

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)

Thatcher Company of Nevada, Inc.)
2302 Larkin Circle)
Sparks, Nevada 89431)

Respondent)
_____)

Docket No.
CAA(112r)-09-2023-0041

**CONSENT AGREEMENT
AND FINAL ORDER
40 C.F.R. §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, Sections 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region IX ("EPA").
3. Respondent is Thatcher Company of Nevada, Inc. ("Respondent").
4. Pursuant to EPCRA Section 325, 42 U.S.C. § 11045, the Administrator of EPA is authorized to take enforcement action against persons who violate EPCRA Section 312, 42 U.S.C. § 11022. The Administrator delegated this authority to the EPA Regional Administrators by delegation 22-3A, dated May 11, 1994 (last revised July 20, 2016). The Regional Administrator of EPA Region IX, redelegate this authority to the Director of the Enforcement Division (now

called the Enforcement and Compliance Assurance Division (“ECAD”)) by delegation R9-22-3-B, dated February 11, 2013.

5. Pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d), the Administrator of EPA is authorized to sign consent agreements memorializing settlements of enforcement actions against persons who violate CAA Section 112(r), 42 U.S.C. § 7412(r). The Administrator delegated this authority to the EPA Regional Administrators by delegation 7-6-A, dated August 4, 1994. The Regional Administrator of EPA Region IX redelegated this authority to the Director of the Enforcement Division (now ECAD) by delegation R9-7-6-A, dated February 11, 2013.

6. The United States Department of Justice granted EPA a waiver from the conditions on administrative actions specified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to allow EPA to pursue this administrative action.

7. This Consent Agreement and Final Order (“CA/FO”), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a)(1)-(3) and (8), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

8. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

B. GENERAL ALLEGATIONS

9. Respondent owns and operates a chemical warehouse and repackaging facility located at 2302 Larkin Circle in Sparks, Nevada (the “Facility”).

10. From November 2 through November 5, 2021, EPA performed an inspection of the Facility to evaluate compliance with Section 103 of the Comprehensive Environmental Response,

Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9603, EPCRA Sections 304-312, 42 U.S.C. §§ 11004-12 and CAA Section 112(r), 42 U.S.C. § 7412(r) (the “Inspection”). Based upon the information gathered during the Inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of EPCRA and the CAA.

11. At all times relevant to this CA/FO, Respondent has been and continues to be a “person” as defined in EPCRA Section 329(7), 42 U.S.C. § 11049(7) and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

i. Section 312 of EPCRA

12. EPCRA Section 312, 42 U.S.C. § 11022, and 40 C.F.R. § 370.10 require the owner or operator of a facility that is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”), 29 U.S.C. § 651 et seq., to submit an annual emergency and hazardous chemical inventory form containing information on hazardous chemicals present at the facility during the preceding calendar year above the threshold levels established in 40 C.F.R. § 370.10(a). For a hazardous chemical that is an Extremely Hazardous Substance (“EHS”) as defined in Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), the threshold is the lower of 500 pounds or the Threshold Planning Quantity (“TPQ”) in 40 C.F.R. Part 355, Appendices A and B.

13. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

14. Anhydrous ammonia is an EHS as defined in Section 302(a) of EPCRA, 42 U.S.C. § 11002(a). The TPQ for anhydrous ammonia is 500 pounds. 40 C.F.R. Part 355, Appendices A and B.

15. Sulfur dioxide is an EHS as defined in Section 302(a) of EPCRA, 42 U.S.C. § 11002(a). The TPQ for sulfur dioxide is 500 pounds. 40 C.F.R. Part 355, Appendices A and B.

16. At all times relevant to this CA/FO, over 500 pounds each of anhydrous ammonia and sulfur dioxide were present at the Facility.

ii. Section 112(r) of the CAA

17. Pursuant to the General Duty Clause in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same as extent as OSHA Section 654, 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

18. Pursuant to CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

19. At all times relevant to this CA/FO, the Facility has been a “stationary source” as defined at CAA Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

20. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility.

