

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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In Re: :  
: Docket No. CAA-03-2016-0023  
Dyno Nobel Inc., :  
1320 Galiffa Drive, :  
Donora, Pennsylvania 15033, :  
Respondent. :  
: FINAL ORDER  
: Proceeding under the Clean Air Act,  
: Section 113(a)(3)(A) and (d)(1)(B)

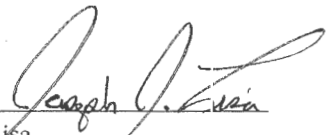
FINAL ORDER

Complainant, Director, Air Protection Division, United States Environmental Protection Agency (EPA), Region III, and Respondent, Dyno Nobel Inc., have executed a document entitled "CONSENT AGREEMENT", which I hereby ratify as a consent agreement in accordance with 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 [with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)]. The terms of the executed CONSENT AGREEMENT, attached hereto, are accepted by the undersigned and incorporated herein as if fully set forth.

Based on the representations of the parties in the attached CONSENT AGREEMENT, the civil penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991, as modified, and the statutory factors set forth in Section 113(e)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7413(e)(1). **NOW, THEREFORE, PURSUANT TO** Section 113(a)(3)(A) and (d)(1)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(A) and (d)(1)(B), and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **ONE HUNDRED THOUSAND DOLLARS (\$100,000)**, plus any applicable interest, as specified in the CONSENT AGREEMENT, and comply with the terms and conditions of the CONSENT AGREEMENT.

The effective date of this FINAL ORDER and attached CONSENT AGREEMENT is the date on which the FINAL ORDER, signed by the Regional Administrator of EPA - Region III or the Regional Judicial Officer of EPA - Region III, is filed with the Regional Hearing Clerk of EPA - Region III.

April 20, 2016  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial Officer  
EPA - Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

In Re:	:	
	:	Docket No. CAA-03-2016-0023
Dyno Nobel Inc.,	:	
1320 Galiffa Drive,	:	CONSENT AGREEMENT
Donora, Pennsylvania 15033,	:	
Respondent.	:	Proceeding under the Clean Air Act, Section 113(a)(3)(A) and (d)(1)(B)

**CONSENT AGREEMENT**

**I. Preliminary Statement**

1. This administrative consent agreement is entered into by and between the Director, Air Protection Division, United States Environmental Protection Agency (EPA), Region III (Complainant), and Dyno Nobel Inc. (Respondent), pursuant to Section 113(a)(3)(A) and (d)(1)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(A) and (d)(1)(B), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Consolidated Rules of Practice at 40 C.F.R. § 22.13(b) provide, in pertinent part, that “where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to § 22.18(b)(2) and (3).”

2. This administrative consent agreement and the accompanying final order (CAFO) address violations set forth herein, which occurred at Respondent’s facility located at 1320 Galiffa Drive, Donora, Pennsylvania 15033 (Donora facility). The Commonwealth of Pennsylvania is within the jurisdiction of EPA - Region III.

**II. General Provisions**

1. Section 113(a)(3)(A) and (d)(1)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(A) and (d)(1)(B), authorizes the Administrator of EPA to, among other things, issue an administrative penalty order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that a person has violated a requirement of a permit issued under Subchapter V of Chapter 85 of Title 42 of the United States Code. Chapter 85 of Title 42 of the United States Code is the CAA, 42 U.S.C. §§ 7401-7671q. Subchapter V of Chapter 85 [also referred to as Title V of the CAA] includes Section 501 to Section 507 of the CAA, 42 U.S.C. §§ 7661-7661f. The authority to issue the accompanying final order has been duly delegated to the Regional Judicial Officer of EPA - Region III.

2. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to the Administrator a permit program meeting the requirements of Title V.
3. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations providing for the establishment of Title V permitting programs at 40 C.F.R. Part 70.
4. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b), provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.
5. EPA granted full and final approval to the Commonwealth of Pennsylvania's Title V operating permit program on August 29, 1996 (61 Fed. Reg. 39597).
6. The Pennsylvania Department of Environmental Protection (PADEP) is a permitting authority for Title V purposes as defined in Section 501(4) of the CAA, 42 U.S.C. § 7661(4).
7. Pennsylvania's Title V regulations are promulgated at 25 Pa. Code §§ 127.501 through 127.543.
8. Pursuant to 25 Pa. Code § 127.512, each permit issued to a Title V facility shall contain the minimum permit terms and conditions set forth in § 127.512, which includes a provision stating that "[t]he permittee shall comply with conditions of the operating permit." 25 Pa. Code § 127.512(c)(1).
9. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty amount or a longer period of violation is appropriate for administrative penalty action. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), further provides that any such determination by the Administrator and the Attorney General shall not be subject to judicial review. Under 40 C.F.R. Part 19, § 19.4, the figure of \$200,000 has been increased to \$320,000.
10. The Administrator of EPA and the Attorney General of the United States, each through their respective delegates, have jointly determined that administrative penalty action is appropriate for the longer period of violation involved in this matter.
11. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of this CAFO. Respondent agrees not to contest jurisdiction with respect to the issuance, execution and enforcement of this CAFO.
12. For the purpose of this proceeding, except as provided in Section II, Paragraph 11 immediately above, Respondent neither admits nor denies the specific factual allegations in this consent agreement.
13. For the purpose of this proceeding, Respondent consents to the terms and conditions of this CAFO.

14. This CAFO records all terms and conditions of the settlement.

### III. Findings of Fact and Conclusions of Law

1. Respondent, Dyno Nobel Inc., is a corporation incorporated in the State of Delaware. Respondent's headquarters is located at 2795 East Cottonwood Parkway, Suite 500, Salt Lake City, Utah 84121. Respondent is a wholly-owned subsidiary of Dyno Nobel Holdings USA, Inc., located at 2650 Decker Lake Boulevard, Suite 300, Salt Lake City, Utah 84121. Dyno Nobel Holdings USA, Inc. is a wholly-owned subsidiary of Incitec Pivot Limited of Southbank, Australia.
2. Respondent is the owner and operator of the Donora facility at 1320 Galiffa Drive, Donora, Pennsylvania 15033. At the Donora facility, Respondent manufactures nitric acid, ammonium nitrate solution, and ammonium nitrate prill, all of which is sold.
3. Respondent is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and as that term is used in Section 113(a)(3) and (d)(1) of the CAA, 42 U.S.C. § 7413(a)(3) and (d)(1).
4. Respondent's Donora facility is a "Title V Facility" under 25 Pa. Code § 121.1 because it is a major stationary source of air pollutants that has the potential to emit 100 tons or more per year of particulate matter.
5. On December 31, 2007, PADEP issued a Title V operating permit to Respondent for the Donora facility (Permit No. 63-00070) with an effective date of January 1, 2008 and an expiration date of January 1, 2013. 25 Pa. Code § 127.446(c) provides that an issued permit will remain in force beyond its expiration date if an application for renewal of the permit is timely submitted to PADEP by the permittee prior to the expiration date and the renewed permit has not yet been issued by PADEP. On May 15, 2012, Respondent timely submitted an application for renewal of Permit No. 63-00070 and, to date, PADEP has not issued the renewed permit. As a consequence, Permit No. 63-00070, as issued on December 31, 2007, has remained in force beyond January 1, 2013 up to the present.
6. Respondent's Donora facility includes an ammonium nitrate cooler, ammonium nitrate predryer, and ammonium nitrate dryer, each of which is a source of particulate matter emissions and subject to a particulate matter emission standard in Permit No. 63-00070. Permit No. 63-00070 also specifies the control technology for each of these sources as a mechanical scrubber. Section E., Group G02, #002, IV.A.(1) (page 48) of the permit requires the presence of a flow meter for each scrubber at inlet to measure the flow rate of water in gallons per minute. Section E., Group G02, #002, IV.C.(1) of the permit (page 49) requires the water flow rate at each scrubber to be determined and recorded once per 8-hour shift. These requirements applied as of the January 1, 2008 effective date of the permit.
7. On August 21, 2013, EPA - Region III personnel conducted a compliance inspection at Respondent's Donora facility. During this inspection, the EPA - Region III personnel found that Respondent did not have flow meters for any of the three scrubbers and was consequently not determining and recording the water flow rate via flow meter at each scrubber once per 8-hour shift.

