



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2011-0016

IN THE MATTER OF:

DYNO NOBEL, INC.

8305 Otto Road

Cheyenne, Wyoming

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 29th DAY OF June, 2011.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
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IN THE MATTER OF:)

Dyno Nobel, Inc.)
8305 Otto Road)
Cheyenne, Wyoming 82001)

Respondent)

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

DOCKET NO.: CAA-08-2011-0016

COMPLAINT

This civil administrative enforcement action is issued pursuant to section 113(a)(3)(B) and (d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B) and (d), for violations of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of 42 U.S.C. § 7412(r) (section 112(r)(7)). This proceeding is subject to EPA's "*Consolidated Rule of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits*" (Rules of Practice), 40 C.F.R. part 22, and this COMBINED COMPLAINT AND CONSENT AGREEMENT (CCCA) is authorized by 40 C.F.R. § 22.13(b). The undersigned EPA officials have been properly delegated the authority to issue this action.

STATUTORY AND REGULATORY FRAMEWORK

1. The regulations promulgated by EPA pursuant to section 112(r)(7), are set forth in 40 C.F.R. part 68.
2. Under 40 C.F.R. § 68.3, the following definitions apply:
 - a. "Stationary source" means "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.”

b. “Regulated substance” means “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 § 68.130.

3. 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.

4. Respondent is a person, and thus subject to regulation under section 112(r).

5. Pursuant to section 112(r)(7) the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity is required to prepare and implement a risk management plan (RMP) to detect and prevent or minimize accidental releases of such substances.

FINDINGS OF VIOLATION

6. On November 3, 4, and 10 of 2010, authorized representatives of the EPA conducted an inspection of the Respondent’s facility, with the consent of the Respondent, to determine compliance with the section 112(r)(7) and 40 C.F.R. part 68 (EPA inspection). During the EPA inspection, EPA representatives observed the following violations of the CAA.

SPECIFIC ALLEGATIONS

7. On the days of the EPA inspection, Respondent:

a. had not assured that the Process Hazard Analysis (PHA) teams’ findings and recommendations documented during the 2005 “Litwin” PHA (2005 PHA) were

resolved in a timely manner and that the resolution was documented as required by § 68.67(e);

- i. 40 C.F.R. § 68.67(e) requires that Respondent “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; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and work may be affected by recommendations or actions.”
 - ii. The action items from the 2005 PHA were reviewed during the EPA inspection. The status of two items (reference numbers 316-8 and 316-10) were listed as “In Progress” and no resolution was documented.
- b. had not provided refresher training to each employee involved in operating a process at least every three years as required by § 68.71(b);
- i. In accordance with 40 C.F.R. § 68.71(b), “refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.”
 - ii. During the inspection EPA reviewed individual training folders for randomly selected employees including hard copies of training received by employees and a print out of computer-based training (CBT) received

by employees. Three of the employee files selected revealed that these employees had not received a refresher training at least every three years to assure that the employee understands and adheres to the current operating procedures of the process.

c. had not implemented written procedures to maintain the on-going integrity of process equipment as required by § 68.73(b);

- i. In accordance with 40 C.F.R. § 68.73(b), “the owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.”
- ii. Written procedures for the inspections of pressure vessels have not been implemented. The remaining life of the “discharge bottle” identified as V150ND had not been calculated as required by Dyno Nobel’s mechanical integrity procedures. Non-destructive examination (UT Testing) was performed in 2004 on V150ND but the data retrieved was not analyzed. Also, the remaining life of ammonia storage bullet identified as ST-303A had not been calculated, as required by Dyno Nobel’s mechanical integrity procedures. Finally, the remaining life of the primary ammonia separator (north) identified as D-302 had not been calculated, as required by Dyno Nobel’s mechanical integrity procedures.

d. had not performed inspections and tests on process equipment as required by § 68.73(d)(1);

- i. In accordance with 40 C.F.R. § 38.73(d)(1), “inspections and tests shall be performed on process equipment.”

