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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

UNITED STATES OF AMERICA,	)	
	)	Civ. No. 3:19-cv-00984
Plaintiff,	)	<b>NOTICE OF LODGING</b>
	)	
v.	)	
	)	
DYNO NOBEL, INC.,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

Plaintiff, the United States of America, by and through the undersigned attorney, respectfully lodges the proposed Consent Decree, attached hereto, between the United States as Plaintiff, and Dyno Nobel, Inc., as Defendant, which if approved, will resolve the claims in the above-captioned matter. The United States is *not* requesting any action by the Court at this time on the proposed Consent Decree.

Consistent with Department of Justice regulations (28 C.F.R. § 50.7), the United States is inviting the public to comment on the Consent Decree for a period of thirty days before seeking judicial approval. The public comment period will begin upon publication of a notice in the Federal Register, which we anticipate will occur shortly. Upon expiration of that comment

period, the United States will advise the Court of any comments received and the United States' position as to whether the proposed Consent Decree should be approved and entered by this Court. The United States may withhold its consent to the proposed Consent Decree if the comments disclose facts or considerations which indicate that the proposed Consent Decree is improper, inappropriate, inadequate, or not in the public interest.

The United States respectfully requests that the Court await, before considering whether to approve and enter the proposed Consent Decree as an order of this Court, a subsequent submission by the United States regarding any comments received during the public comment period and the United States' position regarding entry of the proposed Consent Decree.

Dated: June 24, 2019

Respectfully submitted,

NATHANIEL DOUGLAS  
Deputy Section Chief  
Environmental Enforcement Section

/s/ Frederick S. Phillips, Senior Trial Attorney  
FREDERICK S. PHILLIPS  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 24, 2019, the foregoing Notice of Lodging of Proposed Consent Decree was filed electronically using the Court's ECF system and served on Defendant's counsel by electronic mail to:

David.Rabbino@jordanramis.com

(David Rabbino, Esq., counsel for Dyno Nobel, Inc., Defendant)

/s/ Frederick S. Phillips  
FREDERICK S. PHILLIPS  
Attorney for Plaintiff



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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant, Dyno Nobel, Inc. (“Dyno Nobel” or “Defendant”) violated Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9603; Sections 304 and 313 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11004 and 11023; Section 112(r) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r); and the respective implementing regulations for such requirements.

The Complaint against Defendant alleges that, at its facility near St. Helens, Oregon, Defendant violated the above statutes by: 1) failing to timely report releases above the applicable reporting threshold of the hazardous substance ammonia (anhydrous); 2) failing to accurately report annual stack or point source releases of ammonia (anhydrous) in its annual Toxics Release Inventory filing; and 3) failing to comply with all requirements to reduce the risk of a chemical accident at its facility.

Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties (as defined below) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or

admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Defendant pursuant to 28 U.S.C. §§ 1331, 1345, 1355; CERCLA Section 109(c)(1), 42 U.S.C. § 9609(c)(1); EPCRA Section 325(b)(3) and (c)(4), 42 U.S.C. §§ 11045(b)(3) and (c)(4); and CAA Section 113(b), 42 U.S.C. § 7413(b). Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1395; CERCLA Section 109(c)(1), 42 U.S.C. § 9609(c)(1); EPCRA Section 325(b)(3) and (c)(4), 42 U.S.C. §§ 11045(b)(3) and (c)(4); and CAA Section 113(b), 42 U.S.C. § 7413(b), because events giving rise to this action occurred within this judicial district, and because Defendant owns and operates a facility within this district.

2. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction and agrees that the Complaint states claims upon which relief may be granted.

#### II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility (as defined below), whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such

transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed transfer agreement, to EPA Region 10 and the United States Department of Justice, in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor, Auditor, individual, or entity retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, contractors, or Auditors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in EPCRA, CERCLA, the CAA, or regulations promulgated pursuant to EPCRA, CERCLA, or the CAA shall have the meanings assigned to them under such statute or regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Audit" shall mean a third-party audit required by Section V (Compliance Requirements) of this Consent Decree and Appendix A.

b. “Audit Finding” shall mean each way in which an Auditor conducting an Audit pursuant to Section V of this Consent Decree determines that any document, record, report, diagram, test, system, review, evaluation, policy, practice, plan, training, procedure, personnel, equipment, or other item, action or omission at the Facility deviates from, or does not comply or conform with an applicable requirement or standard set forth in Appendix A, Paragraphs 15 or 17.

c. “Audit Participant” shall mean any participant to an audit that is not an employee or subcontractor of the Auditor.

d. “Audit Report” shall mean the report of each Audit submitted by the Auditor pursuant to Paragraph 20 of Appendix A to the Consent Decree.

e. “Auditor” shall mean the independent third-party approved by EPA to conduct the Audits pursuant to Paragraph 12 of this Consent Decree and Appendix A.

f. “Complaint” shall mean the complaint filed by the United States initiating this action.

g. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto listed in Paragraph 94 (Appendices).

h. “Date of Lodging” shall mean the date that this Consent Decree is lodged with the Court for public comment.

i. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day

would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

j. “Defendant” shall mean Dyno Nobel, Inc.

k. “Dyno Nobel Covered Process” shall mean, solely for purposes of determining the scope of the Audit required under Paragraph 12 and Appendix A, any activity at the facility, including any use, storage, manufacturing, handling, or on-site movement, involving a regulated substance present in more than a threshold quantity as determined under § 68.115, as depicted in the diagram attached hereto as Appendix B.

l. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

m. “Effective Date” shall have the definition provided in Section XV (Effective Date).

n. “Facility” shall mean Defendant’s ammonia and chemical manufacturing facility located at 63149 Columbia River Highway, Deer Island, Oregon, also known as the "St. Helens Plant".

o. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

p. “Parties” shall mean the United States and Defendant.

q. “Responsible official” shall mean a corporate officer of the Defendant or any other person who performs similar policy or decision-making functions for the corporation or a duly authorized representative of such person, including but not limited

to the Plant Manager, if the representative is responsible for the overall operation of the Facility.

r. "Section" shall mean a portion of this Decree identified by a roman numeral.

s. "Supplemental Environmental Project" or "SEP" shall mean the activities described and set forth in Paragraph 21 and Appendix C.

t. "United States" shall mean the United States of America, acting on behalf of EPA.

#### IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Defendant shall pay the sum of \$492,000 as a civil penalty, together with interest accruing from the date of lodging, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Oregon after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Jeff Droubay  
Senior Vice President  
Legal and Business Affairs  
Dyno Nobel Americas  
2795 East Cottonwood Parkway, Suite 500  
Salt Lake City, UT 84121

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XIV; and (iii) to EPA in accordance with Section XIV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Dyno Nobel, Inc. and shall reference the civil action number xx: 19-cv-xxxx, and DOJ case number 90-5-2-1-09238/4.

10. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

#### V. COMPLIANCE REQUIREMENTS

11. At the Facility, Defendant shall comply with the requirements of:

a. The emergency notification requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004, and their implementing regulations at 40 C.F.R. Parts 302 and 355, respectively;

b. The Toxic Release Inventory Reporting requirements of Section 313 of

EPCRA, 42 U.S.C. § 11023, and its implementing regulations at 40 C.F.R. Part 372; and

c. The Risk Management Program requirements of Section 112(r)(7) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r)(7), and its implementing regulations at 40 C.F.R. Part 68.

12. Compliance Audits. Defendant shall retain an independent third-party Auditor who shall conduct compliance audits at the Facility in accordance with the requirements set forth in Appendix A of this Consent Decree. The Audits shall take place during typical operating conditions for the Facility and shall evaluate the Facility’s compliance or conformance with the Audit standards set forth in Paragraphs 15 and 17 of Appendix A and with the compliance requirements set forth in Paragraph 11 of this Consent Decree. Defendant shall comply with and implement all provisions of the Independent Third-Party Audit Protocol embodied in Appendix A attached hereto. Defendant shall ensure that the audits are completed in accordance with the deadlines set forth at Paragraph 27 of Appendix A.

13. Revised Filings.

a. No later than August 15, 2019, Defendant shall complete the stack testing of the Urea Surge Tank Vent (also referred to as the “Vent Scrubber C-654”), as provided in the Superseding Plea Letter dated February 14, 2018, signed by Defendant on February 16, 2018, and attached hereto as Appendix D.

b. No later than November 15, 2019, the Defendant shall submit to EPA and the United States Department of Justice, in accordance with Section XIV (Notices):

- (1) A copy of the report from the stack test, which report shall include all items monitored and recorded during the test;
- (2) Revised Form Rs for reporting years 2013 through 2018 that reflect the results of such stack testing as a basis for emissions calculations for the Vent Scrubber C-654, and that otherwise meet the requirements of EPCRA 313, 42 U.S.C. 11023, and 40 C.F.R. Part 372. Such revised reports shall also be submitted in the manner specified in 40 C.F.R. Part 372; and
- (3) A revised continuous release report that reflects the results of such stack testing as a basis for emissions calculations for the Vent Scrubber C-654, and that otherwise meets the requirements of 40 C.F.R. §§ 302.8 and 355.32. Such revised report shall also be submitted in the manner specified in 40 C.F.R. Parts 302 and 355.

c. No later than 180 days after the Effective Date, Defendant shall submit a revised Risk Management Plan in the method and format to the central point specified by EPA as of the date of submission that includes the gas preparation area as part of the Covered Process and shall ensure that the requirements of 40 C.F.R. Part 68 are met with respect to the gas preparation area.