8. By letter dated April 9, 2015, under Section 114 of the CAA, 42 U.S.C. § 7414, EPA required Respondent to provide certain information and documents to EPA. Information and documents were received by letter (and attachments) from Respondent dated June 23, 2015. Information and documents received indicated that Respondent had installed the three required flow meters in August 2014 and that Respondent did not have them prior to that time.

#### **Failure to Install Flow Meters**

9. Section E., Group G02, #002, IV.A.(1) (page 48) of PADEP Permit No. 63-00070, issued on December 31, 2007 and effective on January 1, 2008, requires, at Respondent's Donora facility, the presence of a flow meter for each of three scrubbers at inlet to measure the flow rate of water in gallons per minute. Respondent failed to have the three required flow meters until August 2014.

10. Respondent's failure to comply with Section E., Group G02, #002, IV.A.(1) (page 48) of PADEP Permit No. 63-00070, constitutes a violation of the Title V Permit and Sections 113 and 502(a) of the CAA, 42 U.S.C. §§ 7413 and 7661a(a).

#### **Failure to Determine and Record Water Flow Rates**

11. Section E., Group G02, #002, IV.C.(1) (page 49) of PADEP Permit No. 63-00070, issued on December 31, 2007 and effective on January 1, 2008, requires the water flow rate at each of the three scrubbers at Respondent's Donora facility to be determined and recorded via flow meter once per 8-hour shift. Given that Respondent failed to have the three required flow meters until August 2014, Respondent failed to determine and record via flow meter the water flow rate at each of the three scrubbers at Respondent's Donora facility once per 8-hour shift until August 2014.

12. Respondent's failure to comply with Section E., Group G02, #002, IV.C.(1) (page 49) of PADEP Permit No. 63-00070, constitutes a violation of the Title V Permit and Sections 113 and 502(a) of the CAA, 42 U.S.C. §§ 7413 and 7661a(a).

#### **IV. Civil Penalty**

1. In settlement of the violations set forth in Section III above, and for the purpose of this proceeding, Respondent consents to the assessment of, and agrees to pay, a civil penalty in the amount of one hundred thousand dollars (\$100,000) in the manner specified herein.

2. The settlement amount of one hundred thousand dollars (\$100,000) is based upon Complainant's consideration of, and application of, the statutory penalty factors set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1) [which include the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, the seriousness of the violations, and such other matters as justice may require], and EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as modified [including modifications to adjust for inflation in keeping with 40 C.F.R. Part 19 (Adjustment of Civil Monetary Penalties for Inflation)].

3. Respondent shall pay the civil penalty of one hundred thousand dollars (\$100,000) no later than thirty (30) calendar days after the effective date of this CAFO. Respondent must pay the entire civil penalty by this date in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO.

4. Payment of the civil penalty set forth in Section IV, Paragraph 1 above shall be made by cashier's check, certified check, electronic wire transfer, the Automated Clearing House, or online internet payment, as specified below. Payment, regardless of how it is made, is to be made payable to Treasurer, United States of America, and shall reference the above case caption and docket number (CAA-03-2016-0023).

5. Instructions for making payment of the civil penalty set forth in Section IV, Paragraph 1 above using the methods described in Section IV, Paragraph 4 immediately above are provided at the following EPA website addresses:

<http://www2.epa.gov/financial/makepayment>

<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

6. At the same time that payment is made, regardless of how it is made, copies of any check or written documentation confirming any electronic wire transfer, ACH/REX payment, or online internet payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to James M. Baker, Senior Assistant Regional Counsel (3RC10), EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and to Paul Arnold, Environmental Engineer (3AP20), EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

7. If Respondent fails to timely pay any portion of the civil penalty assessed under this consent agreement, 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 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. (i) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

8. 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 or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
9. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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).
10. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 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 payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
11. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 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. 31 C.F.R. § 901.9(d).
12. Thus, in accordance with the above provisions, to avoid the assessment of interest, late payment penalties, and handling charges on the civil penalty set forth herein, Respondent must pay the full amount of the civil penalty, in the manner directed, no later than thirty (30) calendar days after the effective date of this CAFO, as provided in Section IV, Paragraph 3 above.
13. Complainant and Respondent enter into this consent agreement in order to settle the violations specifically set forth in Section III of this consent agreement.
14. Full payment of the civil penalty assessed herein shall only resolve Respondent's federal civil penalty liability under the CAA for the specific violations alleged herein. Full payment of the civil penalty assessed herein shall not affect the right of EPA or the United States to pursue civil penalties for other violations of law. Full payment of the civil penalty assessed herein shall not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

