

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

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In the Matter of	:	<u>CONSENT AGREEMENT AND</u>
	:	<u>FINAL ORDER</u>
Thatcher Company of	:	
New York, Inc.	:	
	:	
Respondent.	:	Docket No. <u>TSCA-02-2021-9242</u>
	:	
Proceeding under the Toxic	:	
Substances Control Act, as amended.	:	
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This administrative proceeding for the assessment of a civil penalty is being instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). The United States Environmental Protection Agency (EPA or Agency) under authority of TSCA, has promulgated regulations governing, *inter alia*, the manufacture and importation of chemical substances, including requirements for reporting such activities to the EPA.

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. That provision provides, in relevant part, that “[a]ny person who violates a provision of section 2614 or 2689 of this title [Sections 15 and 49 of TSCA, 15 U.S.C. §§ 2614 and 2689, respectively] shall be liable to the United States for a civil penalty... .” Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division (Complainant) of EPA, Region 2, has been delegated the authority to prosecute this proceeding.

Pursuant to 40 C.F.R. § 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22,” where parties agree to a settlement of one or more causes of action prior to the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

It has been agreed by the parties to this proceeding -- Complainant and Respondent Thatcher Company of New York, Inc., that settling this matter by entering into this Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2) constitutes an appropriate means of resolving the claims of EPA, Region 2, against Respondent without further litigation. This CAFO is being issued in accordance with 40 C.F.R. § 22.18(b)(3). No findings of fact or conclusions of law have been made in or by a tribunal. The following constitute EPA’s findings of fact and conclusions of law based upon information which Complainant has gathered.

USEPA FINDINGS OF FACT

1. Respondent is Thatcher Company of New York, Inc. For the period including calendar years 2012 through and including 2015, Respondent was (and continues to be) a corporation existing under New York law. For said period, Respondent owned and controlled a facility (and continues to do so) located at 476 Union Avenue, Williamson, New York 14589 (Facility).
2. For the period including calendar years 2012 through and including 2015, Respondent at its Facility manufactured and/or imported chemical substances into the United States.
3. On October 3, 2018, a representative of EPA conducted an inspection of Respondent's Facility pursuant to the authority of Section 11 of TSCA, 15 U.S.C. § 2610.
4. In one or more of the calendar years 2012, 2013, 2014, and 2015 Respondent, at its Facility, manufactured and/or imported for commercial purposes each of the following chemical substances in quantities exceeding 25,000 pounds, each such chemical substance identified by name and Chemical Abstract Services Registry Number [CASRN]:
 - a. Permanganic acid (HMnO₄), sodium salt (CASRN 10101-50-5)
 - b. Ethanol, 2,2'-iminobis- (CASRN 111-42-2)
 - c. Ethanol, 2-amino- (CASRN 141-43-5)
 - d. Aluminum hydroxide (Al(OH)₃) (CASRN 21645-51-2)
 - e. Distillates (petroleum), hydrotreated light (CASRN 64742-47-8)
 - f. Zinc chloride (ZnCl₂) (CASRN 7646-85-7)
 - g. Phosphoric acid (CASRN 7664-38-2)
 - h. Sulfuric acid (CASRN 7664-93-9)
 - i. Nitric acid (CASRN 7697-37-2)
 - j. Sulfuric acid, aluminum salt (3:2) (CASRN 10043-01-3)
 - k. Sulfurous acid, potassium salt (1:2) (CASRN 10117-38-1)
 - l. Nitric acid, calcium salt (2:1) (CASRN 10124-37-5)
 - m. Sodium hydroxide (NaOH) (CASRN 1310-73-2)
 - n. Nitrous acid, calcium salt (2:1) (CASRN 13780-06-8)
 - o. Thiocyanic acid, sodium salt (1:1) (CASRN 540-72-7)
 - p. Acetic acid (CASRN 64-19-7)
 - q. Sulfurous acid, sodium salt (1:1) (CASRN 7631-90-5)
 - r. Nitric acid sodium salt (1:1) (CASRN 7631-99-4)
 - s. Thiosulfuric acid (H₂S₂O₃) sodium salt (1:2) (CASRN 7772-98-7)
5. Each of the nineteen (19) chemical substances listed in the preceding paragraph was on the Master Inventory File (as defined in 40 C.F.R. § 711.3) as of June 1, 2016, and none was excluded from the 40 C.F.R. Part 711 Chemical Data Reporting (CDR) requirements by 40 C.F.R. § 711.6.