14. Notwithstanding the review or approval by any agency of the United States of any plans, reports, policies or procedures formulated pursuant to the Consent Decree, Defendant will remain solely responsible for compliance with the terms of the Consent Decree, all applicable permits, and all applicable federal, state, regional, and local laws and regulations.

15. Approval of Deliverables. After review of the Auditor's Audit Protocols and Checklists referred to in Appendix A and the Defendant's response to the Audit Reports referred to in Appendix A ("Deliverables"), EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. EPA's decision to disapprove any portion of the submission or to impose any specified conditions on approval shall be subject to the Dispute Resolution provisions set forth in Section X below. Defendant may seek relief under the provisions of Section IX (Force Majeure) based on a contention that its failure to meet requirements of the Consent Decree resulted from EPA's failure to timely approve or disapprove a submission that was timely and complete.

16. If the submission is approved pursuant to Paragraph 15, Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 15(b) or (c), Defendant shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions.

17. If the submission is disapproved in whole or in part pursuant to Paragraph 15(c) or (d), Defendant shall, within 45 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is

approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

18. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies subject to the right of EPA to seek stipulated penalties as provided in the Section VIII (Stipulated Penalties).

19. Any stipulated penalties applicable to the original submission, as provided in Section VIII (Stipulated Penalties), shall accrue during the 45 day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission,.

20. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

## VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

21. Defendant shall implement a Supplemental Environmental Project (“SEP”), the Purchase of Emergency Response Equipment, in accordance with all provisions of Paragraphs 21 through 30 and Appendix C. The SEP will provide the emergency response equipment specified in Appendix C to the identified emergency response organizations to assist them in responding to emergencies near the Facility. Defendant will spend no less than \$939,852, which amount excludes Defendant’s costs administering the SEP.

22. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. “Satisfactory completion” means completing the SEP in accordance with the requirements and schedule set forth in this Consent Decree and Appendix C. Defendant may use contractors or consultants in planning and implementing the SEP.

23. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA’s approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP, exclusive of Defendant’s overhead and administrative costs, is \$939,852;

b. that, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree;

d. that Defendant has not received and will not receive credit for the SEP in any other enforcement action;

e. that Defendant will not receive any reimbursement for any portion of the SEP from any other person; and

f. that (i) Defendant is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 21; and (ii) Defendant has inquired of the SEP recipient(s) and/or SEP implementer(s) whether any are a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient(s) and/or the implementer(s) that none are a party to such a transaction. For purposes of these certifications, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired

24. SEP Completion Report. Within 30 days after the date set for completion of the SEP, Defendant shall submit a SEP Completion Report to the United States, in accordance with Section XIV (Notices). The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP as implemented;

- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all eligible SEP costs expended;
- d. certification that the SEP has been fully implemented in accordance with all provisions of Paragraphs 21 through 30 and Appendix C and documentation providing evidence of the project's completion (including but not limited to photos, vendor invoices or receipts, correspondence) and documentation of all SEP expenditures; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP.

25. EPA may require information in addition to that described in the preceding Paragraph in order to evaluate Defendant's Completion Report.

26. After receiving the SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, the United States shall include in the written notice the reasons for its determination that the Defendant has not satisfactorily completed the SEP and stipulated penalties may be assessed under Section VIII (Stipulated Penalties).

27. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section X (Dispute Resolution).

28. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 34.

29. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States v. Dyno Nobel, Inc., taken on behalf of the U.S. Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act, the Emergency Planning and Community Right-to-Know Act, and the Clean Air Act.”

30. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

#### VII. REPORTING REQUIREMENTS

31. Semi-Annual Reporting. By July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XVIII, Defendant shall submit electronically a semi-annual report for the preceding six months that shall include:

- a. a description of progress on all activities undertaken under Paragraphs 11 through 13 and Appendix A of this Consent Decree; and
- b. a discussion of Defendant’s progress in satisfying its obligations in connection with the Emergency Response Equipment SEP under Section VI including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of any milestones set forth in Appendix C, and a summary of costs incurred since the previous report.

32. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation or potential violation and its likely duration, in writing, within ten working Days of the Day Defendant first becomes aware of the violation or potential violation, with an explanation of the violation or potential violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation or potential violation. If the cause of a violation or potential violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation or potential violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation or potential violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation or violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section IX (Force Majeure).

33. Whenever any violation or potential violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Consent Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or potential violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

34. Certification of Reports and Other Submissions.

a. Each report submitted by Defendant under this Section and Appendix A or

C shall be signed by a Responsible Official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

35. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by CERCLA, EPCRA, the CAA, or regulations promulgated thereunder, or by any other federal, state, or local law, regulation, permit, or other requirement.

36. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law, subject to the provisions of Paragraph 69, below.

#### VIII. STIPULATED PENALTIES

37. Upon the Effective Date of the Consent Decree, Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in this Section, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule

approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

38. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$3,000 per Day for each Day that the payment is late.

39. Stipulated Penalties for Violations of Compliance Requirements.

a. Except as provided for in Paragraph 39.b., no stipulated penalties under this Consent Decree shall accrue for violations of the compliance requirements set forth in Paragraph 11 or Audit Findings listed in an Auditor's Report submitted to EPA pursuant to Appendix A, provided that any such noncompliance is corrected as required by Paragraphs 23 and 27 of Appendix A. Except as set forth in Paragraph 71, the United States hereby explicitly reserves its right to bring a civil action based on any violation of a compliance requirement in Paragraph 11, violations of other provisions of this Consent Decree, Audit Findings, or applicable law (including but not limited to, actions for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt).

b. The following stipulated penalties shall accrue per violation per Day for violations of compliance requirements set forth in: (1) Paragraph 11, where such violation commenced after the date of completion of the Audit as set forth in Paragraph 27 of Appendix A or where such violation is not contained in an Audit Finding listed in the Auditor's Report; or (2) Paragraphs 12 and 13.

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
1-15	\$1,000
16-30	\$2,250
31 and Over	\$4,500

40. Stipulated Penalties for Failure to Perform Audits in Accordance with Appendix A of this Consent Decree. Defendant shall be liable for the following stipulated penalties that shall accrue per violation per Day for the following violations of the requirements pertaining to the compliance audits as set forth in Appendix A: Failure to complete an Audit in accordance with the Audit methodology set forth in Paragraphs 14 through 20 of Appendix A; failure to complete the Audit by the applicable deadline set forth in Paragraph 27 of Appendix A ; failure of the Auditor to submit the Auditor's Report to EPA and/or of Defendant to submit Defendant's Audit Statement as required by Paragraphs 20 and 22 of Appendix A; and failure of Defendant to correct an Audit Finding by the applicable deadline as set forth in Paragraphs 23 and 27 of Appendix A.

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
1-15	\$1,800
16-30	\$3,000
31 and Over	\$7,500

41. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII (Reporting Requirements) and Section XI (Information Collection and Retention) of this Consent Decree.

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
1-15	\$750
16-30	\$1,500
31 and Over	\$3,000

42. Stipulated Penalties for Failure to Satisfactorily Complete the SEP.

a. If Defendant fails to satisfactorily complete the SEP in accordance with the provisions of this Consent Decree by the deadline set in Section VI (Supplemental Environmental Project) and Appendix C, Defendant shall pay stipulated penalties for each day for which it fails to satisfactorily complete the SEP, as follows:

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
1-15	\$1,500
16-30	\$3,000
31 and Over	\$6,000

b. If Defendant fails to implement the SEP, or halts or abandons work on the SEP, Defendant shall pay a stipulated penalty of \$1,004,300 less (i) the amount spent by Defendant to purchase any “turnout gear” delivered to the Recipients pursuant to Appendix C; (ii) the amount spent by Defendant to purchase any “SCBAs” delivered to the Recipients pursuant to Appendix C; and (iii) the amount of any stipulated penalties paid pursuant to Paragraph 42(a). The penalty under this subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

c. If Defendant fails to comply with Paragraph 24, Defendant shall pay stipulated penalties for each failure to meet an applicable deadline, as follows:

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
1-15	\$750
16-30	\$1,500
31 and Over	\$3,000

43. The following stipulated penalties shall accrue per violation per Day for all other violations of this Consent Decree not set forth in Paragraphs 38 through 42 above.

<b>Period of Non-Compliance or Days Late</b>	<b>Penalty Per Violation Per Day Late or Deficient</b>
1-15	\$750
16-30	\$1,500
31 and Over	\$3,000

44. Except as provided in subparagraph 42.b, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

45. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand for payment.

46. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

47. Stipulated penalties shall continue to accrue as provided in Paragraph 44, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined

to be owing, together with interest at the rate specified in 28 U.S.C. § 1961, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest at the rate specified in 28 U.S.C. § 1961, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest at the rate specified in 28 U.S.C. § 1961, within 15 Days of receiving the final appellate court decision.

48. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable only with regard to the requirements of Paragraph 13 that have occurred prior to the Effective Date, provided that such stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

49. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

50. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in

28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

51. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

52. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

#### IX. FORCE MAJEURE

53. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the

delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

54. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA, within 72 hours of when Defendant first knew or should have known that the event might cause a delay. Within seven days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

55. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by

the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

56. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

57. If Defendant elects to invoke the Dispute Resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraph 54. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA.

