



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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DENVER, CO 80202-1129
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<http://www.epa.gov/region08>

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EPA REGION VIII
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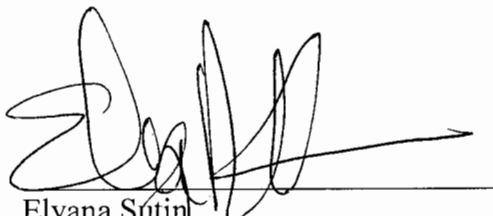
DOCKET NO.: FIFRA-08-2020-0002

IN THE MATTER OF:)	
)	
THATCHER GROUP, INC.)	FINAL ORDER
)	
)	
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 14th DAY OF November, 2019.



Elyana Sutin
Acting Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING ROOM FRK

IN THE MATTER OF:)

THATCHER GROUP, INC.)

Box 27407)

Salt Lake City, Utah 84127)

Respondent.)

Docket No. **FIFRA-08-2020-0002**

CONSENT AGREEMENT

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, as codified at 40 C.F.R. part 22.
2. Thatcher Group, Inc. (Respondent) owns and controls Thatcher Company, Inc., at 1905 Fortune Road in Salt Lake City, Utah 84101, Thatcher Company of New York, Inc., at 4135 Route 104 in Williamson, New York 14589, and Thatcher Company of Nevada, Inc., at 2302 Larkin Circle in Sparks, Nevada 89431.
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a)(1). The undersigned EPA official has been duly authorized to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. STATEMENTS OF GOVERNING LAW

7. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states “it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.”
8. “The term ‘to distribute or sell’ means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” FIFRA § 2(gg), 7 U.S.C. § 136(gg).
9. A “pesticide is misbranded if . . . the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with . . . are adequate to protect health and the environment.” FIFRA § 2(q)(1)(F), 7 U.S.C. § 136(q)(1)(F).
10. “The term ‘labeling’ means all labels and all other written, printed, or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.” FIFRA § 2(p)(2), 7 U.S.C. § 136(p)(2).
11. “The term ‘label’ means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” FIFRA § 2(p)(1), 7 U.S.C. § 136(p)(1).
12. Container labeling regulations require “the following statements, as applicable,” to be placed on the label or container: a statement identifying the container as refillable or nonrefillable and a reuse statement appropriate to that container; and for nonrefillable containers, a recycling or reconditioning statement providing additional instructions for managing an empty container, a batch code for the product contained; and for some nonrefillable containers and all refillable containers, a statement providing cleaning instructions prior to container disposal. 40 C.F.R. § 156.140.
13. All pesticide products distributed or sold by a registrant must have labels that comply with the requirements of 40 C.F.R. § 156.140 by August 16, 2011. 40 C.F.R. § 156.159.
14. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states, “it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under section 136a of this title or whose registration has been canceled or suspended.”
15. No person may distribute or sell any pesticide product that is not registered under the Act. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if: (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide or (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose. 40 C.F.R. § 152.15.

16. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states, “[i]t shall be unlawful for any person who is a producer to violate any of the provisions of section 136e of this title.”
17. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states, “[n]o person shall produce any pesticide subject to this subchapter or active ingredient used in producing a pesticide subject to this subchapter in any State unless the establishment in which it is produced is registered with the Administrator.”
18. Section 7(a) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which it is producing, which it has produced during the past year, and which it has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe.
19. A producer operating an establishment must submit an annual report on or before March 1 each year, even if the producer has produced no pesticidal product for that reporting year. 40 C.F.R. § 167.85(d).
20. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states, “[i]t shall be unlawful for any person to violate any regulation issued under section 136a(a) or 136q of this title.”
21. Under the applicable regulations, “supplemental distribution is permitted upon notification to the Agency if all the following conditions are met: (a) the registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor’s company number, the additional brand name(s) to be used, and the registration number of the registered product.” 40 C.F.R. § 152.132(a).

IV. ALLEGED FACTS

22. Respondent, Thatcher Group, Inc., is a “person” as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
23. At all times relevant to the alleged violations, Respondent was a “distributor/seller” as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), of a “pesticide” as defined in FIFRA section 2(u), 7 U.S.C. § 136(u), and a “producer” as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).
24. Respondent is a corporation organized under the laws of the state of Nevada and is authorized to do business in the states of Utah and Nevada.
25. Respondent’s primary place of business is located at 1905 Fortune Road, Salt Lake City, Utah 84104.
26. Respondent is a registrant with the EPA-assigned company numbers 9768 and 8996.

27. Energy Mizer Inc. (Energy Mizer) is a corporation organized under the laws of the state of Utah and authorized to do business in the state of Utah.
28. Energy Mizer's place of business is located at 1160 West 750 North, Suite G, Centerville, Utah 84014.
29. Sky Blue Industries, Inc. (Sky Blue) is a corporation organized under the laws of the state of Utah and authorized to do business in the state of Utah.
30. Sky Blue's place of business is located at 760 West Exchange, Ogden, Utah 84401.
31. Results Cleaning Systems (Results) is a corporation organized under the laws of the state of Utah and authorized to do business in the state of Utah.
32. Results' place of business is located at 3560 Wagon Wheel Way, Park City, Utah 84098.

