



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2011 JAN 13 PM 2:33

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

FILED  
EPA REGION VIII  
WEARING CLERK

DOCKET NO.: CAA-08-2011-0003

IN THE MATTER OF:

**THATCHER COMPANY**  
P. O. Box 27407  
(1905 Fortune Road)  
Salt Lake City, UT 84104

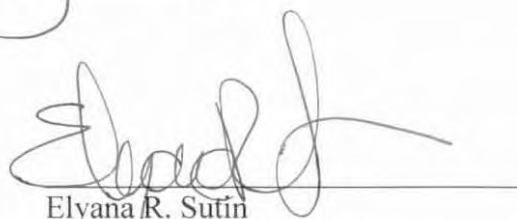
**RESPONDENT**

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**FINAL ORDER**

Pursuant to 40 C.F.R. §22.18, 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 receipt by Respondent of this Consent Agreement and Fina Order.

SO ORDERED THIS 13<sup>th</sup> DAY OF January, 2011.

  
Elyana R. Sutin  
Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
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IN THE MATTER OF: )  
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Salt Lake City, Utah 84104 )  
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Respondent )  
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**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

**DOCKET NO. : CAA-08-2011-0003**

Complainant, United States Environmental Protection Agency- Region 8 (EPA), and Respondent, Thatcher Company (Thatcher), by their undersigned representatives, hereby consent and agree as follows:

**I. INTRODUCTORY TERMS**

1. This proceeding is subject to EPA's "*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits*" (Rules of Practice), 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and amicably concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).
2. EPA and Thatcher agree that EPA has jurisdiction over this matter pursuant to §113 of the Clean Air Act (the "Act"), 42 U.S.C. § 7413. The EPA is authorized to take action in this matter through its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, pursuant to §§ 113(a)(3)(B) and (d) of the Act, 42 U.S.C. §§ 7413(a)(3) and (d), and 40 C.F.R. § 22.13(b), for violations of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of 42 U.S.C. § 7412(r).

**II. STATUTORY AND REGULATORY FRAMEWORK**

3. The regulations promulgated by EPA pursuant to authority under the Act, implementing the "Risk Management Program" requirements, are set forth in part 68 of Title 40 of the Code of Federal Regulations (C.F.R.).
4. Under 40 C.F.R. § 68.3, the following definitions apply:
  - "*Stationary source*" means "any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the

control of the same person (or persons under common control) and from which an accidental release may occur.”

- “*Regulated substance*” means “any substance listed pursuant to § 112(r)(3) of the Clean Air Act as amended, in § 68.130.” Threshold quantities for the regulated substances are included in § 68.130.

5. Pursuant to § 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity is required to prepare and implement a risk management plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source.
6. Pursuant to § 302(e) of the Act, 42 U.S.C. § 7602(e), the term “*person*” includes, in relevant part, “an individual, corporation, or partnership.”
7. Thatcher Company is a Utah corporation in good standing.
8. Thatcher Company is a “person” as defined by § 302(e) of the Act, 42 U.S.C. § 7602(e), and thus subject to regulation.

### **III. GENERAL ALLEGATIONS**

9. On February 12, 2010 and April 8-9, 2010, two authorized representatives of EPA inspected Respondent at its facility, with Respondent’s consent, to determine compliance with the Act and its implementing regulations.

### **IV. SPECIFIC ALLEGATIONS**

10. At the time of both inspections described in the preceding paragraph, Respondent did not meet the requirements of 40 C.F.R. part 68. Specifically, on the days of EPA’s inspections, Respondent:
  - a. had not fully implemented and documented that inspections and tests performed on covered vessels 10-TK-09 and 12-TK-10 followed recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.73(d)(2);
  - b. had not ensured and documented that inspections and tests performed on the relief systems and devices (pressure relief valves) followed applicable manufacturers’ recommendations as required by 40 C.F.R. § 68.73(d)(3);
  - c. had not adequately trained, documented, and assured that the employees involved in maintaining the on-going integrity of the process equipment understand and are able to perform process maintenance activities as required by 40 C.F.R. § 68.73(c);
  - d. had not addressed deficiencies that are outside acceptable limits (chlorine piping test point 43) as required by 40 C.F.R. 68.73(e); and,

- e. had not completed a compliance audit every three years as required by 40 C.F.R. § 68.79(a).