21. Pursuant to CAA Section 112(r), 42 U.S.C. § 7412(r), EPA established a TQ for each “regulated substance” at or above which a facility that has such substance in one or more processes shall be subject to the requirements of CAA Section 112(r), 42 U.S.C. § 7412(r). For substances designated as “regulated substances,” the TQs are specified at 40 C.F.R. § 68.130, Tables 1-4.

22. Chlorine is a “regulated toxic substance” listed under CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), with a TQ of 2,500 pounds. 40 C.F.R. § 68.130, Tables 1 and 2.

23. Sulfur dioxide is a “regulated toxic substance” listed under CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), with a TQ of 5,000 pounds. 40 C.F.R. § 68.130, Tables 1 and 2.

24. At all times relevant to this CA/FO, Respondent had 2,500 pounds or more of chlorine and 5,000 pounds or more of sulfur dioxide in one or more processes at the Facility.

C. ALLEGED VIOLATIONS OF LAW

Count I

Failure to Accurately Report Tier II Inventory Information

25. Paragraphs 1 through 24 above are incorporated herein by reference.

26. 40 C.F.R. § 371.42(s)(2) requires the owner or operator to report Tier II inventory information, including an estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility on any single day during the preceding calendar year.

27. Based upon the Inspection and subsequent investigation, EPA determined that Respondent’s 2018 Tier II inventory information for the Facility estimated the maximum amount of anhydrous ammonia and sulfur dioxide present on a single day at the Facility in the preceding year to be significantly higher than the actual maximum amount.

28. By failing to accurately report the maximum amount of anhydrous ammonia and sulfur dioxide present on a single day at the Facility in the preceding year, Respondent violated 40 C.F.R. § 370.42(s)(2).

Count II

General Duty Clause - Failure to Design and Maintain a Safe Facility

29. Paragraphs 1 through 24 above are incorporated herein by reference.

30. Pursuant to CAA Section 112(r)(1), 40 U.S.C. § 7412(r)(1), Respondent has a general duty, in the same manner and to the same extent as OSHA Section 654, 29 U.S.C. § 654, to identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, design and maintain a safe facility taking such steps as are necessary to prevent releases, and minimize the consequences of accidental releases which do occur.

31. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's Standard Operating Procedure (SOP) 1079 indicates repair kits for emergency response purposes are available at the Facility. However, EPA determined that Respondent did not inspect the repair kits to ensure they are in working condition in the event of use by third-party emergency responders.

32. By not inspecting the test kits to ensure they are in working order in the event of use by third-party responders, Respondent failed to design and maintain a safe facility by taking such steps as necessary to prevent releases, in violation of CAA Section 112(r)(1), 40 U.S.C. § 9413(d).

Count III

Failure to Develop an Accurate Management System

33. Paragraphs 1 through 24 above are incorporated herein by reference.

34. 40 C.F.R. § 68.15(a) requires the owner or operator to develop a management system to oversee the implementation of the risk management program elements.

35. 40 C.F.R. § 68.15(b) requires the owner or operator to assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

36. 40 C.F.R. § 68.15(c) requires that when the responsibility for implementing individual requirements is assigned to persons other than the person identified in 40 C.F.R. § 68.15(b), the names or positions of these people shall be documented, and the lines of authority defined through an organization chart or similar document.

37. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's organizational chart had no person assigned to have overall responsibility for development, implementation, and integration of the RMP elements. EPA determined that Respondent's organizational chart identified people responsible for individual RMP requirements, but some of the people assigned were unable to answer EPA's questions about their assigned responsibilities. In addition, EPA determined that the job positions with assigned responsibility for RMP elements were inconsistent with Respondent's corporate standard operating procedures, which assigned responsibility for RMP elements to those holding different job positions.

38. By failing to develop an accurate management system that identifies people assigned to individual requirements of the RMP elements, Respondent violated 40 C.F.R. § 68.15(a) and (c).

Count IV
Failure to Include Information in Executive Summary

39. Paragraphs 1 through 24 above are incorporated herein by reference.

40. 40 C.F.R. § 68.155 requires the owner or operator to provide in the RMP an executive summary that includes a brief description of, *inter alia*, the accidental release prevention and emergency response policies, the five-year accident history, and the emergency response program.

41. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's RMP for the Facility lacked, in the executive summary, descriptions of the accidental release prevention program, the five-year accident history, and the emergency response program.

42. By failing to include required information in the executive summary for the Facility's RMP, Respondent violated 40 C.F.R. § 68.155.

Count V
Failure to Have the Correct Phone Number in the RMP

43. Paragraphs 1 through 24 above are incorporated herein by reference.

44. 40 C.F.R. § 68.160(b)(4) requires the owner or operator to complete a registration form in the RMP that includes the name, telephone number, and mailing address of the owner and operator.

45. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's registration form in its February 26, 2021, RMP contained an incorrect phone number for Respondent.

46. By failing to include an accurate phone number in the registration form in its RMP, Respondent violated 40 C.F.R. § 68.160(b)(4).

Count VI
Failure to Include Process Safety Information for the Scrubber

47. Paragraphs 1 through 24 above are incorporated herein by reference.

48. 40 C.F.R. § 68.65(a) requires the owner or operator to complete a compilation of written process safety information that includes information pertaining to the technology of the process and the equipment in the process.

49. 40 C.F.R. § 68.65(c)(1) requires the information pertaining to the technology of the process to include process chemistry; safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and an evaluation of the consequences of deviation.

50. 40 C.F.R. § 68.65(d)(1) requires the information pertaining to equipment in the process to include safety systems (e.g., interlocks, detection or suppression systems).

51. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's written process safety information for the scrubber, which is a safety system for releases from the chlorine and sulfur dioxide processes, did not include information pertaining to process chemistry, safe upper and lower operating limits, an evaluation of the consequences of deviation, or information for the scrubber as a safety system.

52. By failing to include written process safety information pertaining to the technology of the process for its scrubber and information pertaining to the scrubber as a safety system, Respondent violated 40 C.F.R. § 68.65(a), (c)(1) and (d)(1).

Count VII

Failure to Document that the Gas Room's Ventilation System and Sodium Bisulfite Reactor Comply with RAGAGEP or were Designed and Operating in a Safe Manner

53. Paragraphs 1 through 24 above are incorporated herein by reference.

54. 40 C.F.R. § 68.65(a) requires the owner or operator to compile written process safety information that includes information pertaining to the equipment in the process.

55. 40 C.F.R. § 68.65(d)(2) requires an owner or operator to compile written process safety information to document that equipment in the process complies with recognized and generally accepted good engineering practices (“RAGAGEP”).

56. 40 C.F.R. § 68.65(d)(3) requires owners and operators to determine and document that any existing equipment that deviates from RAGAGEP because it was designed or constructed in accordance with standards that are no longer in general use, is designed, maintained, inspected, tested, and operating in a safe manner.

57. Based upon the Inspection and subsequent investigation, EPA determined that the Facility’s gas handling room, where it stored and processed chlorine and sulfur dioxide, was operated with exhaust fans and roll-up doors kept in the open position. With the roll-up doors in the open position, the gas room was not operated in negative pressure. The recommended industry practice and standard of care for gas rooms is to operate the room with an exhaust ventilation system and with the room in negative pressure. *See, e.g.*, National Fire Protection Association, NFPA 400: Hazardous Materials Code §§ 21.2.4.1 & 21.2.4.1 (2019).

58. Based upon the Inspection and subsequent investigation, EPA determined that for the Facility’s sodium bisulfite (“SBS”) reactor, which was part of the sulfur dioxide process, Respondent had no information that identified the applicable RAGAGEP or applicable design standard to which the reactor was built. EPA further determined that Respondent’s process safety information for the SBS reactor documented that Respondent maintained, inspected and tested it in a safe manner, but did not document that the SBS reactor was designed and operated in a safe manner.

59. By failing to document that its gas handling room and SBS reactor, for which Respondent did not document compliance with RAGAGEP, were designed, maintained, inspected, tested, and/or operating in a safe manner, Respondent violated 40 C.F.R. § 68.65(d).

