

where the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action and both facilities are Title V facilities, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order (“CA/FO”) serves as notice that EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r); Section 103 of CERCLA, 42 U.S.C. § 9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302; and Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355. Furthermore, this CA/FO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA’s intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Dyno Nobel Inc. This action involves the company’s facilities located at 17562 Gum Road in Carthage, Missouri and 11025 Highway D in Louisiana, Missouri, which are owned and operated by Dyno Nobel Inc. Dyno Nobel Inc. is incorporated under the laws of the State of Delaware and is authorized to conduct business in the state of Missouri.

Statutory and Regulatory Requirements

Risk Management Program

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of 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). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection and correction requirements for these listed regulated substances.



6. 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) of the CAA, 42 U.S.C. § 7412(r)(7). 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.

7. 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.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the 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.

9. The regulations at 40 C.F.R. § 68.10 set forth how the chemical accident prevention provision regulations apply to covered processes. A covered process is eligible for Program 3 if the process does not meet the requirements of Program 1 and if either the process falls under a specified North American Industry Classification System ("NAICS") code or the process is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

10. 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 administrative penalty of up to \$25,000 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). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004, and \$32,500 per day for each violation that occurs after March 15, 2004. For each violation of Section 112(r) of the CAA that occurs after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

Release Reporting

11. Section 103(a) of CERCLA and the regulation set forth at 40 C.F.R. § 302.6 require any person in charge of a vessel or an onshore or offshore facility, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than the reportable quantity established pursuant to Section 102 of CERCLA, to immediately notify the National Response Center of such release.

12. Section 304(a) of EPCRA and the regulations set forth at 40 C.F.R. Part 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored and at which there is a release of a reportable quantity of any EPCRA extremely hazardous substance or CERCLA hazardous substance to immediately notify the State Emergency Response Commission of any State likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committee for any area likely to be affected by the release.

13. Section 109(b)(1) of CERCLA authorizes a civil penalty of not more than \$25,000 per day for each day during which a violation continues for any violation of the requirements of Section 103(a) of CERCLA. Section 109(b)(1) of CERCLA, as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil penalties of up to \$27,500 per day for each violation that occurred between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation that occurred between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation that occurred after January 12, 2009.

14. Section 325(b)(2) of EPCRA authorizes a civil penalty of not more than \$25,000 per day for each day during which the violation continues for violations of the requirements of Section 304 of EPCRA. Section 325(b)(2) of EPCRA, as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day for each violation that occurred between January 30, 1997, and March 15, 2004; \$32,500 per day for each violation that occurred between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation that occurred after January 12, 2009.

Definitions

Risk Management Program

15. The regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, 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.

16. 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, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

17. 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.

18. 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.

Release Reporting

19. The regulations at 40 C.F.R. § 302.3 define “hazardous substance” as any substance designated pursuant to 40 CFR Part 302. 40 C.F.R. § 302.4 lists the elements and compounds and hazardous wastes designated as hazardous substances under Section 102(a) of CERCLA.

20. The regulations at 40 C.F.R. § 302.3 define “reportable quantity” as that quantity, as set forth in 40 CFR Part 302, the release of which requires notification pursuant to Part 302. 40 C.F.R. § 302.4 lists the reportable quantities for substances designated as hazardous substances under Section 102(a) of CERCLA.

21. The regulations at 40 C.F.R. § 355.61 define “hazardous chemical” as any hazardous chemical as defined by 29 C.F.R. § 1910.1200(c), which includes any chemical that is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

22. The regulations at 40 C.F.R. § 355.61 define “extremely hazardous substance” as a substance listed in Appendices A and B to Part 355.

23. The regulations at 40 C.F.R. § 355.61 define “reportable quantity” as the quantity established in Appendices A and B to Part 355 for any extremely hazardous substance.

General Factual Allegations

24. Respondent 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), Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

25. At all times relevant to this action, Respondent’s facilities located at 17562 Gum Road in Carthage, Missouri, and 11025 Highway D in Louisiana, Missouri, were “stationary sources” pursuant to 40 C.F.R. § 68.3 and “facilities” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

26. 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.

27. 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.

28. Oleum is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for oleum, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

29. On or about March 30-April 1, 2010, EPA conducted an inspection of Dyno Nobel's Carthage, Missouri, facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

30. On or about September 27-29, 2010, EPA conducted an inspection of Dyno Nobel's Louisiana, Missouri, facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

31. Information collected during the EPA inspections showed that Respondent had exceeded the threshold quantities for anhydrous ammonia and nitric acid at both the Carthage and Louisiana facilities.

32. Information collected during the EPA inspection of the Carthage facility showed that Respondent had exceeded the threshold quantity for oleum at that facility.

33. Sulfuric acid is a hazardous substance as defined by Section 101(14) of CERCLA, with a reportable quantity of 1,000 pounds as designated by 40 C.F.R. § 302.4. Sulfuric acid is an extremely hazardous substance as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3) and as designated pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and listed in 40 C.F.R. Part 355, Appendix A, with a reportable quantity of 1,000 pounds as listed in 40 C.F.R. Part 355, Appendix A.

34. At all times relevant hereto, hazardous chemicals as defined by Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), were produced, used, or stored by Respondent's Carthage facility.

35. On or about May 9, 2012, there was a release of sulfuric acid from Respondent's Carthage facility in excess of the reportable quantities designated by 40 C.F.R. § 302.4 and Appendix A to 40 C.F.R. Part 355. Respondent had knowledge of the release on May 9, 2012.

