.3 defines the term "Regulated substance" to mean "any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in § 68.130." Threshold quantities for the regulated substances are included in the listing at 40 C.F.R. § 68.130.

14. 40 C.F.R. § 68.3 defines the term "Accidental release" to mean "an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source."

IV. STIPULATED FACTS

15. Respondent is a Delaware corporation authorized to do business in the state of Wyoming and is therefore a "person" under the CAA and is subject to regulation under the CAA.

16. Respondent is the owner and/or operator of the Facility, which is a "stationary source" as that term is defined under the CAA.

17. The Facility uses, handles, and/or stores more than a threshold quantity of ammonia (anhydrous), ammonia (concentration 20% or greater), and chlorine, which are regulated substances, as specified at 40 C.F.R. §§ 68.115 and 68.130.

18. Respondent is required to prepare and implement a risk management program to detect and prevent or minimize accidental of the regulated substances identified in paragraph 14, above. 42 U.S.C. § 7412(r)(7).

19. From December 11 to December 14, 2017, authorized representatives of the EPA conducted an inspection of the Facility to assess compliance with section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and Part 68 (the 2017 EPA Inspection).

20. During the 2017 EPA Inspection, the EPA representatives observed alleged violations of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and Part 68. The alleged violations identified by the EPA representatives as a result of the inspection are described as the EPA's findings in Section VI of this Agreement, below.

V. PRIOR ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

21. The EPA and Respondent entered into an Administrative Compliance Order on Consent (ACOC), Docket No. CAA-08-2023-0002, pursuant to sections 113(a)(3) and (4) of the CAA, 42 U.S.C. § 7413(a)(3) and (4), which became effective on January 4, 2023. The ACOC alleged RMP deficiencies and potentially dangerous conditions observed by the EPA during the 2017 EPA Inspection that Respondent had not addressed prior to entry of the ACOC; ordered Respondent to comply with those alleged unaddressed RMP requirements at the Facility; and ordered Respondent to certify and document that it had corrected those alleged deficiencies in two phases: no later than July 31, 2023, for the majority of alleged deficiencies, and no later than December 31, 2023, for an alleged labelling program deficiency at the Ammonia Plant within the Facility. After entry of the ACOC, the EPA received two notifications of completion of compliance certifications from Respondent, consistent with these two phases: the first dated July 27, 2023, and the second dated December 18, 2023. Together these certifications of compliance indicated that Respondent had corrected all alleged RMP deficiencies outlined in the ACOC on or before December 18, 2023.

VI. THE EPA'S FINDINGS OF ALLEGED VIOLATIONS OF LAW

22. Part 68 provides that an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115, must comply with the requirements of Part 68 by specified dates. 40 C.F.R. § 68.10(a). The Facility's Cooling Tower 2 chlorine injection area contains up to 4,000 lbs of chlorine in two 1-ton cylinders, above the chlorine RMP threshold quantity of 2,500 lbs set forth in 40 C.F.R. § 68.115. Respondent did not include the Cooling Tower 2 chlorine injection area as part of an RMP covered process. By failing to include the Cooling Tower 2 chlorine injection area as part of an RMP covered process, Respondent violated 40 C.F.R. § 68.10(a).

23. Part 68, at Subpart B, requires the owner or operator of a stationary source undertake a hazard assessment analyzing the worst-case release scenario. Part 68, Subpart B, provides that the owner or operator may use the most recent Census data, or other updated information, in its RMP to estimate the population potentially affected by an accidental release as part of a hazard assessment. 40 C.F.R. § 68.30(c). When Respondent resubmitted its RMP for the Facility to the EPA in 2014, Respondent re-evaluated the off-site consequence scenarios and impacts as part of a hazard assessment. Instead of using 2010 Census information, Respondent used a data set that contained 2000 Census information. Respondent therefore underestimated the population affected by the toxic worst-case scenario by approximately 10,000 in the 2014 RMP submission. By failing to use the most recent Census data, or other updated information, to estimate the population potentially affected, Respondent violated 40 C.F.R. § 68.30(c).