#### X. DISPUTE RESOLUTION

58. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a

dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

59. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the United States receives a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal Dispute Resolution procedures as set forth below.

60. Formal Dispute Resolution. Defendant shall invoke formal Dispute Resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

61. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of

Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

62. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

63. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

64. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 60, Defendant shall have the burden of demonstrating, based on the administrative record, which shall include the Statement of Position of the United States and Defendant, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

65. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with

respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 47. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

#### XI. INFORMATION COLLECTION AND RETENTION

66. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data; and
- d. assess Defendant's compliance with this Consent Decree.

67. Until three years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United

States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

68. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

69. Defendant may also assert that information required to be provided under this Consent Decree is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

70. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws,

regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

## XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

71. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

72. Except as otherwise expressly provided in Paragraph 71, the United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

73. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 71.

74. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of CERCLA, EPCRA, the CAA, or regulations promulgated thereunder, or with any other provisions of federal, state, or local laws, regulations, or permits.

75. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

76. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

### XIII. COSTS

77. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIV. NOTICES

78. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by first class or overnight mail to the addressees specified below. Simultaneously, such notices shall be emailed to the relevant recipients, except that any notice attachments that are too voluminous to email need only be provided by mail. Where this Consent Decree requires that notices and submissions are to be made to the United States, they shall be made to the United States Department of Justice and EPA. Where the Consent Decree requires that Notices and Submissions shall be made to EPA, they need only be sent to EPA. Except as otherwise provided herein, all reports, notifications, certifications, or other communications required under this Consent Decree to be submitted or sent to the United States, EPA, and/or Defendant shall be addressed as follows:

As to the United States by email:

[eesdcopy.enrd@usdoj.gov](mailto:eesdcopy.enrd@usdoj.gov)

Re: DJ # 90-5-2-1-09238/1

As to the United States by mail:

EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-2-1-09238/4

As to EPA: Director, Enforcement and Compliance Assurance Division  
EPA Region 10 (OCE-201)  
U.S.EPA Region 10  
1200 Sixth Avenue Ste. 155  
Seattle, WA 98101

As to Defendant: Jeff Droubay  
Senior Vice President  
Legal and Business Affairs  
Dyno Nobel Americas  
2795 East Cottonwood Parkway, Suite 500  
Salt Lake City, UT 84121

with a copy to:

David Rabbino, Esq.  
Jordan Ramis PC  
2 Centerpointe Drive, 6<sup>th</sup> Fl.  
Lake Oswego, OR 97035  
david.rabbino@jordanramis.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

79. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### XV. EFFECTIVE DATE

80. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted,

whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties under Paragraph 13 that may be scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

#### XVI. RETENTION OF JURISDICTION

81. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

#### XVII. MODIFICATION

82. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

83. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 64, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

### XVIII. TERMINATION

84. This Consent Decree may be terminated upon satisfaction of all of the following conditions:

a. Defendant has completed the Audits and corrected all Audit Findings in accordance with Paragraph 12 and the requirements set forth in Appendix A of this Consent Decree;

b. Defendant has submitted and filed the revised notices and reports in accordance with Paragraph 13;

c. Defendant has completed the SEP in accordance with Section VI (Supplemental Environmental Project) of this Consent Decree and the requirements set forth in Appendix C of this Consent Decree;

d. Defendant has complied with all other requirements of this Consent Decree for a period of at least three years after entry; and

e. Defendant has paid the civil penalty, has resolved any outstanding disputes, and has paid any accrued stipulated penalties as required by this Consent Decree.

85. If Defendant believes it has satisfied the requirements for termination set forth in Paragraph 84, Defendant shall serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting completion documentation required by Appendices A, B, and C (to the extent not already submitted).

86. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If, the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

87. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 30 Days after service of its Request for Termination.

#### XIX. PUBLIC PARTICIPATION

88. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

## XX. SIGNATORIES/SERVICE

89. Each undersigned representative of Defendant and the Deputy Section Chief of the Environmental Enforcement Section of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

90. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail or email with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

## XXI. INTEGRATION

91. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than Deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

## XXII. FINAL JUDGMENT

92. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

## XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

93. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 5; Section V (Compliance Requirements), Paragraphs 11, 12, 13, and 20; Section VII (Reporting Requirements), Paragraphs 31 (except with respect to the SEP); and Section XI (Information Collection and Retention), Paragraphs 67 through 69; and related Appendix A is restitution or required to come into compliance with law.

## XXIV. APPENDICES

94. The following Appendices are attached to and hereby incorporated into this Consent Decree:

- a. “Appendix A” sets for the requirements for the Compliance Audits required by Paragraph 12 of this Consent Decree.
- b. “Appendix B” is a diagram of the “Dyno Nobel Covered Process.”
- c. “Appendix C” sets the requirements for completing the Supplemental Environmental Project required by Section VI of this Consent Decree.

d. “Appendix D” is the Superseding Plea Letter dated February 14, 2018, signed by Defendant on February 16, 2018.

Dated and entered this \_\_\_ day of \_\_\_\_\_, 2019.

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UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

[Redacted signature]

Date

NATHANIEL DOUGLAS  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

6-24-19

Date

[Redacted signature]

FREDERICK S. PHILLIPS  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
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Frederick.phillips@usdoj.gov

BILLY J. WILLIAMS  
United States Attorney  
District of Oregon

6-24-19

Date

[Redacted signature]

FOR  
ALEXIS LIEN  
Assistant United States Attorney  
District of Oregon  
1000 SW Third Ave Suite 600  
Portland, Oregon 97204  
(503) 727-1098

FOR THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY:



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Allyn Stern  
Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 10



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Julie Vergeront  
Assistant Regional Counsel  
Office of Regional Counsel, ORC-113  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue  
Seattle, WA 98101  
(206) 553-1497

FOR DYNO NOBEL, INC.

\_\_\_\_\_  
Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FOR DYNO NOBEL, INC.

28 May 2019  
Date

[REDACTED]

[REDACTED]  
SVP Legal and Business Affairs



# APPENDIX A



**Appendix A: Independent Third-Party Audit Protocol**

1. Pursuant to Paragraph 12 of the Consent Decree, Defendant shall retain an Auditor who shall conduct a Compliance Audit at the Facility in accordance with the requirements set forth in this Appendix A for:

a. The release notification requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004, and their implementing regulations at 40 C.F.R. §§ 302.8 and 355.32 for releases that are continuous and stable in quantity and rate (“Continuous Release Notification” provisions);

b. The annual Toxics Release Inventory (“TRI”) reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and its implementing regulations at 40 C.F.R. Part 372; and

c. The Risk Management Program requirements of CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and the implementing regulations at 40 C.F.R. Part 68, Subparts D and E.

2. Defendant shall give the Auditor a copy of the Consent Decree and all appendices, as well as all other information and access necessary to complete the Audit set forth herein. The Audit must evaluate the Facility’s compliance or conformance with the Audit standards set forth in Paragraphs 15 and 17 below. Defendant shall ensure that the Auditor conducts the Audit in accordance with the requirements set forth in Paragraphs 14 to 20 below and according to the deadlines set forth in Paragraph 27

below.

3. The definitions set forth in Section III of the Consent Decree shall apply to the Audit conducted in accordance with this Appendix.

4. United States Approval of Auditors. Within 30 days of the Effective Date of the Consent Decree, Defendant shall submit to the United States the names and qualifications of three proposed independent third-party Auditors meeting the requirements of Paragraph 5 below.

5. Before the United States can approve any independent third-party Auditor to conduct the Audit required by Paragraph 12 of the Consent Decree and as set forth in Paragraphs 14 to 20 below, Defendant and each Auditor candidate must certify the following conditions have been met:

a. The Auditor is a professional engineer with expertise in the fields of: 1) the Continuous Release Notification provisions of CERCLA and EPCRA at 40 C.F.R. §§ 302.8 and 355.32, respectively; 2) the annual TRI reporting requirements of 40 C.F.R. Part 372; 3) the development and implementation of Risk Management Plans and the Risk Management Program regulations at 40 C.F.R. Part 68, Subparts D and E relating to chemical manufacturing and chemical plant operations and maintenance;

b. The Auditor must have at least five years' experience in evaluating the compliance of facility plans, policies, practices and procedures with applicable Risk Management Program regulations, plans, and requirements;

c. The Auditor has been trained and/or certified in proper auditing techniques;

d. Neither the Auditor nor the Auditor's employer has been employed by Defendant or any corporate affiliates of Defendant, nor conducted research, development, design, construction, financial, engineering, legal, consulting nor any other advisory services for Defendant within the last two years; and

e. Neither the Auditor nor the Auditor's employer was involved in the development or construction of any process at the Facility or any operating, maintenance, or other risk management procedures for the Facility.

6. The Defendant understands and agrees that:

a. The Auditor shall not be permitted to provide any other commercial, business, or voluntary services to Defendant or its corporate affiliates for a period of at least two years following the Auditor's submittal of its final Audit Report;

b. Defendant shall not provide future employment to any of the Auditors or persons who managed, conducted, or otherwise participated in the Audit for a period of at least two years following the Auditor's submittal of its final Audit Report; and

c. Subject to Paragraph 20, the Auditor and EPA may communicate independently with each other without notice to, or including, Defendant.

d. Once Defendant signs a contract with the Auditor, no communication shall occur between Defendant and the Auditor without EPA simultaneously being copied on the communication (except such communications that occur on-site while the audit is being conducted). Accordingly, all such communications must be by

electronic mail or letter so that EPA may be copied. Before Defendant signs any contract with the Auditor, Defendant may communicate with the Auditor without copying EPA and provide a preliminary site tour and documentation relating to the Facility if desired, to help the Auditor anticipate safety needs and price services.