A. Failure to File Supplemental Distributor Forms

33. Respondent entered into a repackaging agreement with Energy Mizer dated October 4, 2012.
34. Under the October 2012 repackaging agreement, Energy Mizer repackaged Thatcher T-Chlor, a sodium hypochlorite sanitizer, EPA Reg. No. 9768-7, and applied the distributor product label, called Sanitizer 2000, EPA Reg. No. 9768-7-89075.
35. Respondent did not submit to EPA for the Thatcher T-Chlor distributor product a statement signed by both Respondent and Energy Mizer listing the names and addresses of the registrant and Energy Mizer, Energy Mizer's company number, the additional brand name(s) to be used, and the registration number of the registered product.
36. Respondent entered into a repackaging agreement with Sky Blue dated July 3, 2013.
37. Under the July 2013 repackaging agreement, Sky Blue repackaged Thatcher T-Chlor 12.5, EPA Reg. No. 9768-7, and applied the distributor product labels Sky Blue Liquid Chlorine 12%, EPA Reg. No. 9768-7, and ATP Advanced Technology Products Liquid Chlorine 12%.
38. Respondent did not submit to EPA for the Thatcher T-Chlor distributor product a statement signed by both Respondent and Sky Blue listing the names and addresses of the registrant and Sky Blue, Sky Blue's company number, the additional brand name(s) to be used, and the registration number of the registered product.

B. Production of Pesticides in an Unregistered Facility

39. On or about July 28, 2015, Respondent submitted to the EPA a pesticide production report for the Thatcher Company of New York that indicated that the Thatcher New York facility was producing pesticides in 2014.
40. Respondent did not obtain the registered establishment number for the New York facility until July 24, 2015.

C. Failure to Report Pesticide Production

41. Respondent did not report its 2015 pesticide production for its New York facility by March 1, 2016.
42. Respondent did not report its 2016 pesticide production for its New York facility by March 1, 2017.

D. Distribution of Unregistered Pesticides

43. On March 23, 2016, a federally-credentialed inspector with the Utah Department of Agriculture and Food inspected the Results facility located at 3560 Wagon Wheel Way, in Park City, Utah 84098 to ensure compliance with FIFRA.
44. The inspection revealed that Results had received a sodium hypochlorite product packaged by Respondent called Results-Chlorinated Destainer.
45. Respondent did not register the Results-Chlorinated Destainer.
46. During the March 23, 2016, inspection, the inspector requested and obtained copies of distribution records demonstrating that Respondent had distributed the Results-Chlorinated Destainer to the Results facility on seven occasions.
47. On January 22, 2018, an inspector with the Utah Department of Agriculture and Food conducted a FIFRA marketplace inspection at the Thatcher Company of Utah facility, located at 1905 Fortune Road, Salt Lake City, Utah 84104.
48. The inspector identified a product containing ammonia labeled "Sanifresh" and referred his findings to the EPA.
49. The term "sani" implies that the product can or should be used as a pesticide.
50. Respondent did not register the Sanifresh product.
51. During the January 22, 2018, inspection, the inspector requested and obtained copies of distribution records demonstrating that Respondent had distributed ten separate containers of the Sanifresh product.
52. Respondent subsequently renamed the Sanifresh product "Fresh," however it remained a product containing a quaternary ammonium compound.
53. Respondent knew that the Fresh product continued to contain a quaternary ammonium compound and was intended to be used as a two-in-one detergent and disinfectant.
54. Respondent did not register the Fresh product.
55. During an October 31, 2018, inspection of the Thatcher Company New York facility, EPA obtained documentation demonstrating that Registrant had distributed five separate containers of the Fresh product.

56. During the October 31, 2018, inspection of the Thatcher Company New York facility, EPA obtained documentation demonstrating Respondent had repackaged a pesticide product called Bison Laboratory's Crystal Aqua Chlorinating Solution, EPA Reg. No. 9613-20001, and distributed it as a pesticide product called Thatcher T-Chlor 12.5, EPA Reg. No. 9613-20001-9768, on at least 15 occasions.
57. The Thatcher T-Chlor 12.5, EPA Reg. No. 9613-20001-9768, distributor product was not registered until December 18, 2018.