Violations

Risk Management Program

36. EPA alleges that Respondent has violated the CAA and federal regulations promulgated pursuant to the CAA, as follows:

37. Respondent 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 because it is an owner and operator of stationary sources that had more than a threshold quantity of a regulated substance in a process.

38. Respondent is subject to Program 3 of the risk management program requirements because, pursuant to 40 C.F.R. § 68.10(d), the covered processes at its Carthage and Louisiana facilities did not meet the requirements of Program 1 and were subject to the OSHA process safety management standard.

39. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. 68.12, to develop and implement a risk management program for each stationary source that includes a management system, a hazard assessment, a prevention program and an emergency response program, and to submit an RMP.

40. Information collected during the inspection of Respondent's Carthage and Louisiana facilities revealed that Respondent failed to develop and implement risk management programs for each facility that complied with all the requirements of 40 C.F.R. Part 68. Specifically:

COUNT I

41. Respondent failed to develop and implement a management system as provided in 40 C.F.R. § 68.15 for its Carthage facility, as required by 40 C.F.R. § 68.12(d)(1).

COUNT II

42. Respondent failed to implement various prevention requirements of 40 C.F.R. §§ 68.65 through 68.87 at its Carthage facility, as required by 40 C.F.R. § 68.12(d)(3), as follows:

- (a) Respondent failed to address administrative controls used in the process in its Process Hazard Analyses, as required by 40 C.F.R. § 68.67(c)(3);

- (b) Respondent failed to address the consequences of the failure of administrative controls used in the process in its Process Hazard Analyses, as required by 40 C.F.R. § 68.67(c)(4);
- (c) Respondent failed to document the resolution of the findings and recommendations produced by the Process Hazard Analyses, as required by 40 C.F.R. § 68.67(e);
- (d) Respondent failed to update and revalidate each Process Hazard Analysis at least every five years after completion of the initial Process Hazard Analysis, as required by 40 C.F.R. § 68.67(f);
- (e) Respondent failed to perform inspections and tests on all process equipment, as required by 40 C.F.R. § 68.73(d)(1);
- (f) Respondent failed to follow recognized and generally accepted good engineering practices when performing inspections and tests on process equipment, as required by 40 C.F.R. § 68.73(d)(2);
- (g) Respondent failed to document each inspection and test that has been performed on process equipment, as required by 40 C.F.R. § 68.73(d)(4);
- (h) Respondent failed to document that equipment complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
- (i) Respondent failed to document first-aid for exposure to regulated substances in its emergency response plan, as required by 40 C.F.R. § 68.95(a)(1)(ii); and
- (j) Respondent failed to include procedures for the use of emergency response equipment in its emergency response plan, as required by 40 C.F.R. § 68.95(a)(2).

COUNT III

43. Respondent failed to implement various prevention requirements of 40 C.F.R. §§ 68.65 through 68.87 at its Louisiana facility, as required by 40 C.F.R. § 68.12(d)(3), as follows:

- (a) Respondent failed to document that equipment complies with recognized and generally accepted engineering practices, as required by 40 C.F.R. § 68.65(d)(2);



- (b) Respondent failed to resolve all Process Hazard Analysis findings and document a revised resolution date, as required by 40 C.F.R. § 68.67(e);
- (c) Respondent failed to document the consequences of deviation in the facility's written operating procedures, as required by 40 C.F.R. § 68.69(a)(2)(i);
- (d) Respondent failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected, as required by 40 C.F.R. § 68.79(d); and

44. Each of Respondent's failures to comply with the requirements of 40 C.F.R. Part 68, as set forth above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Release Reporting

COUNT I

45. Respondent did not notify the National Response Center of the May 9, 2012, release of sulfuric acid at the Carthage facility as soon as it had knowledge of the release.

46. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and of the requirements of 40 C.F.R. § 302.6.

COUNT II

47. Respondent did not immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the May 9, 2012, release of sulfuric acid at the Carthage facility.

48. Respondent's failure to immediately notify the State Emergency Response Commission and the Local Emergency Planning Committee of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and of the requirements of 40 C.F.R. Part 355, Subpart C.

CONSENT AGREEMENT

49. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.



50. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

51. Respondent neither admits nor denies the factual allegations set forth above.

52. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CA/FO.

53. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

54. This CA/FO addresses all civil and administrative claims under the CAA, CERCLA, and EPCRA for the violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA, CERCLA, EPCRA, or other applicable law.

55. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

56. Respondent certifies by signing this CA/FO that, to the best of its knowledge, Respondent's Carthage and Louisiana facilities are in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and all regulations promulgated thereunder.

57. The effect of settlement described in Paragraph 54 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 56 of this CA/FO.

58. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

59. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

60. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to legally bind Respondent to it.



FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401 *et seq.*, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Two Hundred Fifty-Seven Thousand, One Hundred Sixty-Seven Dollars (\$257,167) within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to "United States Treasury," and shall be remitted to:

United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket numbers CAA-07-2013-0018, EPCRA-07-2013-0001, and CERCLA-07-2013-0010.

2. A copy of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Erin Weekley
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of the CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.



5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several connected loops and strokes.


COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 9/26/13



for Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7


Date 9/26/13




Erin Weekley
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:
DYNO NOBEL INC.

Date 09/20/2013



Name


Signature
VP, IS MANUFACTURING, AMERICAS

Title

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date 9-26-13

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

IN THE MATTER OF Dyno Nobel Inc., Respondent
Docket Nos. CAA-07-2013-0018
EPCRA-07-2013-0001
CERCLA-07-2013-0010

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

weekley.erin@epa.gov

Copy by First Class Mail to Respondent:

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

Dated: 9/26/13



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7