7. Notwithstanding Paragraphs 1 through 6 above, the Auditor may assemble an auditing team, to be led by the Auditor. The auditing team may include other employees of the third-party auditor firm or subcontractors meeting the criteria of Paragraphs 5 and 6. The Auditor may obtain participation in any audit by Audit Participants, including Defendant or Facility personnel; however, Audit Participants shall not contribute to any Auditor's Report under Paragraph 20.

8. The United States shall review the proposed Auditors and either approve them in accordance with Paragraph 9 or disapprove them in accordance with Paragraph 10.

9. The United States shall notify Defendant in writing whether it approves the proposed Auditor(s). Within 30 days after United States' approval, Defendant shall retain an approved Auditor to perform the activities set forth in Paragraphs 14 through 20 of this Appendix. The contract for the auditing services shall prohibit the Auditor from providing any other commercial, business, or voluntary services to Defendant and its corporate affiliates for a period of at least two years following the Auditor's submittal of its final Audit Report; and shall prohibit the Defendant from employing the Auditor or any persons who managed, conducted, or otherwise participated in the Audit for a period of at least two years following the Auditor's submittal of its final Audit Report. Defendant shall ensure that all Audit personnel who conduct or otherwise participate in Audit activities have certified that they satisfy the conditions set forth

in Paragraphs 5 and 6 above before receiving any payment from Defendant.

10. If the United States disapproves all the proposed Auditors, the United States will provide notice to Defendant stating the good-faith reasons for such disapprovals. Within 60 days of receipt of the United States' notification, Defendant shall submit for approval another proposed Auditor that meets the qualifications set forth in Paragraphs 5 and 6. The United States shall review the proposed Auditor in accordance with Paragraph 8. Disapprovals of the proposed Auditors shall be subject to Section X (Dispute Resolution) of the Decree.

11. If the Auditor selected pursuant to Paragraph 9 cannot satisfactorily perform the Audit, within 60 Days of learning that the Auditor cannot satisfactorily perform the Audit, Defendant shall submit for approval two or more proposed replacement Auditors that meet the qualifications set forth in Paragraphs 5 and 6. In the event that it becomes necessary to select a replacement Auditor as provided in this Paragraph, the United States shall review the proposed replacement Auditors and either approve them in accordance with Paragraph 9 or disapprove them in accordance with Paragraph 10.

12. Nothing in Paragraphs 4 through 11 precludes the United States from assessing stipulated penalties for missed Audit deadlines associated with the need to replace an Auditor unless Defendant successfully asserts that the inability of the Auditor to perform the Audit as required was a Force Majeure event in accordance with Section XI of the Consent Decree; however, any pending Audit deadline set out in Paragraph 27 may be extended up to 120 days by mutual, written agreement between the parties should an Audit deadline be affected while the United States is evaluating a replacement Auditor following Defendant's timely submission under Paragraph 11.

13. Defendant shall be solely responsible for paying for each Auditor's fees and expenses.

14. Notice of Audit Commencement. At least 30 Days prior to the commencement of the Audit, Defendant shall provide notice to EPA pursuant to Section XIV (Notices) of the Consent Decree of the Day that the Audit will commence along with:

- a. The protocol the Auditor proposes to use for the Continuous Release Notification and the TRI reporting portions of the Audit; and
- b. The checklist that the Auditor proposes to use for the Risk Management Program portion of the Audit.

15. Paper Audit of Defendant's Policies and Engineering Specifications. The Auditor shall review the Facility's documents related to implementation of the Risk Management Program at the Facility, including but not limited to: the Defendant's policies applicable to the Facility for risk management; the Facility's Hazard Analysis, Management of Change, Standard Operating Procedures, and Process Safety Management documents for the Dyno Nobel Covered Process; and the engineering and design specifications for the Dyno Nobel Covered Process at the Facility. The Auditor shall evaluate the above documents for compliance with 40 C.F.R. Part 68, Subparts D and E, and for consistency with the most current applicable design codes and standards, including, but not limited to, any relevant portions of the following standards:

- a. ASME Boiler and Pressure Vessel Code Section 8;
- b. National Board Inspection Code;
- c. API 510 Pressure Vessel Code;

- d. API 570 Piping Inspection Code;
- e. API 580 Risk-Based Inspection and API RP 581 Risk-Based Inspection Technology; and
- f. ASME B31.3 Process Piping.

The Auditor shall evaluate conformance with all of the above-listed codes, standards and practices, as in effect at the time of the audit. Defendant may use alternative methods for achieving compliance with the requirements of the applicable industry practices and/or standards as long as the selected alternatives are documented by the Facility to be equivalent to or better than the applicable industry standards in reducing the hazards. The paper audit referred to in this Paragraph shall be completed at the same time as the on-site Audit according to the schedule set forth in the Table in Paragraph 27 of this Appendix.

16. Defendant shall submit to the Auditor policies and engineering specifications referred to in Paragraph 15 within 120 days after EPA approval of the proposed Auditor(s) pursuant to Paragraph 9 above.

17. On-Site Facility Audit. Defendant shall ensure that the Auditor conducts an Audit at the Facility as required by Paragraph 12 of the Consent Decree according to the schedule set forth in the Table in Paragraph 27 of this Appendix.

- a. The Continuous Release Notification portion of the Audit shall include:
  - i. A review of the currently applicable Continuous Release Notification(s) that have been filed for the Facility with the National Response Center, EPA Region 10, the State Emergency Response Commissions for Oregon and Washington, or the Local Emergency Planning

Commissions for Columbia County in Oregon, and Clark and Cowlitz Counties in Washington (collectively, the “Reporting Agencies”), along with:

(A) All Continuous Release Notifications that have been filed for the Facility with any of the Reporting Agencies after the earlier of May 1, 2019 or the date of the first submission to EPA pursuant to Paragraph 13(b) of the Consent Decree;

(B) All other notifications required by 40 C.F.R. §§ 302.8 or 355.32 that have been filed by Defendant for the Facility on or after the date in Paragraph 17(a)(i)(A) above; and

(C) All supporting documentation required by 40 C.F.R. § 302.8.

ii. An on-site evaluation of the emission sources covered in the currently applicable Continuous Release Notifications for the Facility, and the emissions from such sources, to determine whether the requirements of 40 C.F.R. §§302.8 and 355.32 are met.

b. The TRI reporting portion of the Audit shall include:

i. A review of all potential TRI reporting statutory and regulatory obligations of the Facility for the most recent completed calendar reporting year and the four previous reporting years for ammonia, nitric acid, nitrate compounds, formaldehyde, copper compounds, and any other toxic chemical manufactured, processed, or otherwise used by the Facility.

ii. A review of the Facility's records maintained pursuant to 40 C.F.R. § 372.10 for the subject reporting years;

iii. A review of information available to the Facility relevant to quantifying releases of the toxic chemicals reported to the TRI for the subject reporting years; and

iv. An on-site evaluation of the sources potentially subject to TRI reporting, including (A) an analysis of emissions to air, releases to water on-site, releases to land on-site, transfers to publicly owned treatment works, and off-site transfers of toxic chemicals reported to TRI for the subject reporting years; and (B) an evaluation of the Facility's on-site waste treatment methods, on-site energy recovery processes, and on-site recycling processes of the toxic chemicals reported to TRI for the subject reporting years.

c. The Risk Management Program portion of the Audit shall include:

i. A review of all on-site documents relevant to Defendant's Risk Management Program; and

ii. An evaluation of the Dyno Nobel Covered Process for compliance with the applicable requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7); 40 C.F.R. Part 68, Subpart D and E; all applicable federal, state and local codes and regulations and current accepted industry practices, standards, and guidelines, including the industry

standards and codes in Paragraph 15; and other requirements contained in the Facility's Risk Management Plan and Risk Management Program.

18. Audit Completion. Defendant shall ensure that the Auditor completes the paper and on-site Audits no later than the applicable deadlines for the Facility set forth in the Table in Paragraph 27 below.

19. Audit Out-briefing.

a. Within 20 Days of the completion of the on-site Audit, the Auditor shall conduct an out-briefing with Defendant in which the Auditor shall orally convey the major Audit Findings.

b. Defendant shall notify EPA of the scheduled date of the out-briefing for the Audit at least five Days prior to the out-briefing. EPA shall have the right to have its representatives (including contractors) attend the out-briefing either in person or telephonically. If the out-briefing date changes, Defendant shall notify EPA at least 48 hours prior to the out-briefing date.

c. Defendant shall correct Audit Findings disclosed at the out-briefing in accordance with Paragraphs 23 through 27 below. Regardless of whether Defendant corrects such Audit Findings, the Auditor shall include such Audit Findings in the Auditor's Report submitted to EPA pursuant to Paragraph 20 below, but may also include a description of the correction(s) that occurred prior to submission of the Auditor's Report.