E. Distribution of Misbranded Pesticides

58. During an October 5, 2016, inspection of the Thatcher Company Utah facility located at 1905 Fortune Road, Salt Lake City, Utah 84104, EPA identified the Complete Acid Sanitizer product, EPA Reg. No. 4959-41-9768.
59. The label on the Complete Acid Sanitizer product did not contain the appropriate storage and disposal language that is required by 40 C.F.R. § 156.159.
60. During the October 5, 2016, inspection of the Thatcher Company Utah facility, the EPA inspector requested and obtained copies of distribution records demonstrating that Respondent had distributed the Complete Acid Sanitizer product with labels that did not contain the required language on one occasion.
61. During the October 5, 2016, inspection of the Thatcher Company Utah facility, the EPA also identified the chlorine gas product, EPA Reg. No. 9768-21.
62. The label on the chlorine gas product did not contain the storage and disposal language required by 40 C.F.R. § 156.159.
63. During the October 5, 2016, inspection, the EPA inspector requested and obtained copies of distribution records demonstrating that Respondent had distributed the chlorine gas product with labels that did not contain the required language on fifteen separate occasions.
64. During a March 29, 2018, inspection of the Thatcher Company of Nevada facility located at 2302 Larkin Circle, Sparks, Nevada 89431, a federally-credentialed inspector with the Nevada Department of Agriculture identified the Sierra Pure Chlor and Sierra Sani Chlor product labels, EPA Reg. No. 8996-20001.
65. The Sierra Pure Chlor and Sierra Sani Chlor product labels did not contain the storage and disposal language that is required by 40 C.F.R. § 156.159.
66. During the March 29, 2018, inspection, the inspector obtained copies of distribution records demonstrating that Respondent had distributed the Sierra Pure Chlor and Sierra Sani Chlor product with labels that did not contain the required language on one occasion.

V. ALLEGED VIOLATIONS OF LAW

67. As demonstrated in section IV A, EPA alleges that Respondent violated the regulation concerning notification of supplemental distribution in violation of section 12(a)(2)(S) of FIFRA, 7 U.S.C. §136j(a)(2)(S), on at least two separate occasions, and is therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 136l.
68. As demonstrated in sections IV B and C, EPA alleges that Respondent violated the regulations requiring registration of an establishment producing pesticides and requiring annual reporting of pesticide production in violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), on at least three separate occasions, and is therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 136l.
69. As demonstrated in section IV D, EPA alleges that Respondent distributed, or sold unregistered pesticides in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on more than 37 separate occasions, and is therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 136l.
70. As demonstrated in section IV E, Respondent distributed or sold misbranded pesticides in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on 17 separate occasions, and is therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 136l.

VI. TERMS OF CONSENT AGREEMENT

71. For the purpose of this proceeding, Respondent
 - a. admits the jurisdictional allegations in section II of this Agreement;
 - b. neither admits nor denies the alleged facts stated in section IV and the alleged violations stated in section V of this Agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - e. waives any and all available rights to judicial or administrative review or other remedies Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–706; and
 - f. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, subject to defenses available to Respondent, and agrees that federal law shall govern in any such civil action.
72. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes EPA to assess a civil penalty in this matter.

73. In determining the amount of the penalty to be assessed, EPA considered the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation, as required by section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).
74. Based on the alleged violations of law, and after consideration of the statutory factors in paragraph 73, EPA has determined a civil penalty of \$300,415.00 is appropriate to settle this matter.
75. Penalty Payment. Respondent agrees to
- a. pay a civil penalty in the amount of \$300,415.00 within 30 calendar days of the effective date of this Agreement;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
 - c. identify each and every payment with the docket number that appears on the final order,
 - d. within 24 hours of payment, email proof of payment to Daniel Webster and Erin Agee at webster.daniel@epa.gov and agee.erin@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
76. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may
- a. request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses;
 - b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. after an opportunity to be heard and to cure the alleged violation, suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
77. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

78. This Agreement applies to Respondent and its successors and assigns. Until the penalty is paid in full, Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Thatcher Company of Nevada, Inc. facility, the Thatcher Company of New York, Inc. facility, or the Thatcher Company, Inc. facility. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
79. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
80. Except as qualified by paragraph 76, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

81. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
82. The terms and conditions of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the environmental appeals board/ regional judicial officer, or other delegatee.
83. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
84. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
85. 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.

VIII. EFFECTIVE DATE

86. This Agreement shall become effective on the date the final order is filed by the hearing clerk.

Consent Agreement In the Matter of THATCHER GROUP, INC.

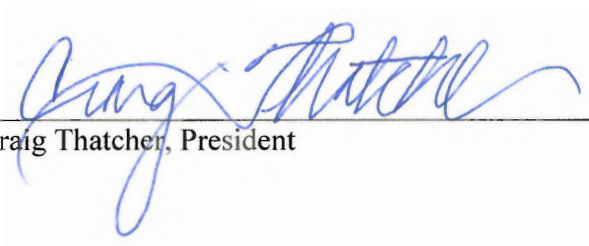
**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.**

Date: 10/31/19

By: 
Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

**THATCHER GROUP, INC.
Respondent.**

Date: 10/17/2019

By: 
Craig Thatcher, President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **THATCHER GROUP, INC.; DOCKET NO.: FIFRA-08-2020-0002** was filed with the Regional Hearing Clerk on November 14, 2019.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Erin Agee, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on November 14, 2019, to:

Respondent

Craig Thatcher
President
Thatcher Group, Inc.
Box 27407
Salt Lake City, Utah 84127


Legal Representation

Dean S. Sommer
Young/Sommer LLC Attorneys at Law
Executive Woods, Five Palisades Drive
Albany, New York 12205

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

November 14, 2019



Melissa Haniewicz
Regional Hearing Clerk