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**V. TERMS OF SETTLEMENT**

11. In consideration of Respondent's facility service size, its full compliance history, its good faith effort to comply, other factors as justice may require, and upon consideration of the entire record, the parties enter into this CCCA in order to settle the violations for the total penalty amount of \$12,500, performance of a Supplemental Environmental Project (SEP) costing not less than \$168,928, and performance of remedial measures re-establishing Respondent's compliance with requirements within six months of entry of the Final Order in this matter.

**VI. CONSENT AGREEMENT**

12. Respondent admits the jurisdictional allegations contained herein.
13. Respondent neither admits nor denies the factual allegations stated herein.
14. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this CCCA.
15. This CCCA, upon incorporation into a final order, applies to and is binding on EPA, Respondent, and Respondent's heirs, successors and assigns. Any change in ownership or corporate status 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. This CCCA contains all terms of the settlement agreed to by the parties.
16. CERTIFICATION OF COMPLIANCE. On or before one hundred eighty days after the date of the Final Order approving this CCCA, Thatcher will submit to EPA a Certification of Compliance, establishing Thatcher's completion of the items described in Paragraph's (a) through (d) below:
  - a. Demonstrate that the implementation and documentation of the inspection and testing procedures for anhydrous ammonia vessels No. 10-TK-09 and No. 12-TK-10 follow recognized and generally accepted good engineering practices (RAGAGEP) and reference the specific RAGAGEP(s) in SOP MBE 44 as required by 40 C.F.R. § 68.73(d)(2);
  - b. Demonstrate that all pressure-relieving devices on covered equipment have been inspected and replaced in accordance with manufacturers' recommendations as required by 40 C.F.R. § 68.73(d)(3);
  - c. Demonstrate that all employees involved in maintaining the on-going mechanical integrity of the process equipment (i.e. non-destructive testing) have been adequately trained as required by 40 C.F.R. § 68.73(c); and,

- d. Demonstrate the required RMP Compliance Audit has been completed with the frequency required by 40 C.F.R. § 68.79(a).

17. The CERTIFICATION OF COMPLIANCE submitted by Thatcher shall contain the date, printed name, and signature of a Thatcher Company officer, as well as the following statement:

*I certify that I am authorized to verify the completion of work on behalf of Thatcher Company. I certify under penalty of perjury that the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.*

18. The CERTIFICATION OF COMPLIANCE will be sent or e-mailed to Mr. David Cobb at the following address:

Mr. David Cobb, 8ENF-AT  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
E-mail: [cobb.david@epa.gov](mailto:cobb.david@epa.gov)

19. PENALTY. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the implementing regulations associated with the “Prevention of Accidental Releases” requirements of 42 U.S.C. § 7412(r). For purposes of determining the amount of any civil penalty to be assessed, § 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.
20. Based on the factors listed in paragraph 19, Respondent’s agreement to promptly re-establish compliance with requirements of § 112(r)(7) of the Act, and Respondent’s agreement to perform a Supplemental Environmental Project (SEP), **EPA has determined that an appropriate civil penalty to settle this action is Twelve Thousand Five Hundred Dollars (\$12,500).**
21. Respondent consents, for the purpose of settlement, to the issuance of a final order in this matter and agrees to pay the civil penalty described in the preceding paragraph.
22. Respondent further consents, for the purpose of settlement, to the performance of the SEP described below, performance of remedial measures described below, and to pay the civil penalty as follows:

- a. Payment shall be made in the amount of TWELVE THOUSAND FIVE HUNDRED DOLLARS (**\$12,500**) and payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer which adopts this CCCA. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "*Treasurer, United States of America,*" (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:  
Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact Natalie Pearson  
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074

Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22-checking  
Environmental Protection Agency  
Account 310006  
CTX Format

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On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter sfo1.1 in the search field

Open form and complete required fields

**A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:**

Mr. David Cobb, 8ENF-AT  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

Ms. Tina Artemis, 8RC  
Regional Hearing Clerk  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

23. SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP). Respondent agrees to perform a SEP, which is described below:
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- a. Respondent shall perform a SEP that involves the purchase, installation and continuous operation of a Tail Gas Mitigation Demister (TGMD) purchased from Stebbins Engineering and Manufacturing Company. The TGMD will prevent salt particulates from entering the environment that would otherwise be emitted from the facility. The TGMD will be designed with a removal efficiency of >99% for particulates < 1 micron and  $\approx 99.9\%$  > 1 micron. The TGMD will be installed and operated in accordance with the manufacturer's recommendations.
  - b. The TGMD is not required as part of any federal, state or county permit, regulation, or separate enforcement action.
  - c. Respondent shall purchase, install, and operate the SEP no later than thirty days from receipt of the Final Order.
24. **The total expenditure for the SEP shall be not less than ONE HUNDRED SIXTY EIGHT THOUSAND NINE HUNDRED AND TWENTY EIGHT DOLLARS (\$168,928)**. This amount is 90% of the original SEP estimate (\$187,698). Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described below.
25. SEP Reports:
- a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of the SEP. The SEP Completion Report shall contain the following information:
    - i. A detailed description of the SEP as implemented;
    - ii. A description of any operating, implementing or performance problems encountered and the solutions thereto;
    - iii. Proof of expenditures and itemized costs to perform the SEP, documented with copies of purchase orders, receipts and canceled checks; and
    - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.
26. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CCCA and Respondent shall become liable for stipulated penalties and late fees as set forth below.
27. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CCCA, Respondent shall have its duly appointed officer sign and certify under penalty of law that the information contained in such



document or report is true, accurate, and not misleading by signing the following statement:

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*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.*

28. EPA acceptance of SEP Reports. Following receipt of the SEP Completion Report described above, EPA will do one of the following:
  - a. accept the SEP Completion Report;
  - b. reject the SEP Completion Report with notification to Respondent in writing of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or,
  - c. reject the SEP Completion Report and seek stipulated penalties in accordance with the provisions herein.
29. If EPA elects to exercise option (c.) in the preceding paragraph, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) days of receipt of such notification. EPA and Respondent shall then have an additional thirty (30) days to reach agreement from the receipt by EPA of Respondent's notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this CCCA.
30. Determining whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
31. Respondent shall submit by first class mail all notices and reports required by this CCCA to:

Mr. David Cobb, 8ENF-AT  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129
32. SEP-RELATED PENALTIES AND LATE FEES. In the event Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEP described above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEP expenditure stated above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. If the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty to the U.S. Treasury in the amount of One Hundred Sixty Eight Thousand Nine Hundred and Twenty Eight Dollars (\$168,928) within thirty (30) days of written demand by EPA.
  - b. If the SEP has been satisfactorily completed, and Respondent spent less than the amount of money required to be spent for the project, Respondent shall pay One Hundred Sixty Eight Thousand Nine Hundred and Twenty Eight Dollars (\$168,928), less the EPA-approved amount already expended on the SEP, to the U.S. Treasury within thirty (30) days of the date on EPA's written demand.
  - c. For failure to submit the SEP Completion Report required above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of Fifty Dollars (\$50) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.
33. Stipulated penalties for subparagraph (c) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.
  34. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions for payment of the civil penalty above. Interest and late charges shall be paid as stated in the paragraph 22.

#### **VII. OTHER TERMS**


35. Nothing in this CCCA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
36. Failure by Respondent to comply with any term of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
37. Nothing in this CCCA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.
38. The undersigned representative of Thatcher certifies he/she is fully authorized to enter into and legally bind Thatcher Company to the terms and conditions of this CCCA.
39. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
40. Each party shall bear its own costs and attorney fees in connection with this matter.

41. This CCCA, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint portion of this CCCA.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Office of Enforcement, Compliance, and  
Environmental Justice

COMPLAINANT.


Date: 1/5/10

By:   
for Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

THATCHER COMPANY CORPORATION

RESPONDENT.

Date: 12/20/2010

By:   
Printed Name: Craig N. Thatcher  
Title: President

## CERTIFICATE OF SERVICE

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The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT and FINAL ORDER** in the matter of **THATCHER COMPANY; DOCKET NO.: CAA-08-2011-0003** was filed with the Regional Hearing Clerk on January 13, 2011.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Dana Stotsky, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on January 13, 2011 to:

Craig Thatcher, President  
Thatcher Company  
1905 Fortune Road  
Salt Lake City, UT 84104

E-mailed to:

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

January 13, 2011

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