20. Auditor's Report. No later than the applicable deadline set forth in the Table in Paragraph 27, Defendant shall ensure that the Auditor submits a report of the paper and on-site

Audit results (“Auditor’s Report”) directly to EPA pursuant to Section XIV (Notices) of the Consent Decree, with a copy sent concurrently to Defendant. The Auditor shall not share any written draft reports with Defendant prior to the submission of the Auditor’s Report directly to both EPA and Defendant. EPA shall give notice to Defendant as soon as possible before it has any material communications directly with an Auditor about an Audit and give Defendant the opportunity to participate in such conversations. The Auditor’s Report shall:

- a. Describe when and how the Audit was conducted, as well as the names of all Defendant’s personnel involved with the Audit;
- b. Describe all the types of information and records reviewed in the paper Audit phase and the equipment, processes, practices, structures and other items reviewed, tested, observed or evaluated during the on-site Audit phase;
- c. Describe each situation for which a notification under 40 C.F.R. § 302.8(g), (h), or (i) is required based on the results of the Audit of the Continuous Release Notifications in effect at the time of the Audit, and include a draft of each such notification;
- d. Describe the list of TRI chemicals evaluated as part of the TRI portion of the Audit and the reporting threshold determinations made for each such chemical, and include a table listing each such chemical for which any release estimate calculated through the Audit differs from the estimate reported on the TRI Report (“Form R”) originally submitted or is for a chemical not previously reported. The Table shall include (i) the release estimate calculated on the Form R originally submitted, if applicable; (ii) the release estimate calculated through the Audit; (iii) the treatment or disposal method; and (iv) the

chemicals for which a new or corrected Form R will be submitted;

e. Include drafts of the new or corrected Form Rs that will be submitted as a result of the Audit for each chemical for which the Audit shows: (i) one or more reporting threshold has been exceeded for a chemical for which no Form R was originally submitted; (ii) one or more release estimate calculated through the Audit, or the treatment or disposal data, is a significant data quality error as specified in EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act* (including the *Interim Data Quality Amendment to the EPCRA Section 313 Enforcement Response Policy*); or (iii) for PBT chemicals (chemicals with lower reporting thresholds specified in 40 C.F.R. § 372.28), the release estimated calculated through the Audit is equal to or greater than a 25% increase over the reported amount.

f. To the extent not addressed in subparagraphs (a) through (e) above, identify and list separately each Audit Finding of non-compliance and non-conformance with the Audit standards set forth in Paragraphs 15 and 17 and discovered in the Audit; and

g. Provide a detailed recommendation as to how each discovered Audit Finding should be corrected.

21. At Defendant's election, any on-site Audit may serve as the official Risk Management Program audit required by 40 C.F.R. § 68.79 provided that all requirements of that section are met. The use of an on-site Audit as the official Risk Management Program audit for the Facility will reset the Facility's three-year rolling clock for the performance of a compliance audit.

22. Defendant's Statement for the Audit.

a. No later than the applicable deadline set forth in the Table in Paragraph 27, Defendant shall submit to EPA, pursuant to Section XIV (Notices) of the Consent Decree, a written statement ("Defendant's Audit Statement") in which Defendant:

- i. Responds to or comments on each of the Audit Findings;
- ii. Describes each completed or proposed action to correct each undisputed Audit Finding, including the date(s) that such corrections occurred or are scheduled to occur; and
- iii. Identifies any Audit Findings contained in the Audit Report that Defendant believes are inaccurate or incorrect and the factual or technical basis as to why Defendant believes such Audit Findings are inaccurate or incorrect.

b. If EPA agrees with Defendant that an Audit Finding is inaccurate or incorrect, EPA shall so advise Defendant and Defendant may request that the Auditor revise or remove that Audit Finding from the Audit Report. If the Auditor does not so revise the Audit Report, EPA may waive or revise the corrective actions consistent with its decision that the Audit Finding was incorrect or inaccurate.

23. Correction of Audit Findings.

a. Except as provided in Paragraph 23(b) below, Defendant shall implement all steps necessary to correct each Audit Finding identified in the Auditor's Report as soon as practicable but no later than the applicable date set forth in the Table in Paragraph 27 for correction under this Paragraph 23(a)

b. Extensions of Correction Deadlines in Limited Circumstances.

i. Defendant may seek more time to implement correction of an Audit Finding if in Defendant's Audit Statement, submitted to EPA pursuant to Paragraph 22 above, Defendant explains and documents:

(A) that the correction is likely to cost Defendant more than \$25,000;

(B) that it is not reasonable under the circumstances to correct the Audit Finding by the applicable deadline set forth in the Table in Paragraph 27 for corrections under Paragraph 23(a); and

(C) the date by which Defendant believes correction is reasonable under the circumstances.

ii. Where Defendant seeks additional time to correct an Audit Finding, Defendant shall correct such Audit Finding no later than the earlier of:

(A) the correction date proposed in Defendant's Audit Statement;

(B) the date indicated by EPA in an objection submitted under Paragraph 24 (provided that such date is not less than 90 Days after Defendant's receipt of EPA's objection), unless a different date for correction is agreed to by the parties or ordered by the Court in Dispute Resolution under Section X of the Consent Decree; or

(C) the latest possible date for correction under this Paragraph 23.b as set forth in the in the Table in Paragraph 27.

24. EPA Objections to Proposed Timing or Method of Correction of Audit Findings.

a. At any time after receiving Defendant's Audit Statement pursuant to Paragraph 22, EPA may object to (1) the method by which Defendant has corrected or intends to correct an Audit Finding; and/or (2) the proposed timing of correction where Defendant's Audit Statement proposes a later date for correction than the applicable deadline set forth in Column 4 of the Table in Paragraph 27 for correction. If EPA objects, it shall notify the Defendant in writing pursuant to Section XIV of the Consent Decree (Notices) as to the bases of its objection(s), and indicate what method or methods to correct the Audit Finding are required, and/or provide the date(s) by which it believes it is reasonable under the circumstances for Defendant to correct the Audit Finding.

b. If Defendant disagrees with EPA's proposed method or timing of correction, it may invoke dispute resolution in accordance with Section X (Dispute Resolution) of the Consent Decree by submitting a Notice of Dispute to EPA within 15 Days of receiving EPA's objection. If the method of correction is in dispute, it shall be Defendant's burden to establish that the method by which it proposes to correct the Audit Finding will result in compliance with the applicable Audit standards set forth in Paragraphs 15 and 17. If the timing of correction is in dispute, it shall be Defendant's burden to establish (1) that it will cost more than \$25,000 to correct the Audit Finding; and (2) that it is not reasonable under the circumstances to correct the Audit Finding any earlier than the date proposed in Defendant's Audit Statement submitted pursuant to Paragraph 22.

c. If Defendant does not invoke dispute resolution pursuant to Paragraph

24.b within 15 Days of receiving EPA's objection, Defendant shall correct the Audit Finding by the method indicated in EPA's objection by the date set forth in the Table in Column 4 of Paragraph 27.

25. Public Access to Audit Reports. Defendant agrees to make the Audit Report Findings, and Defendant's responses to those Findings, including Defendant's plans to correct violations, available to the public upon request.

26. Notification of Correction of Audit Findings of Non-Compliance and Non-Conformance.

For each Audit Finding in the Auditor's Report, Defendant shall notify EPA of the method and date of correction of the Audit Finding of non-compliance and non-conformance in the quarterly report submitted pursuant to Section VII (Reporting) of the Consent Decree for the quarter in which the correction was completed.

27. Audit Milestone Deadlines. Defendant shall ensure that the Auditor completes the following Audit milestones no later than the applicable deadlines set forth in the table below for: (1) Completion of the Audit as required by Paragraph 18; (2) Submission of the Audit Report as required by Paragraph 20; (3) Submission of Defendant's Statement in response to the Audit as required by Paragraph 22; and (4) Correction of all Audit Findings as required by Paragraph 23, unless EPA has agreed to an alternative date for correction.

