



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-02-2020-1205
This ESA is issued to: Thatcher Company of New York
4135 Route 104
PO Box 118
Williamson, NY 14589

This Expedited Settlement Agreement (“ESA”) is being entered into by the U.S. Environmental Protection Agency, Region 2 (“EPA”), by its duly delegated official, and by Thatcher Company of New York (“Respondent”) pursuant to Sections 113(a)(3) and (d) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. § 22.13(b). EPA and the United States Department of Justice have jointly determined that EPA may pursue this type of case as an administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

ALLEGED VIOLATIONS

On October 22-23, 2019, EPA conducted an inspection at Respondent’s facility, located at 4135 Route 104 in Williamson, New York to determine compliance with the Act’s Risk Management Program regulations, promulgated at 40 C.F.R. Part 68 pursuant to Section 112(r) of the Act. By letter dated November 20, 2019, EPA provided a copy of its inspection report to Respondent. Pursuant to the inspection, EPA has determined that Respondent violated the RMP regulations described in the enclosed Risk Management Program Findings (“Findings”). EPA described the violations in a letter sent to Respondent dated June 29, 2020.

SETTLEMENT

In consideration of the penalty assessment factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e), and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations described in the Findings for the total penalty amount of nine thousand nine hundred dollars (\$9,900).

For purposes of this proceeding, Respondent agrees to the following: it waives any objections that it may have regarding jurisdiction; it neither admits nor denies the specific factual allegations contained in the Findings; it consents to the assessment of the penalty as stated herein; and it waives its rights to contest the allegations contained herein, or to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own costs and fees, if any.

Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations described in the Findings.

After signature, a scanned copy of the signed ESA must be sent by email to Francesco Maimone at the following email address: Maimone.Francesco@epa.gov. The original, signed ESA must be sent by certified mail to:

Francesco Maimone, Physical Scientist
Air Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, NY 10007

The ESA, when executed by both parties and the Regional Judicial Officer and filed with the Regional Hearing Clerk, is binding on EPA and Respondent. Upon such filing and Respondent's timely payment of the penalty, EPA agrees it will not take any further civil penalty action against Respondent for the alleged violations of the Act referenced herein.

Nothing in this ESA shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This ESA does not relieve, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations promulgated or permits issued thereunder.

If the signed ESA is not returned to EPA Region 2 as instructed herein by Respondent within 45 days of the date of Respondent's receipt of it (or within 90 days if an extension is requested and granted), the proposed ESA is withdrawn, without any prejudice regarding EPA's ability to file an enforcement action for the alleged violations identified herein.

Respondent agrees to submit a payment in full of \$9,900 within 30 days of the filing of a fully executed copy of this ESA with the Regional Hearing Clerk.

PAYMENT INSTRUCTIONS

EPA requests that payments be made through the <http://Pay.gov> website using the following link: <https://www.pay.gov/public/form/start/11751879>.

Please ensure that the following information is included on the payment form:

- i. Amount of payment: \$9,900
- ii. Name of Respondent: Thatcher Company of New York
- iii. Docket No.: CAA-02-2020-1205

To ensure your payment is recorded properly, you are required to notify EPA contemporaneously with the payment. Please send an email message or letter that references the date of the payment, the payment amount, the docket number, and your name and address to the following: Francesco Maimone, at his email or address, shown above, and to:

Jean Regna
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866
email: Regna.Jean@epa.gov

Milton Wise
U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, OH 45268
emails: Wise.Milton@epa.gov and cinwd_acctsreceivable@epa.gov

and

Karen Maples, Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
email: Maples.Karen@epa.gov

Failure to pay the penalty when due may subject Respondent to a civil action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect the penalty, including accrued interest, attorney's fees, collection costs, and nonpayment penalties.

For purposes of the requirements of 26 U.S.C. § 162(f) of the Internal Revenue Code, the cost of actions taken to come into compliance with the violations identified herein are "restitution or paid to come into compliance with law."

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT:

Signature: Craig N. Thatcher
Name (print): Craig N. Thatcher
Title (print): President

Date: 09/30/2020

FOR COMPLAINANT:

for Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 2

Date: _____

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

Helen Ferrara
Regional Judicial Officer
U.S. EPA, Region 2

Date: _____

Risk Management Program Findings
CAA § 112(r) Violations

Thatcher Company of New York
4135 Route 104
PO Box 118
Williamson, NY 14589

COMPLETE THIS FORM AND RETURN IT WITH THE ESA

VIOLATION

PENALTY AMOUNT

Subpart A General

Management System [40 CFR 68.15(a)] \$1,200
The owner or operator failed to develop a management system to oversee the implementation of the risk management program elements.

Subpart B Hazard Assessment

Hazard Assessment [40 CFR 68.36(a)] \$1,200
The owner or operator failed to review and update offsite consequence analyses at least once every five years.

Hazard Assessment [40 CFR 68.39(a)] \$600
The owner or operator failed to document a description of the worst-case release scenario.

Hazard Assessment [40 CFR 68.39(b)] \$600
The owner or operator failed to document a description of the alternative-case release scenario.

Subpart D Prevention Program

Process Hazard Analysis Information [40 CFR 68.67(c)(1)] \$600
The owner or operator failed to fully evaluate the hazards of the process.

Operating Procedures [40 CFR 68.69(a)(3)] \$3,600
The owner or operator failed to address properties of, and physical hazards presented by, the chemicals used in the process; precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment; and control measures to be taken if physical contact or airborne exposure occurs.

Compliance Audits [40 CFR 68.79(a)] \$1,200
The owner or operator failed to conduct a Compliance Audit at least every three years.

Contractors [40 CFR 68.87(b)(1)]

\$900

The owner or operator failed to obtain and evaluate information regarding the contract owner or operator's safety performance and programs when selecting a contractor.

Total Penalty

\$9,900

The approximate cost to correct the above items: \$ _____

Compliance staff name: _____

Signed: _____ Date: _____