24. Part 68 provides that the owner or operator of a stationary source must complete a compilation of written process safety information (PSI) before conducting any process hazard analysis (PHA) required by the rule (per 40 C.F.R. § 68.67). 40 C.F.R. § 68.65(a). This compilation enables the owner or operator and the employees involved in operating processes involving regulated substances to identify and understand the hazards posed by those processes. 40 C.F.R. § 68.65(a). This PSI compilation must include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process. 40 C.F.R. § 68.65(a). Respondent did not compile written PSI for the Cooling Tower 2 chlorine injection area at the Facility. By failing to compile written PSI for the Cooling Tower 2 chlorine injection area, Respondent violated 40 C.F.R. § 68.65(a).

25. Information concerning the technology of the process, as used in 40 C.F.R. § 68.65(a), must include a block flow diagram or simplified process flow diagram. 40 C.F.R. § 68.65(c)(1)(1). Information pertaining to the equipment in the process, as used in 40 C.F.R. § 68.65(a), must include material and energy balances for processes built after June 21, 1999. 40 C.F.R. § 68.65(d)(1)(vii). Respondent's PSI did not contain a block flow diagram or simplified process flow diagram for the Facility and did not contain material and energy balances for Cooling Tower 1 chlorine injection area, which is a process built after June 21, 1999. By failing to include a block flow diagram or simplified process flow diagram for Cooling Tower 1 chlorine injection area in the PSI, and by failing to include material and energy balances for the process, Respondent violated 40 C.F.R. § 68.65(a).

26. Information pertaining to the equipment in the process, as used in 40 C.F.R. § 68.65(a), must include relief system design and design basis. 40 C.F.R. § 68.65(d)(1)(iv). Respondent documented that the relief valves installed on anhydrous ammonia bullet tanks ST-303A/B at the Facility were oversized for the safe working pressure of the tanks. By lacking proper relief system design and design basis in the PSI, Respondent violated 40 C.F.R. § 68.65(d)(1)(iv).

27. Part 68 provides that the owner or operator must document that equipment complies with recognized and generally accepted good engineering practices. 40 C.F.R. § 68.65(d)(2). The Facility's Nitric Acid #3 plant piping was not labeled in accordance with ANSI/ASME A13.1, Scheme for the Identification of Piping Systems. By not labeling Nitric Acid #3 plant piping per ANSI/ASME A13.1, Respondent did not comply with recognized and generally accepted good engineering practices and violated 40 C.F.R. § 68.65(d)(2).

28. Part 68 provides that the PHA required by 40 C.F.R. § 68.67 must address consequences of failure of engineering and administrative controls. 40 C.F.R. § 68.67(c)(4). Respondent did not address consequences of failure of engineering and administrative controls for an identified scenario of loss of unit power at the Facility in the January 2017 PHA for the Ammonia Plant. By not addressing consequences of failure of engineering and administrative controls in the January 2017 PHA for the Ammonia Plant, Respondent violated 40 C.F.R. § 68.67(c)(4).

29. Part 68 provides that the PHA required by 40 C.F.R. § 68.67 must be performed by a team with expertise in engineering and process operations and include individuals with other knowledge requirements specified by the rule. 40 C.F.R. § 68.67(d). Part 68 provides that the owner or operator of a stationary source covered by the rule must establish a system to promptly address the PHA team's findings and recommendations; 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; and 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. 40 C.F.R. § 68.67(e). In its January 2017 Ammonia Plant PHA, in the Human Factors Checklist, Respondent stated, "Need to review primary equipment to ensure proper labeling," and that, a "Program is being developed" for component labeling at the Facility. However, Respondent did not assure that the recommendations were resolved in a timely manner and that the resolution was documented. By not resolving recommendations in the January 2017 Ammonia Plant PHA, Respondent violated 40 C.F.R. § 68.67(e).