## **V. Settlement**

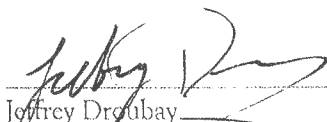
1. For the purpose of this proceeding, Respondent waives any right to contest the allegations in this consent agreement, waives its right to appeal the final order accompanying this consent agreement, waives its opportunity for a hearing on the record in accordance with 5 U.S.C. §§ 554 and 556 under Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and waives its right to judicial review under Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(d)(4).

2. The effective date of this CAFO is the date on which the CAFO is filed with the Regional Hearing Clerk of EPA - Region III.
3. Respondent agrees to pay its own costs and attorney fees.
4. Respondent agrees that this CAFO shall apply to, and be binding upon, Respondent, its directors, officers, employees, servants, agents, successors and assigns.
5. By signing this consent agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this consent agreement and has the legal capacity to bind Respondent to the terms and conditions of this consent agreement.
6. By signing this consent agreement, 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.
7. Penalties paid pursuant to this consent agreement shall not be deductible for purposes of federal taxes.
8. This consent agreement 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 settlement of the above-captioned matter and the subject matter hereof. There are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this consent agreement and the accompanying final order. Nothing in this consent agreement or the accompanying final order shall be construed to affect or limit in any way the obligation of Respondent to comply with all federal, state and local laws and regulations governing any activity required by this consent agreement and the accompanying final order.
9. Nothing in this consent agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA 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. Compliance with this consent agreement and accompanying final order shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.
10. Nothing herein shall be construed to limit the power of 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. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c).
11. Further, Complainant reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.



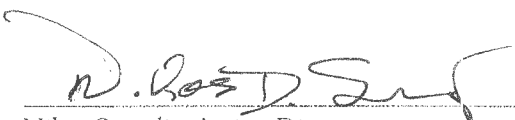
For the Respondent:

4/6/2016  
Date

  
\_\_\_\_\_  
Jeffrey Droubay  
Vice President - Legal  
Dyno Nobel Inc.

For the Complainant:

4/19/2016  
Date

  
\_\_\_\_\_  
Nikos Singelis, Acting Director  
Air Protection Division  
United States Environmental Protection Agency  
Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA - Region III or the Regional Judicial Officer of EPA - Region III, ratify this CONSENT AGREEMENT and issue the accompanying FINAL ORDER (Docket No. CAA-03-2016-0023). The amount of the recommended civil penalty assessment is one hundred thousand dollars (\$100,000).

4/19/2016

Date



Nikos Singelis, Acting Director  
Air Protection Division  
United States Environmental Protection Agency  
Region III

CERTIFICATE OF SERVICE

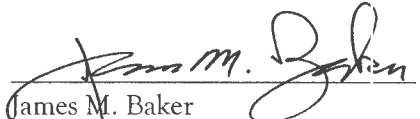
I hereby certify that today, Wednesday, April 20, 2016:

1. the original and two copies of the Consent Agreement and Final Order in Docket No. CAA-03-2016-0023 were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, and filed/ clocked in; and
2. a copy of the filed/clocked-in Consent Agreement and Final Order in Docket No. CAA-03-2016-0023 was sent by overnight mail to the addressee listed below; and
3. a copy of the filed/clocked-in Consent Agreement and Final Order in Docket No. CAA-03-2016-0023 was emailed to the individual listed below.

Under the Consolidated Rules of Practice at 40 C.F.R. Part 22, the official date of filing, and the effective date, of the Consent Agreement and Final Order in Docket No. CAA-03-2016-0023 is today, Wednesday, April 20, 2016.

Linda E. Benfield  
Foley & Lardner LLP  
777 E. Wisconsin Ave.  
Milwaukee, WI 53202

Date: 4/20/16

  
James M. Baker  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029