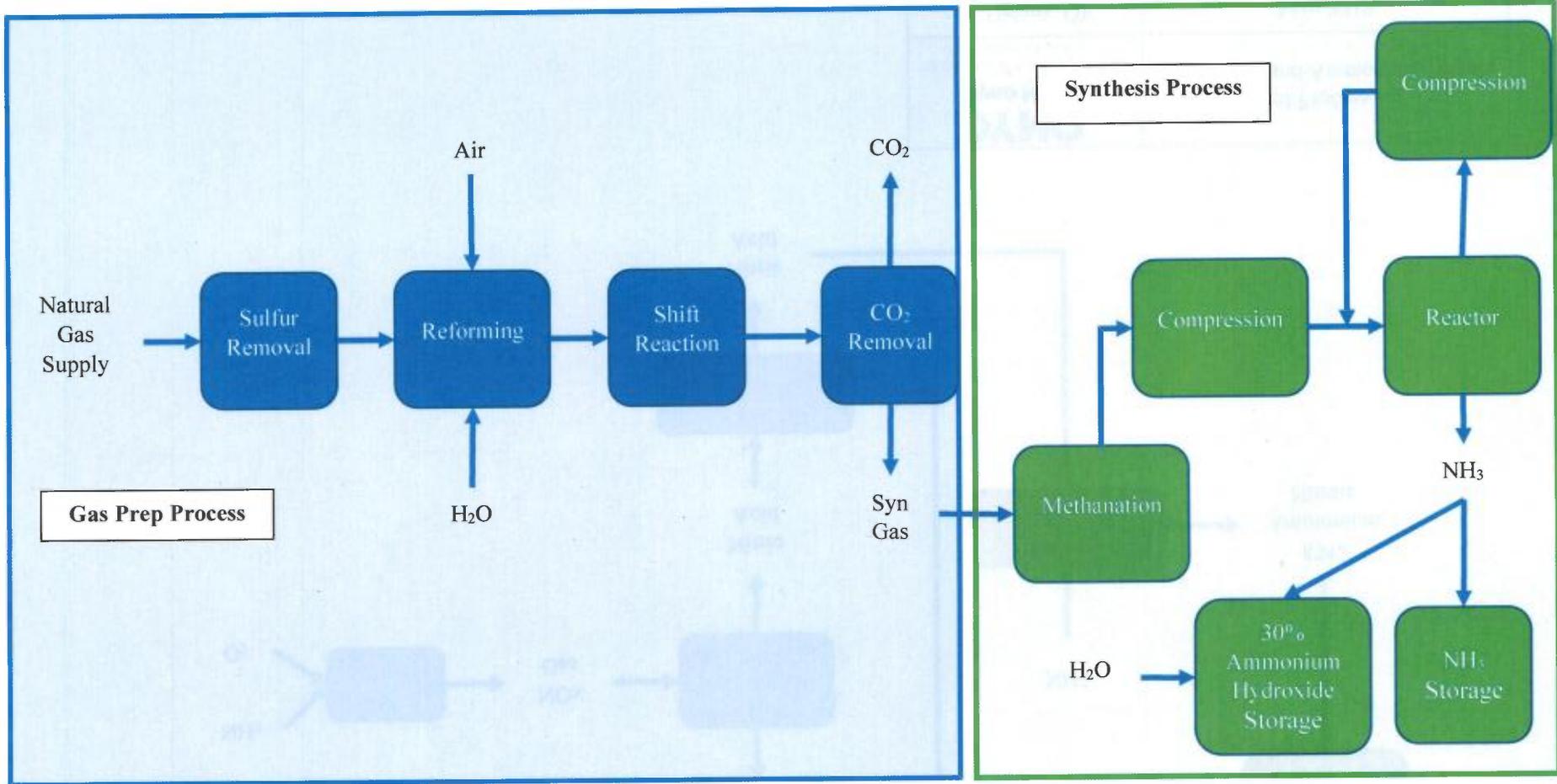
	1	2	3	4	5
Type of Audit	Deadline for Completing Audit	Deadline for Auditor Report for Audit	Deadline for Defendant's Audit Statement for Audit	Deadline for Correction of all Audit Findings Unless Delayed Per Paragraph 23.b.	Deadline for Corrections of Audit Findings subject to Paragraph 23.b.
Paper Audit	App. Date + 8M	App. Date + 10M	App. Date + 11M	App. Date + 17M	App. Date + 23M
On-Site Audit	App. Date + 8M	App. Date + 10M	App. Date + 11M	App. Date + 17M	App. Date + 23M

For purposes of this table, "App. Date" refers to the date on which the United States approves the Defendant's proposed Auditor(s) pursuant to Paragraph 9 above.

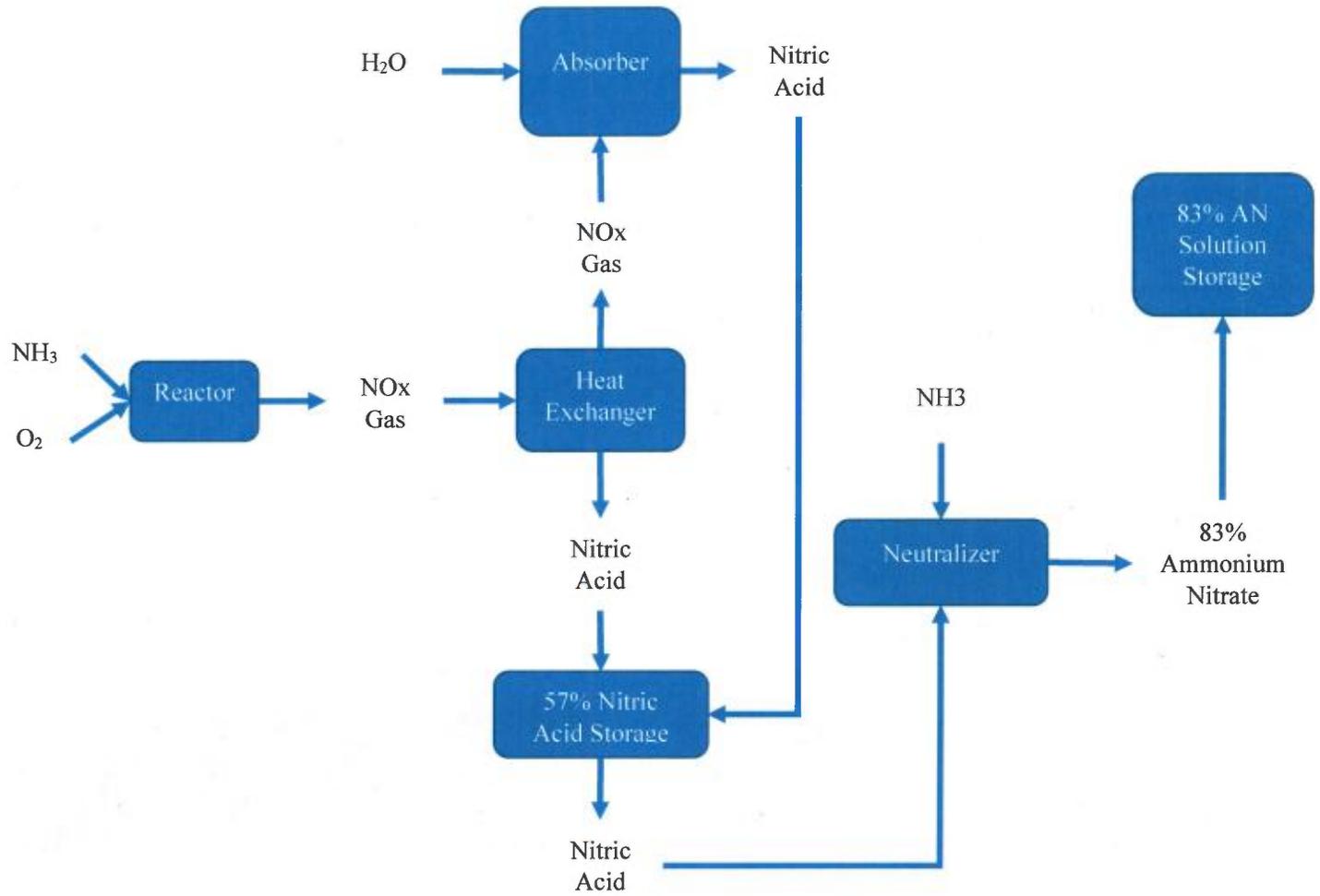


## **APPENDIX B**

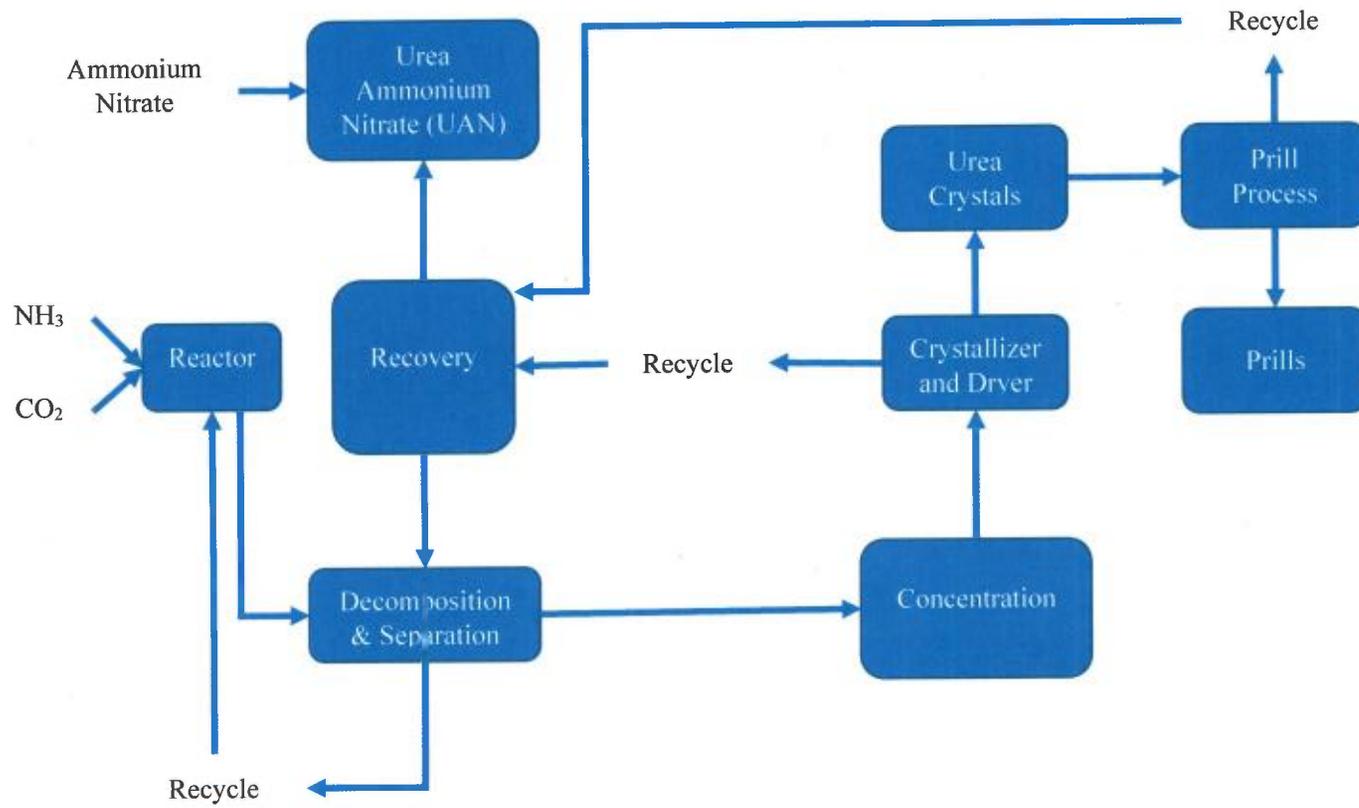




<p><b>DYNO</b>          Dyno Nobel  <i>Groundbreaking          Performance.</i></p>	<p>RMP Covered Process          Gas Prep and Ammonia Process</p>
<p>St. Helens, OR</p>	<p>May 2019</p>