- ii. On June 6, 2010, a high-pressure ammonia pipeline (AL-1501-3"-C8A3) ruptured, leading to the release of approximately 2,309 pounds of ammonia to the environment. Prior to June 6, 2010, inspections and tests had not been performed on AL-1501-3"-C8A3. The original wall thickness of the pipe was 0.600 inches. A point downstream of the rupture was measured to be 0.131 inches. This wall loss is attributable to corrosion and went undetected due to the facility's failure to conduct thickness testing on the piping.
 - iii. Dyno Nobel's piping inspection procedures adopt the American Petroleum Institute (API) 570 procedure which specifically requires thickness measurements to be taken at a maximum interval of 5 years for this class of piping. Other inspection criteria in the piping inspection procedures were not followed.
 - iv. Additionally, inspections and tests had not been performed in accordance with API 570 on the following piping loops, which combined are estimated to be a hundred of feet of piping: PL-P-10; PL-P-13; PL-P-14; 2019-AL-01.
- e. had not corrected deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner as required by § 68.73(e);
- i. In accordance with 40 C.F.R. § 68.73(e), "the owner or operator shall correct deficiencies in equipment that are outside acceptable limits, as defined by the process safety information in § 68.65, before further use or

in a safe and timely manner when necessary means are taken to assure safe operation.”

- ii. In January of 2008, Quest Reliability, LLC (Quest), performed a brittle fracture assessment of nine vessels at Dyno Nobel in accordance with API 579 Fitness-for-Service at Respondent’s request. Four vessels failed the assessment under operating conditions. Those vessels are D8-302 Primary Ammonia Separator, D8-304 South Primary Separator, D8-305 Ammonia let Down Drum, and V-107A/B Secondary Ammonia Separator. All nine vessels failed the assessment under both design and auto-refrigeration conditions.
 - iii. The recommendations from Quest’s assessment in January of 2008 were to have further testing performed; however, no further testing had been performed to assure the safe operation of these vessels by the time of EPA’s November 3, 2010 inspection. According to Dyno Nobel personnel, after EPA’s November inspection the inspection plan for the vessels was updated and inspection tasks scheduled for December 1, 2010 included “[c]arry[ing] out a review on the brittle fracture assessment carried out by Quest, to determine the potential for brittle fracture.”
- f. had not completed a compliance audit every three years as required by § 68.79(a).
- i. In accordance with 40 C.F.R. § 68.79(a), the owner or operator shall certify that they have evaluated compliance with the provisions of 40 C.F.R. part 68, Subpart D at least every three years to verify that

procedures and practices developed under Subpart D are adequate and are being followed.

- ii. Compliance audits were only available for 2001 and 2004. According to Respondent, in 2007 there was a personnel turnover and the individual responsible for compliance audits left Dyno Nobel. Although a new individual responsible for compliance audits was hired, the compliance audit for 2007 was not performed. However, Respondent has shown that Respondent had conducted a review for the 2001 and 2004 audits and from 2007 on had worked on closing out the action items.
- iii. At the time of the EPA inspection a compliance audit for 2010 had not been conducted.

g. had an emergency response plan that did not contain procedures for the testing, inspection, and maintenance of emergency response equipment as required by § 68.95(a)(2).

- i. Respondent's emergency response plan did not include procedures for the testing, inspection, and maintenance of emergency response equipment.

CONSENT AGREEMENT

8. Respondent admits the jurisdictional allegations in this CCCA and neither admits nor denies the factual and legal allegations herein.

9. Respondent waives its right to a hearing before any tribunal to contest any issues of law or fact set forth in this CCCA.