Count VIII

Failure to Promptly Address Process Hazard Analysis Findings and Recommendations

60. Paragraphs 1 through 24 above are incorporated herein by reference.

61. 40 C.F.R. § 68.67(e) requires the owner or operator to establish a system to promptly address the findings and recommendation from a process hazard analysis (“PHA”), assure 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 employees.

62. Based upon the Inspection and subsequent investigation, EPA determined that Respondent’s 2018 PHA for the Facility repeated some recommendations from Respondent’s 2013 PHA that had not been resolved by the time of the 2018 PHA. At the time of EPA’s inspection, Respondent failed to provide documentation showing that some recommendations originally made in the 2013 PHA and repeated in the 2018 PHA, as well as new recommendations from the 2018 PHA, were resolved.

63. By failing to document that recommendations from the 2013 and 2018 PHAs were resolved in a timely manner, Respondent violated 40 C.F.R. § 68.67(e).

Count IX

Failure to Have Accurate Written Operating Procedures for Each Operating Phase

64. Paragraphs 1 through 24 above are incorporated herein by reference.

65. 40 C.F.R. § 68.69(a)(1) requires the owner or operator to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process that address steps for each operating phase, including startup, normal and temporary operations, emergency shutdown, emergency operations, normal shutdown, and startup following a turnaround or after an emergency shutdown.

66. Based upon the Inspection and subsequent investigation, EPA observed the following inconsistencies between Respondent's written operating procedures for the Facility and actual operations at the Facility:

- A. Respondent had written operating procedures for chlorine processes that no longer existed at the Facility;
- B. Respondent's written operating procedures for its chlorine and sulfur dioxide processes did not include operating procedures for its barcode tracking system for movement of chlorine and sulfur dioxide around the Facility; and
- C. Respondent's written operating procedures for startup of the sulfur dioxide process, which includes filling out a startup checklist (SOP 1079), were not consistent with staff practice.

67. By failing to have accurate written operating procedures for each operating phase, Respondent violated 40 C.F.R. § 68.69(a)(1).

Count X

Failure to Have Written Operating Procedures that Include Operating Limits

68. Paragraphs 1 through 24 above are incorporated herein by reference.

69. 40 C.F.R. § 68.69(a)(2) requires the owner or operator to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in

each covered process that address operating limits, including consequences of deviation and steps required to correct or avoid deviation.

70. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's operating procedures for the Facility's sulfur dioxide covered process did not include the operating limits, consequences of deviation, or steps required to correct or avoid deviation for the sulfur dioxide scrubber system.

71. By failing to include operating limits for the sulfur dioxide scrubber system in the written operating procedures, Respondent violated 40 C.F.R. § 68.69(a)(2).

Count XI

Failure to Certify Annually Operating Procedures are Current and Accurate

72. Paragraphs 1 through 24 above are incorporated herein by reference.

73. 40 C.F.R. § 68.69(c) requires owners and operators to review operating procedures as often as necessary to assure that they reflect current operating practice. The owner or operator shall certify annually that these operating procedures are current and accurate.

74. Based upon the Inspection and subsequent investigation, EPA determined that Respondent did not certify that part of its operating procedures at the Facility, SOP 1079, was current and accurate for the year 2020.

75. By failing to certify annually that part of its operating procedures are current and accurate, Respondent violated 40 C.F.R. § 68.69(c).

Count XII

Failure to Conduct Initial Training for Employees Involved in Operating a Process

76. Paragraphs 1 through 24 above are incorporated herein by reference.

77. 40 C.F.R. § 68.71(a)(1) requires initial training for employees, whereby each employee involved in operating a process must be trained in an overview of the process before being involved in operating a newly assigned process.

78. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's training records for the Facility did not show that two employees involved in operating a process at the Facility had received initial training in operating the process.

79. By failing to provide initial training to employees involved in operating a process, Respondent violated 40 C.F.R. § 68.71(a)(1).

COUNT XIII
Failure to Provide Refresher Training

80. Paragraphs 1 through 24 above are incorporated herein by reference.

81. 40 C.F.R. § 68.71(b) requires refresher training to be provided at least every three years to each employee involved in operating a process.

82. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's training documents for the Facility did not include refresher training or any records that refresher training had been conducted.

83. By failing to provide refresher training every three years to each employee involved in operating a process, Respondent violated 40 C.F.R. § 68.71(b).

Count XIV
Failure to Conduct Mechanical Integrity Inspections and Tests

84. Paragraphs 1 through 24 above are incorporated herein by reference.

85. 40 C.F.R. § 68.73(a) and (d)(1) require mechanical integrity inspections and tests to be performed on process equipment, including on piping systems, emergency shutdown systems, and controls.

86. 40 C.F.R. § 68.73(d)(4) requires the owner or operator to document each inspection and test, and 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.

87. Based upon the Inspection and subsequent investigation, EPA determined that Respondent had no records that it conducted mechanical integrity inspections and tests on the E-stops for the sulfur dioxide process or inspections for corrosion on the sulfur dioxide piping and equipment. EPA further determined that Respondent's documentation for inspections and tests for certain equipment, such as the loop checks for the GCV 5 and GCV 8 control loops, did not contain a description of the inspection or test performed.

88. By failing to conduct mechanical integrity inspections and tests on piping systems, emergency shutdown systems and controls and keep adequate documentation of inspections and tests, Respondent violated 40 C.F.R. §§ 68.73(a), (d)(1) and (d)(4).

Count XV
Failure to Promptly Begin an Incident Investigation

89. Paragraphs 1 through 24 above are incorporated herein by reference.

90. 40 C.F.R. § 68.81(b) requires an owner or operator to begin an incident investigation as promptly as possible, but no later than 48 hours following the incident.

91. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's documentation for Incident I-18-074-TCNV-Sparks-#150 Chlorine Cylinder Release, which involved a leak from a chlorine cylinder, indicates that the incident started on August 10, 2018 at 3:25 pm, and the investigation into the incident started on August 13, 2018 at 4:54 pm. EPA further determined that Respondent began the incident investigation for Incident I-18-074-TCNV-Sparks-#150 Chlorine Cylinder Release more than 48 hours following the incident.

92. By failing to initiate an incident investigation as promptly as possible, but no later than 48 hours following the incident, Respondent violated 40 C.F.R. § 68.81(b).

Count XVI
Failure to Evaluate Contractors' Safety Performance and Programs

93. Paragraphs 1 through 24 above are incorporated herein by reference.

94. 40 C.F.R. § 68.87(b)(1) requires an owner or operator to, when selecting a contractor, obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

95. Based upon the Inspection and subsequent investigation, EPA determined that Respondent did not have any documentation of the contract owner or operator's safety performance and programs for three contractors prior to selecting the contractor.

96. By failing to evaluate the contract owner or operator's safety performance and programs when selecting a contractor, Respondent violated 40 C.F.R. § 68.87(b)(1).

D. CIVIL PENALTY

97. EPA proposes that Respondent be assessed, and Respondent agrees to pay, a civil penalty in the amount of **SIXTY-NINE THOUSAND THREE HUNDRED NINETY-SIX THOUSAND DOLLARS (\$69,396)**, pursuant to 40 C.F.R. § 22.18(c).

98. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68” dated June 2012, and the “Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act” dated September 30, 1999, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

99. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. All payments shall indicate the Respondent’s name and address, Respondent’s point of contact person and phone number, and the EPA docket number for this action. Payment made by corporate, certified, or cashier’s checks shall be payable to “Treasurer of the United States.” Information on how to make a payment to EPA can accessed here: <https://www.epa.gov/financial/makepayment>.

100. Respondent shall send a copy of each check, or notification that the payment has been made by one of the methods provided on the website in paragraph 99, above, including proof of the date payment was made, via electronic mail with a transmittal letter indicating Respondent’s name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
R9HearingClerk@epa.gov

and

Anuka King
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
King.Anuka@epa.gov

101. Failure to send the penalty payment so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date. Respondent further will be liable for stipulated penalties as set forth below for failure to pay the civil penalty by the due date.

