

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

11 JUN 25 PM 2:43

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARINGS CLERK

IN THE MATTER OF)

DYNO NOBEL, INC.,)
11025 Highway D)
Louisiana, Missouri 63353,)

Respondent)

)
)
) Docket No. CAA-07-2011-0010
)
)
)
)
)
)
)
)

ADMINISTRATIVE ORDER FOR COMPLIANCE

Pursuant to Section 113(a)(3)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(3)(B), as amended, Dyno Nobel, Inc. ("Respondent" or "Dyno Nobel") is hereby ordered by the United States Environmental Protection Agency ("EPA") to comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, and to take the specific compliance actions set forth below.

Statutory and Regulatory Background

1. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

2. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These regulations require owners and operators of stationary sources to develop and implement a Risk Management Program that includes a hazard assessment, a prevention program, and an emergency response program.

3. The regulations at 40 C.F.R. Part 68 set forth the requirements of a Risk Management Program that must be established at each stationary source. The Risk Management Program is described in a Risk Management Plan (“RMP”) that must be submitted to EPA.

4. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted for all covered processes, by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

5. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil penalty of up to \$37,500 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112(r)(7), 42 U.S.C. § 7412(r)(7).

Definitions

6. The regulations at 40 C.F.R. § 68.3 define “stationary source” as 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.

7. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130, Tables 1, 2, 3, and 4, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

8. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130, Tables 1, 2, 3, and 4.

9. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Factual Background

10. Dyno Nobel is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

11. The Dyno Nobel facility, located at 11025 Highway D in Louisiana, Missouri, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

12. EPA inspected the Dyno Nobel facility, located at 11025 Highway D in Louisiana, Missouri, on September 27 through 29, 2010, to determine compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the Dyno Nobel facility had failed to properly implement the risk management program at its facility.

13. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

14. At the time of the inspection, Dyno Nobel had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

15. Nitric acid (concentration 80% or greater) is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for nitric acid, as listed in 40 C.F.R. § 68.130, Table 1, is 15,000 pounds.

16. At the time of the inspection, Dyno Nobel had greater than 15,000 pounds of nitric acid in a process at its facility.

Finding of Violation

17. The facts stated in Paragraphs 10 through 16, above, are herein incorporated.

18. Dyno Nobel is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is the owner and operator of a stationary source that had more than the threshold quantity of a regulated substance in a process.

19. Dyno Nobel is subject to the requirements of the Program 3 risk management program, 40 C.F.R. Part 68, Subpart D, because the process is subject to the Occupational Safety and Health Administration (“OSHA”) safety management process standard, 29 C.F.R. § 1910.119, 40 C.F.R. §68.10(d).

20. Dyno Nobel failed to comply with the requirements of 40 C.F.R. Part 68, as follows, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r):

- (i) failure to document that equipment complies with recognized and generally accepted engineering practices (40 C.F.R. § 68.65(d)(2));
- (ii) failure to resolve all Process Hazard Analysis findings and document a revised resolution date (40 C.F.R. § 68.67(e));
- (iii) failure to document the consequences of deviation in the facility's written operating procedures (40 C.F.R. § 68.69(a)(2)(i));
- (iv) failure to 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(d));
- (v) failure to obtain documentation from contractors that contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training (40 C.F.R. § 68.87(c)(3)); and
- (vi) failure to maintain all required records for the requisite five year period (40 C.F.R. § 68.200).

Order for Compliance

21. Based on the Factual Background and Finding of Violation set forth above, and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended, Dyno Nobel, Inc., is hereby ORDERED to take the actions described in Paragraphs 22 and 23.

22. Within 120 days of the effective date of this Administrative Order for Compliance ("Order"), Dyno Nobel must comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, including, but not limited to, completion of the following compliance actions:

- (i) document that equipment complies with recognized and generally accepted engineering practices in accordance with 40 C.F.R. § 68.65(d)(2). The American National Standards Institute ("ANSI"), the National Boiler Inspector Code ("NBIC") and the American Petroleum Institute ("API") all provide recognized and generally accepted engineering practices. Dyno

Nobel must document that equipment complies with these or similar industry standards, including, but not limited to, the following standards:

- (a) ANSI K61.1-1999, Section 6.4.1 requires the foundation of the above ground storage container to maintain the lowest point of the tank not less than 18 inches above the ground.
- (b) ANSI K61.1-1999, Section 5.4.3, requires that all container openings shall be marked, stenciled, tagged, or decaled to indicate whether the opening is in contact with the liquid or vapor phase when the container is filled to the maximum allowable filling density. Both the liquid and the vapor anhydrous ammonia piping must be identified as such.
- (c) NBIC 23 requires that there be no evidence of corrosion, erosion, cracking or other detrimental conditions to piping systems. API 570 requires thickness measurements at inspection points at the frequency listed for the class of piping in order to determine corrosion rate and remaining life of the pipe. ANSI K61.1-1999, Section 5.6.9, requires all piping, fittings, and tubing to be tested and proved to be free from leaks at a pressure no less than the normal operating pressure of the system.
- (d) ANSI K61.1-1999, Section 5.12, requires aboveground uninsulated containers to have a reflective surface maintained in good condition. Sandblast and paint rusty parts of each of the two 250-ton anhydrous ammonia tanks that are currently in operation.
- (e) ANSI K61.1-1999, Section 6.4.2, states that if supports of the saddle type are employed, the baring afforded by the saddles shall extend over at least one-third of the circumference of the shell. The concrete saddles supporting the two 250-ton anhydrous ammonia tanks that are currently in operation must comply with this standard by extending at least one-third of the circumference of the shell of the tank.
- (f) ANSI K61.1-1999, Section 5.6.3, requires that all piping shall be supported in accordance with good piping practices. All structural steel supports and connections shall be free from rust, and those which are not free of rust must be sandblasted and painted or replaced, as appropriate.

- (ii) resolve all Process Hazard Analysis findings, and document the resolution, including the revised resolution date, in accordance with 40 C.F.R. § 68.67(e);
- (iii) document the consequences of deviation in the facility's written operating procedures for each process in accordance with 40 C.F.R. § 68.69(a)(2)(i);
- (iv) determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected, in accordance with 40 C.F.R. § 68.79(d);
- (v) obtain documentation from contractors that contains the identity of the contract employee, the date of training, and the means used to verify that the contract employee understood the training, in accordance with 40 C.F.R. § 68.87(c)(3); and
- (vi) maintain records for the requisite five year period in accordance with 40 C.F.R. § 68.200.

23. Dyno Nobel must provide documentation of completion of these tasks to EPA within 150 days of the effective date of this Order. Documentation must include a written description of the work completed, as well as photographs, invoices, testing results, and steps taken to address results of testing. All documentation shall be submitted in accordance with Paragraph 24 of this Order.

Submissions

24. All submissions to the EPA required by this Order shall be sent to:

Patricia Reitz
Chemical Risk Information Branch
U.S. Environmental Protection Agency
901 North Fifth Street
Kansas City, Kansas 66101.

25. Pursuant to 40 C.F.R §§ 2.201-2.311, Dyno Nobel may assert a business confidentiality claim covering any portion of the submitted information that is entitled to confidential treatment. For any such claim, describe the basis of the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the

public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations.

General Provisions

Potential Liability

26. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), grants EPA the authority to issue an Order to any person found in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), or the regulations promulgated pursuant thereto.

27. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. Under Section 113(a) of the CAA, 42 U.S.C. § 7413(a), the Administrator is authorized to address such a violation as follows:

- (i) issue an administrative penalty order assessing a civil penalty not to exceed \$37,500 per day of violation;
- (ii) bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$37,500 per day of violation, or both; or
- (iii) request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

28. Issuance of this Order does not preclude the State of Missouri or EPA from assessing penalties or taking any other action authorized under the CAA. This Order does not affect the obligation of Dyno Nobel to comply with all federal, state, and local statutes, regulations, and permits.

Amendment of Order

29. EPA may subsequently amend this Order in accordance with the authority of the CAA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

Access and Requests for Information

30. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect the Dyno Nobel facility, and/or to request additional information from Dyno Nobel pursuant to the authority of Section 114 of the CAA, 42 U.S.C. §7414.

Effective Date

31. The terms of this Order shall be effective and enforceable against Dyno Nobel upon its receipt of the Order.

1/24/11
Date

Becky Weber
Becky Weber
Director
Air and Waste Management Division