PENALTY

10. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This CCCA contains all terms of the settlement agreed to by the parties. Attachment A (Collection Information) provides terms for payment including the assessment of fees and interest charges for late payments. Respondent consents and agrees to pay a civil penalty in the amount of **One Hundred-Ten Thousand Nine Hundred Dollars (\$110,900).**

CERTIFICATION OF COMPLIANCE

11. On or before one hundred eighty days after the date of the Final Order approving this CCCA, Dyno Nobel will submit to EPA a Certification of Compliance, establishing Dyno Nobel's completion of the items described in Paragraphs a – h below. In the Certificate of Compliance Respondent shall demonstrate:

- a. that the Process Hazard Analysis team's findings and recommendations for all covered processes at the facility have been resolved and that the resolution is documented as required by 40 C.F.R. § 68.67(e);
- b. that refresher training has been and will be provided to each employee involved in operating a process at least every three years as required by 40 C.F.R. § 68.71(b);
- c. that written procedures to maintain the on-going integrity of process equipment have been properly implemented as required by 40 C.F.R. § 68.73(b);
- d. that inspections and tests have been performed on process equipment as required by 40 C.F.R. § 68.73(d)(1);

- e. that deficiencies in equipment that are outside acceptable limits have been corrected in a timely and safe manner before further use as required by 40 C.F.R. § 68.73(e);
- f. that Respondent has certified that Respondent has evaluated compliance with the provisions of 40 C.F.R. part 68 in calendar year 2010 and will continue to do so at least every three years as required by 40 C.F.R. § 68.79(a);
- g. that the emergency response plan contains procedures for the testing, inspection, and maintenance of emergency response equipment as required by 40 C.F.R. § 68.95(a)(2); and
- h. that Respondent's written risk analysis procedures, utilized to maintain the on-going integrity of process equipment, follow the recognized and generally accepted good engineering practices of the API 580 or other applicable industry standards as required by 40 C.F.R. § 68.73(d)(2).

12. The Certification of Compliance shall contain the date, printed name, and signature of a Dyno Nobel, Inc officer, as well as the following statement:

I certify that I am authorized to verify the completion of work on behalf of Dyno Nobel, Inc. I certify under penalty of perjury that the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

13. The Certification of Compliance will be sent or emailed to Greg Bazley at the following address:

Greg Bazley, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
E-mail: bazley.greg@epa.gov

OTHER TERMS

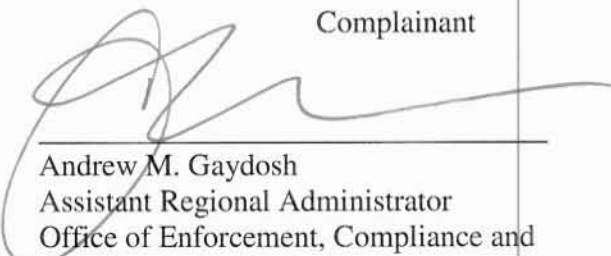
14. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CAA and its implementing regulations. This CCCA, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors, heirs, and assigns. Any change in ownership or within corporate status of respondent, including but not limited to, any transfer of assets are real property, shall not alter respondent's responsibilities under this agreement. This CCCA contains all terms of the settlement agreed to by the parties.
15. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
16. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate penalty associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.
17. The undersigned representative of Dyno Nobel certifies that he or she is fully authorized to enter into and legally bind Dyno Nobel to the terms and conditions of the CCCA.
18. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
19. Each party shall bear its own costs and attorney fees in connection with this administrative matter.
20. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

21. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in this CCCA.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Office of Enforcement, Compliance, and
Environmental Justice

Complainant

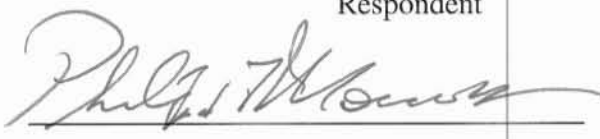
Date: 6/20/11

By: 
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

DYNO NOBEL, INC

Respondent

Date: 5/31/11

By: 
Printed Name: PHILIP MORROW
Title: VP - MANUFACTURING

COLLECTION INFORMATION

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT/FINAL ORDER** in the matter of **DYNO NOBEL, INC.;** **DOCKET NO.: CAA-08-2011-0016.** The documents were filed with the Regional Hearing Clerk on June 29, 2011.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Charles Figur, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on June 29 2011, to:

Seth P. Hobby
Associate General Counsel
Dyno Nobel, Inc.
2795 East Cottonwood Parkway, Suite 500
Salt Lake City, UT 84121

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

June 29, 2011



Tina Artemis
Paralegal/Regional Hearing Clerk

