

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED

Sep 30, 2024

4:18 pm

U.S. EPA REGION 8
HEARING CLERK

IN THE MATTER OF:	CAA-08-2024-0018
Thatcher Company,	ADMINISTRATIVE COMPLIANCE
Respondent	ORDER ON CONSENT

PRELIMINARY STATEMENT

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

1. The Manager of the Air and Toxics Enforcement Branch in the EPA Region 8's Environmental Compliance and Assurance Division is delegated the authority to issue this Order under section 113(a) of the CAA, 42 U.S.C. § 7413(a).
2. This Order requires Respondent to comply with the requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. part 68 (Part 68). All activities specified and ordered below must be initiated and completed as soon as reasonably possible even though maximum time periods or specific dates for their completion may be detailed herein. With the exception of a written decision by the EPA to extend deadlines for submissions or performance, the terms of this Order will not be modified except by a subsequent written agreement between the EPA and Respondent.
3. By entering into this Order, Respondent (1) consents and agrees not to contest the EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein.

STATUTORY AND REGULATORY BACKGROUND

4. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA to, among other things, promulgate regulations to prevent accidental releases of certain regulated substances.
5. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides that the owners and operators of stationary sources are required to develop and implement a risk management plan (RMP) that includes a hazard assessment, a prevention program, and an emergency response program.
6. Part 68 sets forth the requirements of a risk management program that must be established and implemented at a stationary source that has more than a threshold quantity of a regulated substance in a process.
7. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term "person" to include in relevant part, an individual, corporation, or partnership.

FINDINGS

8. Respondent is a corporation that is authorized to do business in the state of Utah and is therefore a "person" as that term is defined under the section 112(r) of the CAA, 42 U.S.C. § 7412(r).
9. Respondent is the owner and/or operator of the Thatcher Company-Salt Lake City facility, a stationary source, located at 1905 Fortune Road, Salt Lake City, Utah 84104 (the Facility).
10. The Facility uses, handles, and/or stores more than a threshold quantity of sulfur dioxide (anhydrous), chlorine, ammonia (concentration 20% or greater), and ammonia (anhydrous), which are regulated substances, as specified at 40 C.F.R. §§ 68.115 and 68.130.
11. Respondent is required to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances. 42 U.S.C. § 7412(r)(7).

12. The EPA conducted an inspection of the Facility from July 27 through July 29, 2022, to assess compliance with section 112(r) of the CAA, 42 U.S.C. § 7412(r) and 40 C.F.R. part 68.
13. During the inspection, the EPA representative observed “areas of concern” or alleged violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. part 68. The alleged violations identified in the inspection that have not yet been brought into compliance to the satisfaction of the EPA,¹ are described in paragraphs 14-23, below.
14. Part 68 provides that the owner or operator must list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in section 68.22(a). 40 C.F.R. § 68.33(a). Respondent’s hazard assessment identified that environmental receptors existed within the relevant radius from the point of release, but Respondent did not identify the actual environmental receptors in the RMP. By failing to list the relevant environmental receptors in the RMP, Respondent violated 40 C.F.R. § 68.33(a).
15. Part 68 provides that, for each accidental release covered by section 68.42(a), the owner or operator shall submit in the RMP the information related to its five-year accident history as provided in section 68.42(b). 40 C.F.R. § 68.168. As part of the five-year accident history, the owner or operator must report known offsite impacts for each accidental release. 40 C.F.R. § 68.42(b)(8). Respondent did not accurately report all known offsite impacts in the five-year accident history for the release that occurred on June 19, 2019. By failing to accurately report all known offsite impacts in the five-year accident history in the RMP, Respondent violated 40 C.F.R. §§ 68.42(b)(8) and 68.168.

¹ At this early juncture of this matter, Respondent is still conducting its due diligence and does not admit that it is or ever was out of compliance with or otherwise in violation of said sections of law, and reserves the opportunity to continue to deny any alleged noncompliance or violation. The use of the terms “compliance,” “violation,” “correction,” or like terms herein, is not intended, and should not be interpreted, to mean that Respondent acknowledges or admits that any of the referenced “areas of concern” or “alleged violations” ever constituted non-compliant or violative conditions or actions.

16. Part 68 provides that the owner or operator must compile written process safety information before conducting any process hazard analysis and must keep process safety information up to date, including "information pertaining to the equipment in the process" such as piping and instrument diagrams (P&IDs). 40 C.F.R. § 68.65(a) and (d)(1)(ii). Respondent did not maintain P&IDs that accurately reflect the equipment as installed in the field. By failing to maintain up-to-date process safety information such as P&IDs, Respondent violated 40 C.F.R. § 68.65(a) and (d)(1)(ii).
17. Part 68 provides that the owner or operator must document that the process is designed and maintained in compliance with recognized and generally accepted good engineering practices. 40 C.F.R. § 68.65(d)(2). Respondent's anhydrous ammonia storage tanks do not have pressure gauges in accordance with ANSI/CGA G-2.1, Requirements for the Storage and Handling of Anhydrous Ammonia, and Respondent's ammonia, sulfur dioxide, and chlorine piping was not labeled in accordance with ANSI/ASME A13.1, Scheme for the Identification of Piping Systems. By failing to install pressure gauges on anhydrous ammonia storage tanks per ANSI/CGA G-2.1 and failing to label ammonia, sulfur dioxide, and chlorine piping per ANSI/ASME A13.1, Respondent failed to comply with recognized and generally accepted good engineering practices and violated 40 C.F.R. § 68.65(d)(2).
18. Part 68 provides that a process hazard analysis (PHA) must be performed (and updated and revalidated every five years) by a team with expertise in engineering and process operations. 40 C.F.R. § 68.67. The owner or operator must establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations or actions. 40 C.F.R. § 68.67(e). Respondent did not promptly address multiple PHA findings and recommendations and did not complete the corresponding actions arising from its 2016 Chlorine, Ammonia, and Sulfur Dioxide

PHAs. By failing to promptly address PHA findings and recommendations and failing to complete the corresponding actions, Respondent violated 40 C.F.R. § 68.67(e).