102. The penalties specified in this CA/FO shall represent civil administrative penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

E. RESPONDENT'S ADMISSIONS AND WAIVERS OF RIGHTS

103. In accordance with 40 C.F.R. § 22.18(b) and for the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of the complaint; (b) neither admits nor denies the specific factual allegations contained in the complaint; (c) consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, and to any conditions specified in the consent agreement; and (d) waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

F. SUPPLEMENTAL ENVIRONMENTAL PROJECT

104. In settlement of the civil administrative enforcement action for the violations alleged herein, although not required by EPCRA, the CAA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project ("SEP"), as described below in paragraph 105.

105. Respondent shall complete an equipment donation SEP, consisting of purchasing and donating equipment, as described in further detail below, to the Sparks Fire Department in Sparks, Nevada. The Sparks Fire Department is part of a regional “TRIAD” hazmat team that includes the Reno Fire Department and Truckee Meadows Fire and Rescue. The TRIAD provides a coordinated response to any hazardous materials leak, spill, or condition that threatens the public and/or the environment in Washoe County, Nevada. The Sparks Fire Department will make the donated equipment available for use by the TRIAD. Respondent shall purchase, for the Sparks Fire Department, the following equipment:

- A. Four (4) ZUMRO Model 284 low-pressure inflatable shelter systems;
- B. Accessories for the four (4) ZUMRO Model 284 shelter systems:
 - (1) Four (4) LED light systems for Model 284;
 - (2) Four (4) units of insulation for Model 284;
 - (3) Four (4) anchor bladder sets for Model 284;
 - (4) Four (4) stake kits for Model 284;
 - (5) Four GM80 axial ventilators; and
 - (6) Four Pelsue axial ventilators with 1/3 HP, 120 VAC.

106. Respondent shall spend no less than **ONE HUNDRED TEN THOUSAND, SEVEN HUNDRED FIFTY-SIX DOLLARS (\$110,756)** on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent’s implementation of the SEP as described in paragraph 105 does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response

equipment, Respondent will identify, purchase and provide additional emergency response equipment to the Sparks Fire Department.

107. Respondent shall complete the SEP by sixty (60) days after the Effective Date of this CA/FO.

108. Respondent has selected the Sparks Fire Department in Sparks, Nevada, to receive SEP equipment donations. The EPA had no role in the selection of the SEP recipient, or specific equipment identified in the SEP. This CA/FO shall not be construed to constitute EPA approval or endorsement of any SEP or specific equipment identified in this CA/FO.

109. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEP advances at least one of the objectives of EPCRA and the CAA by enhancing the capabilities of local hazardous waste emergency responders and thereby minimizing the consequences of accidents that do occur. The SEP is not inconsistent with any provision of EPCRA or the CAA. The SEP relates to the alleged violations and is designed to reduce the overall risk to public health and/or the environment potentially affected by the alleged violations (i.e., the risk of releases of hazardous substances) by improving hazardous material emergency response capabilities of the local fire departments.

110. Respondent certifies the truth and accuracy of each of the following:

- A. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is \$110,756;

- B. That Respondent will not include administrative costs, attorney costs, or employee oversight of the implementation of the SEP in its estimate of the cost to implement the SEP;
- C. That, as of the date of Respondent's signing of this CA/FO, Respondent 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;
- D. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CA/FO;
- E. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
- F. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- G. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- H. That Respondent 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 105; and
- I. That Respondent has inquired of the Sparks Fire Department whether it is 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 Sparks Fire Department that it is not a party to such a transaction.

111. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this CA/FO from the date of its execution of this CA/FO shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of federal laws.”

112. SEP Reports.

A. Respondent shall provide email confirmation to the EPA official in subparagraph D below within ten (10) days of completing the purchase of the equipment listed in paragraph 105. Respondent shall submit a SEP Completion Report to EPA by ninety (90) days after the Effective Date of this CA/FO. The SEP Completion Report shall contain the following information, with supporting documentation:

- (1) A detailed description of the SEP as implemented;
- (2) A description of any operating problems encountered and the solutions thereto;
- (3) Receipts documenting itemized costs;
- (4) Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and
- (5) A description of the environmental and public health benefits resulting from implementation of the SEP.