30. Part 68 provides that owner or operator of a stationary source covered by the rule must develop and implement written operating procedures that provide clear instructions for safely conducting

activities involved in each covered process consistent with the PSI. 40 C.F.R. § 68.69(a). The owner or operator must review these operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources, and the owner or operator must certify annually that these operating procedures are current and accurate. 40 C.F.R. § 68.69(c). Respondent did not have documentation indicating that the following procedures for the Facility had been reviewed and certified as current and accurate in 2016 and 2017: #3 Acid Plant Proc. No. 1.38.1; #4 Acid Plant Proc. No. 2.1.10; #1 LoDAN Plant Proc. No. 7.0.8; and Ammonia Plant Proc. No. 3.27.1. By not documenting or certifying annually that these operating procedures are current and accurate, Respondent violated 40 C.F.R. § 68.69(c).

31. Part 68 provides that the owner or operator of a stationary source covered by the rule must establish and implement written procedures to maintain the on-going integrity of the process equipment listed in 40 C.F.R. § 68.73(a). 40 C.F.R. § 68.73(b). Respondent established internal policy, GMES-PE-001, Pressure Equipment Management Standard, to maintain the on-going integrity of process equipment at the Facility. Section 4.2 of that policy stated that Respondent would carry out a qualitative risk-based assessment on all pressure equipment, in accordance with the guidelines in AS3788 and API581. However, Respondent did not implement Section 4.2 to manage pressure equipment, including developing a qualitative risk-based assessment for pressure equipment. By failing to implement written procedures to maintain the on-going integrity of process equipment, Respondent violated 40 C.F.R. §§ 68.73(b).

32. The Part 68 requirement set forth in Paragraph 31 is re-alleged. During the 2017 EPA Inspection, Respondent had June 2, 2017 as the documented inspection due date for the internal inspection on the shell side of the start-up heater in the Facility's Ammonia Plant, 1212-D1.0301. Respondent failed to complete this inspection by the documented inspection due date. By not completing the inspection for 1212-D1.0301 by June 2, 2017, Respondent failed to implement written procedures to maintain the on-going integrity of process equipment, and Respondent violated 40 C.F.R. § 68.73(b).

33. The Part 68 requirement set forth in Paragraph 31 is re-alleged. Respondent implements procedures for the on-going integrity of piping component 2033-AL-01, Liquid Ammonia to Urea Reactor, at the Facility, yet these procedures are not documented in Respondent's internal policy, GMES-SE-001, Static Equipment Management Standard. By not establishing written procedures to maintain the on-going integrity of piping component 2033-AL-01, Respondent violated 40 C.F.R. § 68.73(b).

34. Part 68 provides that inspection and testing must be performed on process equipment subject to the mechanical integrity requirements at 40 C.F.R. § 68.73. 40 C.F.R. § 68.73(d)(1). The inspection and testing procedures must follow recognized and generally accepted good engineering practices. 40 C.F.R. § 68.73(d)(2). Respondent stated to the EPA that its inspection and testing procedures follow API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration. However, Respondent failed to calculate the remaining life of all pressure vessels at the Facility to determine required inspection frequencies, per API 510. By failing to follow API 510 for its inspection and testing procedures, Respondent violated 40 C.F.R. § 68.73(d)(2).

35. The Part 68 requirements set forth in Paragraph 34 are re-alleged. Respondent stated to the EPA that its inspection and testing procedures follow API 570, Piping Inspection Code: Inspection, Repair, Alteration, and Rerating of In-service Piping Systems. However, Respondent failed to calculate remaining life of all piping components at the Facility to determine required inspection frequencies,

per API 570. By failing to follow API 570 for its inspection and testing procedures, Respondent violated 40 C.F.R. § 68.73(d)(2).

36. The Part 68 requirements set forth in Paragraph 34 are re-alleged. Respondent stated to the EPA that its inspection and testing procedures follow API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration. However, Respondent failed to ensure that the period between internal or on-stream inspections for NH3 Synthesis Converter, 1212-D8.030, at the Facility did not exceed one half the remaining life of the vessel or 10 years, whichever was less, and Respondent did not justify this action by a Risk-Based Inspection assessment or deferral procedure, per API 510. By failing to follow API 510 for its inspection and testing procedures, Respondent violated 40 C.F.R. § 68.73(d)(2).