	RMP Covered Process Nitric Acid and Ammonium Nitrate
St. Helens, OR	May 2019



	RMP Covered Process Urea Production
St. Helens, OR	May 2019



## **APPENDIX C**



**APPENDIX C**  
**Emergency Response Equipment**  
**Supplemental Environmental Project**

The Supplemental Environmental Project consists of donating emergency response equipment to the Columbia Fire & Rescue (“CF&R”) and the Scappoose Rural Fire District (“SRFD”), as described below. CF&R and SRFD shall be collectively referred to as “the Recipients.”

**Scheduling:**

Defendant shall order the equipment described below for the Recipients within 90 days of the Effective Date, which equipment must be delivered to the Recipients within 180 days of the Effective Date. The SEP shall be considered complete when each piece of equipment described below, or substantially similar equipment in the event the equipment listed below is not available, is delivered to the Recipients. If necessary, substantially similar equipment will be donated by Defendant after consultation with the Recipients.

1. Fifty sets of personal protective equipment commonly referred to as “turnout gear” for the CF&R, as shown on Attachment C-1. Each set of “turnout gear” consists of a coat and pants to protect a firefighter from flames as they enter a structure, chemicals used to fight fires, and chemicals generated during fires from materials located at the structure. The total expenditure for the “turnout gear” is \$124,147.
2. Seventy-four sets of Self-Contained Breathing Apparatus (“SCBA”) for the CF&R and 52 sets of SCBA for the SRFD, and spare parts, as shown on Attachment C-2. SCBA is the breathing system firefighters use during structure fires, hazardous material response, or any incident where the atmosphere is not safe to be in. The total expenditure for the equipment is \$815,705.

APPENDIX C-1

# SEAWESTERN

FIRE FIGHTING EQUIPMENT

P.O. Box 51, Kirkland, Washington 98083  
 Phone (425) 821-5858 / Fax (425) 823-0636 / Toll Free 1-800-327-5312  
 www.seawestern.com / E-mail: info@seawestern.com

Q U O T A T I O N

TO: Dyno Nobel – Columbia River Fire &amp; Rescue

DATE: 2/26/19

63149 Columbia River Highway

Deer Island, OR 97054

ATTN: Fire Chief Greisen

Replying to your  
inquirywe are pleased to quote as  
follows:

ITEM #	QTY	DESCRIPTION	UNIT PRICE	EXTENSION
<b>JANESVILLE V-FORCE TURNOUTS</b>				
1.	50	<b>Janesville V-Force Turnout Coat – 32”</b> 7 oz PBI MAX Natural Outershell, with Glide Facecloth and ISODRI “C7” Thermal Liner System with W.L. Gore Crosstech Black Moisture Barrier. <i>Per Attached Line List</i> With 2” Lettering on Hanging Name Plate.	<b>\$1,467.44</b>	<b>\$73,372.00</b>
2.	10	<b>Janesville V-Force Turnout Option 35” Coat Length</b>	<b>\$45.00</b>	<b>\$450.00</b>
3.	50	<b>Janesville V-Force Turnout Pant</b> 7 oz PBI MAX Natural Outershell, with Glide Facecloth and ISODRI “C7” Thermal Liner System, W.L. Gore Crosstech Black Moisture Barrier with V-Back Suspender System. <i>Per Attached Line List.</i>	<b>\$1,006.50</b>	<b>\$50,325.00</b>
<b><u>Total for Order of Fifty Sets of Turnouts</u></b> <b><u>Per Columbia River Fire &amp; Rescue Department Specifications</u></b>				<b><u>\$124,147.00</u></b>

FOB: St. Helens, OR

DELIVERY 75 to 90 Days

TERMS:

after receipt of order

Net on Receipt

**Sea Western, Inc.**

By: Steve Morris

Vice-President

APPENDIX C-2

# SEAWESTERN

FIRE FIGHTING EQUIPMENT

P.O. Box 51, Kirkland, Washington 98083  
 Phone (425) 821-5858 / Fax (425) 823-0636 / Toll Free 1-800-327-5312  
 www.seawestern.com / E-mail: info@seawestern.com

Q U O T A T I O N

TO: Dyno Nobel – Columbia River Fire &amp; Rescue

DATE: 2/26/19

63149 Columbia River Highway

Deer Island, OR 97054

ATTN: Fire Chief Greisen

Replying to your  
inquiry

we are pleased to quote as follows:

ITEM #	QTY	DESCRIPTION	UNIT PRICE	EXTENSIO N
		<b>MSA "G1" SCBA SYSTEM</b>		
1.	126	<b>MSA "G1" Breathing Apparatus</b> Includes: 4500 PSI Operating System with Remote Quick Connect Cylinder System, "G1" Carrier and Harness System with Chest Strap, Metal Cylinder Band and Adjustable Swiveling Lumbar Pad, "G1" Regulator with Solid Cover with Continuous Low Pressure Hose, Quick Connect Cylinder Connection, "G1" Amplifier System on Left Chest, "G1" PASS Device on Right Shoulder and Rechargeable Battery System. <i>NFPA 1981, 2013 Edition and NFPA 1982, 2013 Edition Compliant.</i>	<b>\$3,980.00</b>	<b>\$501,480.00</b>
2.	126	<b>MSA "G1" Breathing Apparatus Option "A"</b> Telemetry System for G1 SCBA.	<b>\$350.00</b>	<b>\$44,100.00</b>
3.	126	<b>MSA "G1" Breathing Apparatus Option "B"</b> Serviceable Shoulder Straps for Removal for Sanitization.	<b>\$75.00</b>	<b>\$9,450.00</b>
4.	126	<b>MSA "G1" Breathing Apparatus Facepiece</b> Available in Small, Medium and Large.	<b>\$285.00</b>	<b>\$35,910.00</b>
5.	126	<b>MSA "G1" Breathing Apparatus 45 Minute Cylinder</b> With Cylinder Valve and Quick Connect Fitting.	<b>\$955.00</b>	<b>\$120,330.00</b>

FOB: St Helens, OR

DELIVERY 90 to 120 Days

after receipt of order

Sea Western, Inc.

By: Steve Morris

Vice - President



# SEAWESTERN

FIRE FIGHTING EQUIPMENT

P.O. Box 51, Kirkland, Washington 98083  
 Phone (425) 821-5858 / Fax (425) 823-0636 / Toll Free 1-800-327-5312  
 www.seawestern.com / E-mail: info@seawestern.com

## Q U O T A T I O N

TO: Dyno Nobel – Columbia River Fire & Rescue

DATE: 2/26/19

63149 Columbia River Highway

Deer Island, OR 97054

ATTN: Fire Chief Greisen

Replying to your  
inquiry

we are pleased to quote as  
follows:

ITEM #	QTY	DESCRIPTION	UNIT PRICE	EXTENSIO N
6.	10	<b>MSA "G1" Breathing Apparatus – Fill Station Adapter</b> Quick Connect Adapter for Fill Station, Price Per Fill Position.	<b>\$525.00</b>	<b>\$5,250.00</b>
7.	4	MSA "G1" Breathing Apparatus – Fit Test Adapter For Quantitative Fit Test of Department Members.	<b>\$315.00</b>	<b>\$1,260.00</b>
8.	2	<b>MSA "G1" Tag Reader / Writer for Telemetry System</b> Includes: Dongle and Software. One Reader for RFID Tags and One Reader/Writer for SCBA and Mask.	<b>\$445.00</b>	<b>\$890.00</b>
9.	126	<b>MSA ID Tags for Telemetry System</b>	<b>\$35.00</b>	<b>\$4,410.00</b>
10.	6	<b>MSA Base Station for Telemetry System</b> For Command Apparatus to Monitor Firefighter Air Supply.	<b>\$1,850.00</b>	<b>\$11,100.00</b>
11.	52	<b>MSA Spare Rechargeable Battery Packs for "G1" SCBA.</b>	<b>\$275.00</b>	<b>\$14,300.00</b>

FOB: St Helens, OR

DELIVERY 90 to 120 Days

after receipt of order

Sea Western, Inc.