B. The certification required by subparagraph A(4) above shall contain the following language: 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 on

my inquiry of those individuals immediately responsible for obtaining the information, I believe that 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.

C. Respondent agrees that failure to submit the SEP Completion Report required by subsections A and B above shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to paragraph 121 below.

D. Respondent shall submit all notices and reports required by this CA/FO to:

Anuka King
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
King.Anuka@epa.gov

E. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

113. EPA acceptance of SEP Report.

A. After receipt of the SEP Completion Report described in paragraph 112 above, EPA will notify Respondent, in writing, regarding:

- (1) Any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
- (2) Indicate that EPA concludes that the SEP has been completed satisfactorily; or
- (3) Determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with paragraphs 121-122 below.

B. If EPA elects to exercise option (1) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO.

G. PARTIES BOUND

114. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D has been paid, and any delays in

performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of civil penalty liability for the violations alleged herein.

115. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

116. Until all requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

117. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

118. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO are within the sole discretion of the Director of ECAD, EPA Region IX.

H. CERTIFICATION OF COMPLIANCE

119. Respondent certifies to EPA that as of the Effective Date, it has fully complied with the requirements of EPCRA Section 312, 42 U.S.C. § 11022, and CAA Section 112(r), 42 U.S.C. § 7412(r), that formed the basis for the violations alleged in this CA/FO.

120. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify

personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

121. In the event Respondent fails to meet any requirement set forth in this CA/FO, including the requirements regarding the SEP specified in Section F, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

122. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in paragraph 106, Respondent shall pay a stipulated penalty to the United States in the amount of \$122,000. "Satisfactory completion" of the SEP is defined as Respondent spending no less than \$110,755.78 to purchase and donate emergency response equipment described in paragraph 105 to the Sparks Fire Department. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA. The sum of the stipulated penalties Respondent shall pay under paragraphs 121 and 122 for failure to meet the SEP requirements of Section F shall not exceed \$122,000.

123. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within thirty (30) days of receipt of a written demand by Complainant for such

penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section D of this CA/FO.

124. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the thirty-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with EPCRA, the CAA and their respective implementing regulations.

125. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

126. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive or reduce any portion of stipulated penalties that have accrued pursuant to this CA/FO.

J. RESERVATION OF RIGHTS

a. In accordance with 40 C.F.R. § 22.18(c), full compliance with this CA/FO shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

127. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations. This CA/FO shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

K. MISCELLANEOUS

128. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

129. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

130. Each party to this action shall bear its own costs and attorneys' fees.

131. This CA/FO can be signed in counterparts.

132. By signing this CA/FO, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.

133. Respondent consents to entry of this CA/FO without further notice.

L. EFFECTIVE DATE

134. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

In the Matter of Thatcher Company of Nevada, Inc.
Consent Agreement and Final Order

Respondent Thatcher Company of Nevada, Inc.

DATE: 8/9/2023

BY: Craig N. Thatcher

Name: Craig N. Thatcher

Title: CEO

In the Matter of Thatcher Company of Nevada, Inc.
Consent Agreement and Final Order

United States Environmental Protection Agency, Region 9

AMY MILLER-
BOWEN

Digitally signed by AMY
MILLER-BOWEN
Date: 2023.08.23
08:30:20 -07'00'

Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) in the Matter of Thatcher Company of Nevada, Inc. (Docket No. CAA-09-2023-0041) be entered and that Respondent shall pay a civil penalty of SIXTY-NINE THOUSAND THREE HUNDRED NINETY-SIX DOLLARS (\$69,396), and spend at least ONE HUNDRED TEN THOUSAND, SEVEN HUNDRED FIFTY-SIX DOLLARS (\$110,756) to implement a Supplemental Environmental Project in accordance with all terms and conditions of this CA/FO.

Beatrice Wong Date
Regional Judicial Officer
U.S. EPA, Region IX

