

1/04/2023

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

11:31am

Received by  
EPA Region VIII  
Hearing Clerk

\_\_\_\_\_  
**IN THE MATTER OF:** )  
 )  
Dyno Nobel, Inc. – Cheyenne Plant )  
8305 Otto Road )  
Cheyenne, Wyoming 82009 )  
 )  
Respondent. )  
\_\_\_\_\_ )

**ADMINISTRATIVE COMPLIANCE ORDER  
ON CONSENT**

**Docket No.** CAA-08-2023-0002

**PRELIMINARY STATEMENT**

This Administrative Compliance Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency (the EPA) and by Dyno Nobel, Inc. (Respondent) and is issued under the authority vested in the Administrator of the EPA by section 113(a)(3) and (4) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413(a)(3) and (4).

1. The Branch Manager for the EPA Region 8’s Air Enforcement Branch, Environmental Compliance and Assurance Division, is delegated the authority to issue this Order under section 113(a) of the Act, 42 U.S.C. § 7413(a).
2. This Order requires Respondent to comply with the requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. part 68 (Part 68). All activities specified and ordered below must be initiated and completed as soon as possible even though maximum time periods or specific dates for their completion may be detailed herein. With the exception of a written decision by the EPA to extend deadlines for submittals or performance, the terms of this Order will not be modified except by a subsequent written agreement between the EPA and Respondent.

3. By entering into this Order, Respondent (1) consents and agrees not to contest the EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order and (3) consents to be bound by the requirements set forth herein.

### **STATUTORY AND REGULATORY BACKGROUND**

4. 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 the EPA to, among other things, promulgate regulations to prevent accidental releases of certain regulated substances.

5. The CAA provides that the owners and operators of stationary sources are required to 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).

6. Part 68 sets forth the requirements of a risk management program that must be established and implemented at a stationary source that has more than a threshold quantity of a regulated substance in a process.

7. The CAA defines the term "person" to include in relevant part, an individual, corporation, partnership, or association. 42 U.S.C. § 7602(e).

### **FINDINGS**

8. Respondent is a corporation that is authorized to do business in the state of Wyoming and is therefore a "person" as that term is defined under section 302(e) of the CAA, 42 U.S.C. § 7602(e).

9. Respondent is the owner and/or operator of the Dyno Nobel Cheyenne Plant, a stationary source, located at 8305 Otto Road, Cheyenne, Wyoming (the Facility).

10. 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.
11. Respondent is required to prepare and implement a risk management program to detect and prevent or minimize accidental releases of such regulated substances. 42 U.S.C. § 7412(r)(7).
12. The EPA conducted an inspection of the Facility from December 11 to December 14, 2017, to assess compliance with section 112(r) of the CAA, 42 U.S.C. § 7412(r), and Part 68.
13. During the inspection, the EPA representative observed alleged violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and Part 68. The alleged violations identified in the inspection that remain uncorrected are described in paragraphs 14-21 below.
14. 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). Respondent'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).
15. Part 68 provides that the owner or operator must establish a system to promptly address the 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 process hazard analysis, 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. 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 process hazard analysis, Respondent violated 40 C.F.R. § 68.67(e).

16. Part 68 provides that inspection and testing procedures must follow recognized and generally accepted good engineering practices. 40 C.F.R. § 68.73(d)(2). Respondent stated 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 remaining life of all pressure vessels 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).

17. Part 68 provides that inspection and testing procedures must follow recognized and generally accepted good engineering practices. 40 C.F.R. § 68.73(d)(2). 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 calculate remaining life of all piping components 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).

18. Part 68 provides that inspection and testing procedures must follow recognized and generally accepted good engineering practices. 40 C.F.R. § 68.73(d)(2). Respondent stated 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 NH<sub>3</sub> Synthesis Converter, 1212-D8.030, did not exceed one half the remaining life of the vessel or 10 years, whichever was less, nor did Respondent 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).