By: Steve Morris

Vice-President



# SEAWESTERN

FIRE FIGHTING EQUIPMENT

P.O. Box 51, Kirkland, Washington 98083  
 Phone (425) 821-5858 / Fax (425) 823-0636 / Toll Free 1-800-327-5312  
 www.seawestern.com / E-mail: info@seawestern.com

## Q U O T A T I O N

TO: Dyno Nobel – Columbia River Fire & Rescue

DATE: 2/26/19

63149 Columbia River Highway

Deer Island, OR 97054

ATTN: Fire Chief Greisen

Replying to your  
inquiry

we are pleased to quote as  
follows:

ITEM #	QTY	DESCRIPTION	UNIT PRICE	EXTENSIO N
12.	11	<b>MSA "G1" Rechargeable Battery Charging Station</b> For Fast Charging of Six "G1" Batteries.	<b>\$575.00</b>	<b>\$6,325.00</b>
13.	14	<b>MSA "G1" RIT System</b> Includes: "G1" 2 <sup>nd</sup> Stage Regulator, Low Air Alarm, 1 <sup>st</sup> Stage Regulator, "G1" Mask, Six Foot High Pressure Hose with Universal Rescue Air Connection, "G1" 60 Minute High Pressure Cylinder and New True North RIT Bag.	<b>\$4,350.00</b>	<b>\$60,900.00</b>
<b><u>Total for SCBA System Delivered to St Helens, OR</u></b>				<b><u>\$815,705.00</u></b>
<i>Above Pricing Includes Training of Department Members on the Use of the MSA G1 SCBA System</i>				
<i>Above Pricing Includes Repair Instruction (CARE) Training for 4 Department Members</i>				

FOB: St Helens, OR

DELIVERY 90 to 120 Days

after receipt of order **Sea Western, Inc.**

By: Steve Morris

Vice-President



## **APPENDIX D**



Appendix D

**PORTLAND MAIN OFFICE**  
1000 SW Third Avenue, Suite 600  
Portland, Oregon 97204  
(503) 727-1000  
[www.usdoj.gov/usao/or](http://www.usdoj.gov/usao/or)

Ryan W. Bounds  
Assistant U.S. Attorney  
[Ryan.Bounds@usdoj.gov](mailto:Ryan.Bounds@usdoj.gov)  
(503) 727-1141  
*Reply to Portland Office*



**U.S. DEPARTMENT OF JUSTICE**  
United States Attorney's Office  
District of Oregon  
Billy J. Williams, United States Attorney

**EUGENE BRANCH**  
405 E 8th Avenue, Suite 2400  
Eugene, Oregon 97401  
(541) 465-6771

**MEDFORD BRANCH**  
310 West Sixth Street  
Medford, Oregon 97501  
(541) 776-3564

February 14, 2018

David A. Rabbino, Esq.  
Two Centerpointe Drive, Sixth Floor  
Lake Oswego OR 97035

Re: *United States v. Dyno-Nobel, Inc.*  
Superseding Pre-Indictment Plea Offer

Dear Mr. Rabbino:

- Parties/Scope:** This plea agreement is between this United States Attorney's Office (USAO) and defendant Dyno-Nobel, Inc., and thus does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority. This agreement applies neither to any charges other than those specifically mentioned herein nor to any civil remedy that the Environmental Protection Agency or any other regulatory agency may seek.
- Charges:** Defendant agrees to waive indictment and to plead guilty to the Information to be filed in this case, which is transmitted herewith and charges defendant with failing to notify the National Response Center as soon as it had knowledge of an unpermitted release of a hazardous substance into the environment when the volume of such release was in excess of a reportable quantity, in violation of Title 42, United States Code, § 9603(a), (b)(3).
- Penalties:** The maximum sentence for an organization found guilty of this offense is a fine of \$500,000 (or twice the gross pecuniary gains or losses resulting from the offense if such amount exceeds \$500,000), a probationary term of five years, and a \$400 fee assessment. Defendant agrees to pay the fee assessment by the time of entry of its guilty plea. *See* 18 U.S.C. § 3013(a)(2)(B).
- Dismissal/No Prosecution:** The USAO agrees not to bring additional charges against defendant in the District of Oregon arising out of this investigation, insofar as all the material facts underlying such charges are known to the USAO at the time this agreement is tendered to defendant.

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5. **Sentencing Factors:** The parties agree that the Court must first determine the applicable advisory guideline range, then determine a reasonable sentence considering that range and the factors listed in 18 U.S.C. § 3553(a). Where the parties agree that sentencing factors apply, such agreement constitutes sufficient proof to satisfy the applicable evidentiary standard.

6. **Relevant Conduct:** The parties agree that defendant's relevant conduct includes its release of more than six tons of anhydrous ammonia vapor into the air over the course of three days from its facility located in St. Helens, Oregon, and its failure to notify the National Response Center until approximately seven days after defendant became aware of the first such discharge. Releases of anhydrous ammonia in excess of 100 pounds are required to be reported to the National Response Center pursuant to Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). This conduct yields an offense level of 12 pursuant to U.S.S.G. § 2Q1.2(a), (b)(1)(A), and (b)(6) before any adjustments.

7. **Acceptance of Responsibility:** Defendant must demonstrate to the Court that it fully admits and accepts responsibility under U.S.S.G. § 3E1.1 for its unlawful conduct in this case. If defendant does so, the USAO will recommend a two-level reduction in defendant's offense level. The USAO reserves the right to change this recommendation if defendant, between plea and sentencing, commits any criminal offense, obstructs or attempts to obstruct justice as explained in U.S.S.G. § 3C1.1, or acts inconsistently with acceptance of responsibility as explained in U.S.S.G. § 3E1.1.

8. **Stipulated \$250,000 Fine and Two-Year Term of Probation:** So long as defendant continues to demonstrate its acceptance of responsibility as described in paragraph 7, *supra*, the USAO shall join defendant in stipulating to a sentence of a criminal fine in the amount of \$250,000, due immediately and in full, and a two-year period of probation.

The parties stipulate that, as a special condition of probation, defendant shall implement a stack test of the C-654 scrubber—the source of the discharges recounted in paragraph 6, *supra*—following EPA's approval of the stack test protocol and/or methodology. Defendant shall promptly furnish the results of that test to EPA and agrees to operate the C-654 scrubber under the same or more efficient conditions during the period of probation and to use the results of the stack test as a basis for emissions calculations for the C-654 scrubber for future filings with the EPA.

Defendant shall also, as a special condition of probation, install and operate at the Saint Helens Plant a fence-line monitoring system that EPA agrees is reasonably capable of immediately detecting excessive ground-level concentrations of ammonia vapor at the perimeter of that facility.

9. **Court Bound To Impose Stipulated Sentence:** If the Court accepts this plea agreement, the Court agrees to be bound by the stipulated sentence of the parties. Because this agreement is

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made under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties may rescind the agreement and defendant may withdraw its plea if the Court declines to follow the parties' agreement or recommendations.

10. **Waiver of Appeal/Post-Conviction Relief:** Defendant knowingly and voluntarily waives the right to appeal from any aspect of the conviction and sentence on any grounds, except for a claim that: (1) the sentence imposed exceeds the statutory maximum. Should defendant seek an appeal, despite this waiver, the USAO may take any position on any issue on appeal. Defendant also waives the right to file any collateral attack, including a motion under 28 U.S.C. § 2255, challenging any aspect of the conviction or sentence on any grounds, except on grounds of ineffective assistance of counsel, and except as provided in Fed. R. Crim. P. 33 and 18 U.S.C. § 3582(c)(2).

Defendant expressly agrees that this waiver shall remain effective in the event that the USAO alters its sentencing recommendation in conformity with paragraphs 7-8, *supra*, or if defendant breaches this agreement as described in paragraph 12, *infra*.

11. **Full Disclosure/Reservation of Rights:** The USAO will fully inform the PSR writer and the Court of the facts and law related to defendant's case. Except as set forth in this agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.

12. **Breach of Plea Agreement:** If defendant breaches the terms of this agreement, or commits any new criminal offenses between signing this agreement and sentencing, the USAO is relieved of its obligations under this agreement, but defendant may not withdraw any guilty plea or challenge or rescind the waiver of appeal or collateral attack as provided in paragraph 10, *supra*.

If defendant believes that the government has breached the plea agreement, it must raise any such claim before the district court, either prior to or at sentencing. If defendant fails to raise a breach claim in district court, it has waived any such claim and is precluded from raising a breach claim for the first time on appeal.

13. **Memorialization of Agreement:** No promises, agreements or conditions other than those set forth in this agreement will be effective unless memorialized in writing and signed by all parties listed below or confirmed on the record before the Court. If defendant accepts this offer, please sign and attach the original of this letter to the Petition to Enter Plea.

(Continued on next page.)

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14. **Deadline:** This plea offer expires if not accepted by February 16, 2018, at 5:00 p.m.

Sincerely,

BILLY J. WILLIAMS  
United States Attorney

[Redacted signature]

RYAN W. BOUNDS  
Assistant United States Attorney

Defendant Dyno Nobel, Inc., through its responsible agents and representatives, has carefully reviewed every part of this agreement with its attorney. Dyno Nobel understands and voluntarily agrees to the terms of this agreement. The corporation expressly waives its rights to appeal as outlined in this agreement. The corporation pleads guilty because, in fact, it is guilty.

2/16/2018  
Date

[Redacted signature]  
For Dyno Nobel, Inc., Defendant  
[Redacted signature]

I represent the defendant as legal counsel. I have carefully reviewed every part of this agreement with defendant. To my knowledge, defendant's decisions to make this agreement and to plead guilty are informed and voluntary ones.

2/16/2018  
Date

[Redacted signature]  
David A. Rabbino, Esq.  
Attorney for Defendant  
[Redacted signature]