

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

10/27/2022

10:40am

Received by  
EPA Region VIII  
Hearing Clerk

IN THE MATTER OF:	)	
	)	
Dyno Nobel, Inc. – Cheyenne Plant	)	<b>CONSENT AGREEMENT AND</b>
8305 Otto Road	)	<b>FINAL ORDER</b>
Cheyenne, Wyoming 82009	)	
	)	<b>Docket No.: EPCRA-08-2023-0001</b>
Respondent.	)	
	)	

**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 (the Facility) located at 8305 Otto Road, Cheyenne, Wyoming.
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 325 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045, also known as the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA or the Act). The undersigned EPA official has been duly authorized to institute this action.
5. 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).
6. The Final Order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

**III. GOVERNING LAW**

7. EPCRA and its implementing regulations require the owner or operator of a facility at which a hazardous chemical is produced, used or stored to immediately provide notice to the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of an EPCRA extremely hazardous substance in an amount equal to or greater than the reportable quantity from a facility. 42 U.S.C. § 11004; 40 C.F.R. Part 355.
8. EPCRA and its implementing regulations require that as soon as practicable after a release which requires notice, the owner or operator must provide a written follow-up emergency notice (or

notices, as more information becomes available) setting forth and updating the information required and including additional information with respect to actions taken to respond to and contain the release, any known or anticipated acute or chronic health risks associated with the release, and where appropriate, advice regarding medical attention necessary for exposed individuals. 42 U.S.C. § 11004; 40 C.F.R. Part 355.

#### **IV. STIPULATED FACTS**

9. Respondent is a corporation that is authorized to do business in the state of Wyoming.
10. Respondent is a “person” as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
11. Respondent is the owner and/or operator of a “facility” as that term is defined by section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
12. Specifically, Respondent owns and/or operates the Facility located at 8305 Otto Road, Cheyenne, Wyoming.
13. Respondent’s Facility produces, uses, and/or stores ammonia.
14. Ammonia is an “extremely hazardous substance” as that term is defined by section 329(3) of EPCRA, 42 U.S.C. § 11049, and 40 C.F.R. § 355.61 with a reportable quantity of 100 pounds, as specified in 40 C.F.R. § 355 Appendices A & B.
15. From December 11 to 14, 2017, authorized representatives of the EPA conducted an inspection (the EPA inspection) of the Facility, with the consent of the Respondent, to determine compliance with EPCRA. During the EPA inspection, EPA representatives observed alleged violations of EPCRA Section 304. The alleged violations of law are described in Section V, below.

#### **V. ALLEGED VIOLATIONS OF LAW**

16. EPCRA’s implementing regulations provide that the owner or operator of a facility must provide the immediate emergency release notification information and the written follow-up notification to the community emergency coordinator for the LEPC of any area likely to be affected by the release. 40 C.F.R. § 355.42(a)(1).
17. Respondent did not provide the written follow-up notification to the community emergency coordinator for the LEPC of the area likely affected (Laramie County Emergency Management Agency) for releases of ammonia exceeding a reportable quantity on November 21, 2016, in violation of 40 C.F.R. § 355.42(a)(1).
18. Respondent did not provide the written follow-up notification to the community emergency coordinator for the LEPC of the area likely affected (Laramie County Emergency Management Agency) for releases of ammonia exceeding a reportable quantity on January 27, 2017, in violation of 40 C.F.R. § 355.42(a)(1).

#### **VI. TERMS OF CONSENT AGREEMENT**

19. For the purpose of this proceeding, Respondent:

- a. admits the jurisdictional allegations in Section II of this Agreement;
  - b. neither admits nor denies the alleged violation of law stated in Section V of this Agreement;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. consents to the conditions specified in this Agreement;
  - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
  - f. waives any right to contest any final order approving this Agreement; and
  - g. 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 governs in any such civil action.
20. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R part 19 authorize the EPA to assess a civil penalty of not more than \$62,689 for each violation of EPCRA.
21. In determining the amount of the penalty to be assessed, the EPA is required to consider, in addition to such other factors as justice may require, to the extent known, the nature, circumstances, extent and gravity of the violations alleged, any of Respondent's history of prior violations of EPCRA, or lack thereof, and degree of culpability, and any voluntary disclosure, or lack thereof.
22. Based on the alleged violations of law, and after consideration of the statutory factors in paragraph 21 above, the EPA has determined a civil penalty of \$20,352 is appropriate to settle this matter.
23. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty in the amount of \$20,352 within 30 calendar days of the Effective Date of this Agreement;
  - b. pay the civil penalty using any method provided on the following websites <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa>;
  - c. identify the payment with the docket number that appears on the Final Order; and
  - d. within 24 hours of payment, email proof of payment to Steven Ramirez and Paige Lambert at [ramirez.stevena@epa.gov](mailto:ramirez.stevena@epa.gov) and [lambert.paige@epa.gov](mailto:lambert.paige@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).
24. 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); the United States' enforcement expenses including attorneys' fees and costs for collection proceedings; and a 10% quarterly nonpayment penalty, 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.
25. 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.
26. Respondent agrees, by signing this Agreement, that the alleged violation has been corrected.
27. Respondent agrees and certifies, by signing the Agreement, that the Facility is in full compliance with section 304 of EPCRA, 42 U.S.C. § 11004.
28. 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.
29. 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 they represent to this Agreement.
30. Except as qualified by paragraph 24, each party will bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
31. The parties consent to service of the Final Order by email at the following addresses: [lambert.paige@epa.gov](mailto:lambert.paige@epa.gov) (for Complainant), and [rangell@parsonsbehle.com](mailto:rangell@parsonsbehle.com) (for Respondent).

## **VII. EFFECT OF CONSENT AGREEMENT**

32. 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 specifically alleged above.
33. 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 not more than \$62,689 per violation, as provided in section 325(b) of EPCRA, 42 U.S.C. § 11045(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.

34. 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.
35. 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.
36. 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.

#### **VIII. EFFECTIVE DATE**

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

Consent Agreement - EPCRA - In the Matter of: Dyno Nobel, Inc. – Cheyenne Plant

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY REGION 8,  
Complainant.**

Date: \_\_\_\_\_

By: \_\_\_\_\_

David Cobb, Section Supervisor  
Toxics and Pesticides Enforcement Section,  
Air and Toxics Enforcement Branch,  
Enforcement and Compliance Assurance Division

**DYNO NOBEL, INC.  
Respondent.**

Date: 10/25/22

By:  \_\_\_\_\_

(Print Name) Scott Bell

(Print Title) Senior Vice President