6. On September 29, 2016 Respondent filed a timely 2016 CDR Form U. After being contacted by EPA, Respondent amended its 2016 CDR Form U on January 7, 2021. After again being contacted by EPA, Respondent again amended its 2016 CDR Form U on January 26, 2021.

7. In the 2016 CDR Form U Respondent filed on September 29, 2016, Respondent failed to report to EPA for the nine chemical substances listed in 4a–4i during the period from (and including) June 1, 2016 to October 31, 2016 (hereinafter, the “submission period”).

8. In the 2016 CDR Form U Respondent filed on September 29, 2016, Respondent also failed to report the total annual volume domestically manufactured and/or imported for the ten (10) chemical substances listed in 4j–4s to the accuracy required by 40 C.F.R. § 711.15(b) (3)(iii) during the 2016 submission period:

9. On February 11, 2021, EPA sent Respondent a Notice of Potential Violation and Opportunity to Confer regarding the violations described in Paragraphs 7 and 8, above.

10. The parties have conferred and decided to resolve this matter as further set forth, below.

CONCLUSIONS OF LAW

1. This is an action pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), to assess a civil penalty against Respondent for violations of provisions of Section 15 of TSCA, 15 U.S.C. § 2614. This tribunal is vested with jurisdiction over this administrative proceeding pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), and 40 C.F.R. § 22.1(a)(5).

2. Section 15(3)(B) of TSCA, 15 U.S.C. §§ 2614(3)(B), provides that it is unlawful for any person to fail or refuse to submit any reports, notices or information required by TSCA, 15 U.S.C. § 2601 *et seq.*, or a rule promulgated thereunder. A failure or refusal to submit any such required reports, notices or information constitutes a violation of Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

3. Each of the Chemical Data Reporting (“CDR”) Requirements codified in 40 C.F.R. Part 711 constitutes a rule promulgated under Section 8(a) of TSCA, 15 U.S.C. § 2607(a).

4. Any person who violates Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), shall be liable to the United States for a civil penalty pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

5. For the period including calendar years 2012 through and including 2015, Respondent has been (and continues to be) a “person” (as defined by 40 C.F.R. § 704.3).

6. For the period including calendar years 2012 through and including 2015, Respondent has been (and continues to be) an “importer” and/or a “manufacturer” (as defined by 40 C.F.R. §§ 704.3 and/or 711.3).

7. Each of the nineteen (19) chemicals identified in Paragraph 4 of the Findings of Fact is a “chemical substance” within the meaning of Section 3(2)(A) of TSCA, 15 U.S.C. § 2602(2)(A) and a “reportable chemical substance” within the meaning of 40 C.F.R. § 711.3.

8. Pursuant to 40 C.F.R. § 711.8(a)(2), “for the submission periods subsequent to the 2012 submission period, any person who manufactured (including imported) for commercial purposes 25,000 lb (11,340 kg) or more of a chemical substance described in [40 C.F.R.] §711.5 at any single site owned or controlled by that person during any calendar year since the last principal reporting year (*e.g.*, for the 2016 submission period, consider calendar years 2012, 2013, 2014 and 2015...)” is subject to the reporting requirements.

9. Forty C.F.R. § 711.5 requires that “information must be reported” for “[a]ny chemical substance that is in the Master Inventory File at the beginning of the submission period described in [40 C.F.R.] § 711.20, unless the chemical substance is specifically excluded by [40 C.F.R.] §711.6.”

10. Respondent’s manufacture and/or importation of each of the chemical substances listed in Paragraph 4 of the above EPA’s Findings of Fact, at its Facility in calendar years 2012 through and including 2015 was subject to the 40 C.F.R. Part 711 reporting requirements for the 2016 submission period, *i.e.* (a) Respondent was not exempted or excluded from the 40 C.F.R. Part 711 reporting requirements under either 40 C.F.R. § 711.9 or 40 C.F.R. § 711.10, and (b) none of said chemical substances was excluded or exempted from the 40 C.F.R. Part 711 reporting requirement by 40 C.F.R. § 711.6.

11. As described in Paragraph 7 of the above USEPA Findings of Fact section, Respondent’s failures to report for the chemical substances listed in Paragraph 4a-4i during the 2016 reporting period constitute failures or refusals to comply with the CDR Requirements of 40 C.F.R. Part 711.