19. Part 68 provides that inspection and testing procedures must follow recognized and generally accepted good engineering practices. 40 C.F.R. § 68.73(d)(2). 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, 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).

20. Part 68 provides that the owner or operator must establish and implement written procedures to maintain the on-going integrity of process equipment. 40 C.F.R. § 68.73(b). Respondent implements procedures for the on-going integrity of piping component 2033-AL-01, Liquid Ammonia to Urea Reactor, which 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).

21. Part 68 provides 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(d). Respondent documented that the 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 has represented to the EPA that these deficiencies will continue to exist until at least October 2022. By erroneously documenting that the deficiencies from its May 2016 Compliance Audit report had been corrected while the deficiencies identified in paragraphs 16, 17, 18, 19 and 20 continue to exist, Respondent violated 40 C.F.R. § 68.79(d).

### **COMPLIANCE ORDER**

22. Based upon the foregoing Findings by the EPA, it is hereby ordered and agreed that Respondent will comply with the requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. part 68. Specifically, the EPA and Respondent agree that Respondent will, as expeditiously as possible, but in no event later than July 31, 2023, correct the violations alleged in paragraphs 14 and 16-21. EPA and Respondent further agree that Respondent will, as expeditiously as possible, but in no event later than December 31, 2023, correct the violation alleged in paragraph 15.

23. Within 15 days of completion of all actions taken to correct the violations alleged in paragraphs 14 and 16-21, as identified in paragraph 22, Respondent will provide the EPA with a notification that the first set of actions have been completed. Within 15 days of completion of all actions taken to correct the violation alleged in paragraph 15, as identified in paragraph 22, Respondent will provide the EPA with a notification that the second set of actions have been completed.

24. The two notification of completions required by paragraph 23 of this Order must also contain the following certification signed by an officer of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based upon my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there

are significant penalties for submitting false information, including the possibility of fines and imprisonment. (Signature and date)

25. All submissions and correspondence must be emailed to Ramirez.StevenA@epa.gov.

### **OTHER TERMS AND CONDITIONS**

26. Respondent admits the jurisdictional allegations contained in this Order.
27. Respondent neither admits nor denies the findings in the Findings section of this Order.

### **GENERAL PROVISIONS**

28. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$109,024 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and 40 C.F.R. part 19, as well as criminal sanctions as provided in section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
29. Nothing in this Order relieves Respondent of the duty to comply with all applicable provisions of the Act or other federal, state or local laws or statutes, nor 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.
30. 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 imminent and substantial endangerment to the public health, welfare, or the environment.
31. The provisions of this Order apply to and are binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the effective date of this Order until the termination date as set out in paragraph 38 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of

ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent must provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent will not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

32. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. part 2, subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. part 2, subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

33. Each undersigned representative certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally Respondent and Complainant to this document.

34. Deadlines for submittals or performance may be extended by the EPA, at its sole discretion, without further amendment to this Order. The EPA will provide Respondent written confirmation and documentation of any such extensions of time.

35. The parties consent to service of this Order by email at the following valid email addresses: hanson.robyn@epa.gov (for Complainant) and RAngell@parsonsbehle.com (for Respondent).

#### **EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE**

36. Pursuant to section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that they have been provided an opportunity to



confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

### **JUDICIAL REVIEW**

37. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1).

### **TERMINATION**

38. This Order terminates on the date of a determination by the EPA that Respondent has achieved compliance with all terms of this Order.


UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY, REGION 8,  
Complainant

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

By: \_\_\_\_\_  
Scott Patefield, Branch Manager  
Air and Toxics Enforcement Branch  
Enforcement and Compliance Assurance Division

DYNO NOBEL, INC.  
Respondent

Date: 12/20/2022

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

Braden Lusk  
Title

**In the Matter of:  
Dyno Nobel, Inc. – Cheyenne Plant**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT was sent via email to the Regional Hearing Clerk (R8\_Hearing\_Clerk@epa.gov), and that a true copy of the same was sent via email, read receipt requested, to RAngell@parsonsbehle.com.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joan Detty