37. The Part 68 requirements set forth in Paragraph 34 are re-alleged. Respondent stated that its inspection and testing procedures follow API 570, Piping Inspection Code: Inspection, Repair, Alteration, and Rerating of In-service Piping Systems. However, Respondent failed to ensure that the intervals between thickness measurements for piping component 2033-AL-01, Liquid Ammonia to Urea Reactor, at the Facility did not exceed one half the remaining life, per API 570. By failing to follow API 570 for its inspection and testing procedures, Respondent violated 40 C.F.R. § 68.73(d)(2).

38. Part 68 provides that the owner or operator of a stationary source covered by the rule must establish and implement written procedures to manage changes (except for "replacement in kind") to process chemicals, technology, equipment, and procedures, as well as changes to stationary sources that affect a covered process. 40 C.F.R. § 68.75(a). If a change covered by Part 68's management of change provisions results in a change in the PSI required by 40 C.F.R. § 68.65, the PSI must be updated accordingly. 40 C.F.R. § 68.75(d). Respondent's piping and instrumentation diagram No. A1-124A in the Ammonia Plant at the Facility was inaccurate at the time of the 2017 EPA Inspection. The management of change procedure associated with the most recent change of this line (eMOC No. 139/17) contained both red-lined and final drawings that contained a discrepancy. By not updating the PSI accordingly related to this line change, Respondent violated 40 C.F.R. § 68.75(d).

39. Part 68 provides that the owner or operator of a stationary source covered by the rule must certify that they have evaluated the source's compliance with Part 68 at least every three years to verify that procedures and practices developed under Part 68 are adequate and being followed. 40 C.F.R. § 68.79(a). Part 68 further provides that a report of the compliance audit findings must be developed and that the owner or operator must promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected. 40 C.F.R. § 68.79(c)-(d). At the time of the 2017 EPA Inspection, Respondent documented that the mechanical integrity deficiency related to finding MI-1 in the May 2016 Compliance Audit report had been corrected. Finding MI-1 states, "The facility has not completed the development and implementation of its MI program to (1) adequately meet the requirements of the PSM and RMP regulations and (2) provide a complete program to ensure the integrity of the processes and equipment. The current MI program does not (1) include all covered equipment and safety systems, (2) provide adequate maintenance procedures and work orders, (3) establish frequencies for ITPM activities, and (4) ensure documentation of all maintenance activities that are performed." Respondent later stated to the EPA that these deficiencies continued to exist through at least 2022.

By erroneously documenting that the deficiencies from its May 2016 Compliance Audit report had been corrected as of the 2017 EPA Inspection, Respondent violated 40 C.F.R. § 68.79(d).

40. Part 68 provides that the owner or operator of a stationary source covered by the rule must develop and implement an emergency response program for the purpose of protecting public health and the environment. 40 C.F.R. § 68.95(a). The emergency response program must include an emergency response plan that is maintained at the stationary source. 40 C.F.R. § 68.95(a)(1). The emergency response program must also include procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes. 40 C.F.R. § 68.95(a)(4). Further, the owner or operator must review and update the emergency response plan as appropriate based on changes at the stationary source or new information obtained from coordination activities, emergency response exercises, incident investigations, or other available information, and ensure that employees are informed of the changes. 40 C.F.R. § 68.95(a)(4). At the time of the 2017 EPA Inspection, Respondent's emergency response plan for the Facility was dated September 2015 (Respondent's Emergency Response Plan), even though that plan provides that it should be reviewed and updated annually. Additionally, Respondent's Emergency Response Plan listed an individual in the "Emergency Contact List" and "Environmental Reporting List" as the H&S Supervisor even though this person was no longer with the company. By not appropriately reviewing and updating the Facility's emergency response plan as required, Respondent violated 40 C.F.R. § 68.95(a)(4).