19. Part 68 provides that the owner or operator must certify annually that its written operating procedures are current and accurate. 40 C.F.R. § 68.69(c). Respondent failed to certify annually that its operating procedures were current and accurate and therefore violated 40 C.F.R. § 68.69(c).
20. Part 68 provides that inspections and tests must be performed on process equipment. 40 C.F.R. § 68.73(d)(1). Inspection and testing procedures must follow recognized and generally accepted good engineering practices, and the frequency of inspections and tests of process equipment must be consistent with applicable manufacturers' recommendations and good engineering practices. 40 C.F.R. § 68.73(d)(2-3). Respondent did not replace the pressure relief valves on the anhydrous ammonia storage tanks at least every five years in accordance with ANSI/CGA G-2.1. By failing to replace the pressure relief valves on the anhydrous ammonia storage tanks at least every five years per ANSI/CGA G-2.1, Respondent violated 40 C.F.R. § 68.73(d)(2-3).
21. Part 68 provides that the owner or operator must document each inspection and test that has been performed on process equipment, and the documentation must identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test. 40 C.F.R. § 68.73(d)(4). Respondent did not document the annual inspection and five-year replacement of the pressure relief valves on the anhydrous ammonia storage tanks. By failing to document the inspections and replacements of the pressure relief valves on the anhydrous ammonia storage tanks, Respondent violated 40 C.F.R. § 68.73(d)(4).
22. Part 68 provides that the owner or operator must establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures and changes to stationary sources that affect a covered process. 40

C.F.R. § 68.75(a). Respondent did not implement its management of change procedure when changing the material of construction for sulfur dioxide supply piping or when replacing a flanged connection with a coupling on ammonia supply piping. By failing to implement its management of change procedure, Respondent violated 40 C.F.R. § 68.75(a).

23. Part 68 provides that the owner or operator must promptly determine and document an appropriate response to each finding from its compliance audit, and document that deficiencies have been corrected. 40 C.F.R. § 68.79(d). Respondent did not document that all deficiencies from the 2019 compliance audit had been corrected. By failing to document that all deficiencies from the 2019 compliance audit had been corrected, Respondent violated 40 C.F.R. § 68.79(d).

COMPLIANCE ORDER

24. Based upon the foregoing Findings by the EPA, it is hereby ordered and agreed that Respondent will comply with the requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder codified at 40 C.F.R. part 68. Specifically, the EPA and Respondent agree that Respondent will, as expeditiously as reasonably possible, but in no event later than August 31, 2025, correct the violations alleged in paragraphs 14-23, or demonstrate to the EPA's satisfaction that the conditions or activities alleged do not constitute violations.
25. Within 15 days of completing all actions necessary to correct the violations alleged in paragraphs 14-23, or demonstrate to the EPA's satisfaction that the conditions or activities alleged do not constitute violations, Respondent will provide the EPA with a notification that the actions have been completed.
26. The notification of completion by Respondent required by paragraph 25 of this Order must contain the following certification signed by an authorized representative of Respondent:

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

accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment. (Signature and date)

27. All submissions and correspondence from Respondent shall be emailed to Steven Ramirez at Ramirez.StevenA@epa.gov.

OTHER TERMS AND CONDITIONS

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

GENERAL PROVISIONS

30. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$121,275 per day per violation, or both, as provided in section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), and 40 C.F.R. part 19, as well as criminal sanctions as provided in section 113(c) of the CAA, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
31. Nothing in this Order relieves Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state or local laws or statutes, nor restricts the EPA's authority to seek compliance with any applicable laws or regulations. Nothing in this Order may be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
32. Nothing in this Order may be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present imminent and substantial endangerment to the public health, welfare, or the environment.
33. The provisions of this Order apply to and are binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the effective date of this Order until the termination date as set out in paragraph 40, below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any

transfer of ownership or control of any portion of or interest in the Facility.

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

34. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. part 2, subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. part 2, subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.
35. Each undersigned representative certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally Respondent and the EPA to this document.
36. Deadlines for submissions or performance may be extended by the EPA, at its sole discretion, without further amendment to this Order. The EPA will provide Respondent written confirmation and documentation of any such extensions of time.
37. The parties consent to service of this Order by email at the following email addresses: Stanton.Noah@epa.gov (for the EPA) and schristiansen@parrbrown.com (for Respondent).

EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE

38. Pursuant to section 113(a)(4) of the CAA, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

JUDICIAL REVIEW

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

TERMINATION

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

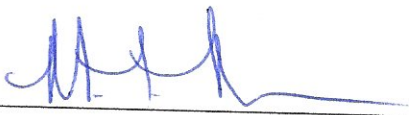
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant

Date: _____

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

Respondent

Date: 27 SEP 24

By: 

PRESIDENT
Title