12. Each of Respondent’s failures or refusals to comply with the CDR Requirements constitutes an unlawful act pursuant to Section 15(3) of TSCA, 15 U.S.C. § 2614(3), for which an individual penalty may be assessed.

13. As described in Paragraph 8 of the above USEPA Findings of Fact section, Respondent’s failures to report the total annual volume domestically manufactured and/or imported for the ten (10) chemical substances listed in Paragraph 4j-4s in the above Findings to the accuracy required by 40 C.F.R. 711.15(b)(3)(iii) during the 2016 submission period constitute failures or refusals to comply with the Requirements of 40 C.F.R. Part 711.

14. Each of Respondent's failures or refusals to report the production volume for the ten (10) chemical substances listed in Paragraph 4j-4s in the above Findings to the accuracy required by 40 C.F.R. 711.15(b)(3)(iii) during the 2016 submission period constitutes an unlawful act pursuant to Section 15(3) of TSCA, 15 U.S.C. § 2614(3), for which an individual penalty may be assessed.

AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18, it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: **(a)** admits EPA, Region 2, has jurisdiction under TSCA to prosecute this proceeding; **(b)** neither admits nor denies the "USEPA Findings of Fact" or "Conclusions of Law" as set forth in this document; **(c)** consents to the assessment of the civil penalty as set forth below; **(d)** consents to the issuance of the Final Order accompanying this Consent Agreement; and **(e)** waives any right it might possess to obtain judicial review of, or otherwise contest, said Final Order.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent understands that it is obligated to maintain compliance with applicable requirements of 40 C.F.R. Part 711.
2. Respondent shall pay a civil penalty to EPA in the amount of **TWO HUNDRED NINETY-ONE THOUSAND SEVEN HUNDRED FORTY DOLLARS (\$291,740)**. Such payment must be received by EPA on or before thirty (30) days after the date of the signature of the Final Order, which is located at the end of this CA/FO.
3. The payment shall be made by cashier's check, certified check, electronically via Fedwire or online.
 - a. If payment is made by cashier's check or by certified check, such check shall be made payable to the "Treasurer, United States of America," and shall be identified with a notation thereon listing the following: **In re Thatcher Company of New York, Inc., Docket Number TSCA-02-2021-9242**. If payment is made by either form of check, such payment shall be mailed to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

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b. Alternatively, if Respondent chooses to make payment electronically by Fedwire, Respondent shall then provide the following information to its remitter bank when such payment is made in accordance with this paragraph:

- 1) **Amount of Payment;**
- 2) **SWIFT address:** FRNYUS33, 33 Liberty Street, New York, New York 10045
- 3) **Account Code for Federal Reserve Bank of New York receiving payment:** 68010727;
- 4) **Federal Reserve Bank of New York ABA routing number:** 021030004;
- 5) **Field Tag 4200 of the Fedwire message should read:** D 68010727 Environmental Protection Agency;
- 6) **Name of Respondent:** Thatcher Company of New York, Inc.; and
- 7) **Case docket number:** TSCA-02-2021-9242.

c. If Respondent chooses to make on-line payment, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under "EPA Miscellaneous Payments – Cincinnati Finance Center;" and open the form and complete the required fields. Once payment has been made, Respondent shall email proof of payment to Miller.JesseA@epa.gov and Wise.Milton@epa.gov and shall note on the subject line: **In the Matter of Thatcher Company of New York, Inc., TSCA-02-2021-9242.**

4. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims. Forty C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments. The Treasury current value of fund rate is two percent (2%) per annum.

5. Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.

6. If Respondent fails to make timely payment in accordance with the above terms, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, administrative handling charges and late penalty charges in the event of any such failure or default and remit such payment in accordance with the payment instructions in Paragraphs 2 and 3 above. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims.

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a. **Interest:** 40 C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments. The Treasury current value of fund rate is two percent (2%) per annum.

b. **Handling Charges:** Pursuant to 31 U.S.C. Section 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

c. **Late Payment Penalty Charge:** A late penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days, 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

7. The civil penalty provided for in this section (including any payment(s) for interest or late payment handling charge that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.

8. Respondent certifies that, as of the date of its signature, Respondent, in the operations at the Facility, is in full compliance with the applicable provisions of the 40 C.F.R. Part 711 TSCA Chemical Data Reporting requirements.

9. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via electronic mail to the addressee identified in Paragraph 11 below. Receipt of the fully executed consent agreement/final order (“CAFO”) by said designated representative shall constitute Respondent’s receipt and acceptance of said CAFO.

10. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement. Respondent further consents to making payment of the civil penalty in accordance with the terms and schedule set forth above.

11. Any responses, documentation and other communications submitted to EPA in connection with this Consent Agreement shall be sent to the following.

Jesse A. Miller, Ph.D.
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue
Edison, New Jersey 08837
Miller.JesseA@epa.gov; and

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Carl R. Howard
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Howard.Carl@epa.gov

Unless the above-named EPA contacts are subsequently advised in writing, EPA shall direct any future (*i.e.* subsequent to service of the fully executed CAFO having been made upon Respondent, as set forth below in this paragraph) written communications to Respondent related to this proceeding, including any communications related to failure to make payment in accordance with the provisions of this CAFO, to:

Richard E. Ostrov
Young/Sommer, LLP
Executive Woods
5 Palisades Drive
Albany, New York 12205
ROstrov@youngsommer.com

12. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit. Payment of the civil penalty in full as provided herein, together with any late payment for interest, shall not nullify, abrogate or otherwise render nugatory Respondent's obligation to comply with applicable TSCA statutory and regulatory requirement for its manufacture and importation of chemical substances, including new chemical substances, and to maintain such compliance.

13. Full payment of the penalty amount set forth above (*i.e.* \$291,740) in accordance with the terms herein, as well as any interest or late payment handling charges that accrue, and subject to 40 C.F.R. § 22.31(a), shall resolve Respondent's liability for federal civil penalties for the facts and violations described in Paragraphs 7-8 of the USEPA Findings of Fact and in Paragraphs 11-14 of the "Conclusions of Law" sections, above. Nothing herein shall affect the authority of the EPA (or the United States on behalf of EPA) to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law, resulting from or pertaining to, *inter alia*, Respondent's manufacture (including importation) of chemical substances for commercial purposes at Respondent's facility.

14. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action, suit or proceeding brought by the United States on behalf of EPA: (a) to enforce this CAFO; or (b) to enforce a judgment relating to this CAFO. Any failure by Respondent to perform fully any requirement herein will be considered a violation

of this CAFO, and may subject Respondent to an action, suit or proceeding by the United States to enforce the provisions of this CAFO.

15. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

16. EPA's entering into this Consent Agreement is premised upon Respondent not having misrepresented or concealed any material fact in any of its written or oral representations to the Agency. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights and Respondent reserves all of its legal and equitable defenses in the event that EPA commences an action.

17. Compliance with the requirements and provisions of this CAFO shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of TSCA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

18. Nothing in this CAFO is intended or is to be construed to operate to resolve or serve as a defense to any criminal liability of Respondent for any TSCA violations, whether such violations occurred prior or subsequent to the filing of the Final Order accompanying this Consent Agreement.

19. If any requirement or obligation of this CAFO is held invalid or stayed by a court of competent jurisdiction, such action is not intended, and shall not, negate, abrogate or otherwise affect the validity and Respondent's obligation to comply with, and to maintain such compliance, with the remaining requirements and provisions of this CAFO.

20. Each party shall bear its own costs and fees in connection with this proceeding.

21. This CAFO is intended to, and shall, be fully binding upon the parties, their officers, directors, employees, successors and/or assigns (as applicable).

22. The undersigned signatories hereto certify that they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and, further, that they are authorized to bind the party on whose behalf they are signing to comply with the applicable terms, conditions and requirement set forth in this Consent Agreement.

**RESPONDENT
THATCHER COMPANY OF
NEW YORK, INC.:**

BY: Craig N. Thatcher
(Signature)

NAME: Craig N. Thatcher
(Please Print)

TITLE: CEO

DATE: 8/3/2021

COMPLAINANT:

For Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

DATE: _____

FINAL ORDER

The Acting Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Thatcher Company of New York, Inc.*, bearing Docket Number TSCA-02-2021-9242. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and is hereby, ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3).

DATED: _____, 2021
New York, New York

WALTER E. MUGDAN
Acting Regional Administrator
United States Environmental Protection Agency
Region 2

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing docket number TSCA-02-2021-9242, in the following manner to the respective addressees below:

Copy by email to:

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Copy by email to:

Richard E. Ostrov
Young/Sommer, LLP
Executive Woods
5 Palisades Drive
Albany, New York 12205
ROstrov@youngsommer.com

Dated: _____
New York, New York