VII. TERMS OF CONSENT AGREEMENT

41. For the purpose of this proceeding, Respondent:

    a. admits the jurisdictional allegations in Section II of this Agreement;

    b. admits the stipulated facts stated in Section IV of this Agreement;

    c. admits that an ACOC was entered between the EPA and Respondent, and admits that it submitted the completion of compliance certifications required by the ACOC, both as stated in Section V of this Agreement, but neither admits nor denies the alleged violations and other findings of the ACOC stated in Section V of this Agreement;

    d. neither admits nor denies the EPA's findings of alleged violations of law stated in Section VI of this Agreement;

    e. consents to the assessment of a civil penalty as stated below;

    f. consents to the conditions specified in this Agreement;

    g. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

    h. waives any right to contest any final order approving this Agreement; and

    i. waives any rights it may possess at law or in equity to challenge the authority of the United States 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 governs in any such civil action.

42. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R part 19 authorize the EPA to assess an administrative civil penalty per day of violation for each violation of the implementing regulations associated with section 112(r) of the CAA, 42 U.S.C. § 7412(r).

43. Pursuant to section 113(e) of the CAA, 42 U.S.C. § 7413(e), the EPA is required to consider, in addition to such other factors as justice may require, to the extent known, the size of Respondent's business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by the Respondent of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violations.

44. Based on the alleged violations of law set forth in section VI, and after consideration of the statutory factors in paragraph 43 above, the EPA has determined a civil penalty of $394,906.00 is appropriate to settle this matter.

45. Penalty Payment. Respondent agrees to:

    a. pay a civil penalty in the amount of $394,906.00 within 30 calendar days of the Effective Date of this Agreement;

    b. pay the civil penalty using any method provided on the following website https://www.epa.gov/financial/makepayment and referring to the instructions provided at https://www.epa.gov/financial/additional-instructions-making-payments-epa;

    c. identify the payment with the docket number that appears on the Final Order approving this Agreement,

    d. within 24 hours of payment, email proof of payment to Steven Ramirez and Robyn Emeson at ramirez.stevenA@epa.gov and emeson.robyn@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the Final Order).

46. If Respondent fails to timely pay any portion of the 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) from the date of the final order; the United States' enforcement expenses; and a 10% quarterly nonpayment penalty, as provided by 42 U.S.C. § 7413(d)(5);

    b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 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 C.F.R. part 13, subparts C and H; and

d. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

47. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

48. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:

    a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

    b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

    c. Respondent shall email its completed Form W-9 to Jessica Chalifoux, of the EPA's Cincinnati Finance Center, at Chalifoux.Jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and the EPA recommends encrypting IRS Form W-9 email correspondence; and

    d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

        i. notify the EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of this Order per paragraph 61 and

        ii. provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

49. Respondent agrees, by signing this Agreement, that all alleged violations in Section VI have been corrected.

50. Respondent agrees and certifies, by signing the Agreement, that the Facility is in full compliance with section 112(r) of the CAA, 42 U.S.C. § 7412(r) and the implementing regulations contained in 40 C.F.R. part 68.

51. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Facility. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property will not alter Respondent's responsibilities under this Agreement.

52. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

53. The parties consent to service of a final order by e-mail at the following valid e-mail addresses: emeson.robyn@epa.gov (for Complainant), and rangell@parsonsbehle.com (for Respondent).

54. Except as qualified by paragraph 46, each party will bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

VIII. EFFECT OF CONSENT AGREEMENT

55. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations alleged in Section V, above, and further described in paragraphs 16 and 17, above.

56. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.

57. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to $117,468 per day for each violation, as provided in section 113(b), 42 U.S.C. § 7413(b) and as adjusted for inflation pursuant to 40 C.F.R. part 19. The EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.

58. Nothing in this Agreement relieves Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, restricts the EPA's authority to seek compliance with any applicable laws or regulations, or will be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

59. Nothing herein may 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.

60. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves its legal and equitable rights.

IX. EFFECTIVE DATE

61. This Agreement will be effective on the date the Final Order is filed by the Regional Hearing Clerk.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.

Date: _____ By: SCOTT PATEFIELD Digitally signed by SCOTT PATEFIELD Date: 2024.02.26 17:30:06 -07'00'

Scott Patefield, Branch Manager
Air and Toxics Enforcement Branch,
Enforcement and Compliance Assurance Division

Respondent.

Date: 02/22/2024_____ By: _____

Braden Lusk, President
Dyno Nobel, Inc.