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In the Matter of: : **STIPULATION AND CONSENT**
: **ORDER**
THATCHER COMPANY, INC. :
EPA ID UTD041307356 : **No. 2102006**
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This **STIPULATION AND CONSENT ORDER** (“CONSENT ORDER”) is issued by the Director of the Division of Waste Management and Radiation Control (“Director”) pursuant to the Utah Solid and Hazardous Waste Act (the “Act”), Utah Code § 19-6-101, *et seq.*, and the Utah Used Oil Management Act (the “Used Oil Act”), Utah Code § 19-6-701, *et seq.*, and stipulated to by Thatcher Company, Inc. (“Thatcher”).

DEFINITIONS

For purposes of this CONSENT ORDER, terms used herein have the meaning provided for in the Act, and the regulations implementing the Act, Utah Admin. Code R 315-260 through 268 (the “Rules”).

JURISDICTION

1. The Director has jurisdiction over the subject matter of this CONSENT ORDER pursuant to Utah Code §§ 19-6-107 and 19-6-112 and 19-6-705(2)(c). Thatcher stipulates to and will not challenge issuance of this CONSENT ORDER or the Director’s jurisdiction to enter and enforce this ORDER.

FINDINGS

2. Thatcher is a corporation registered to conduct business in the State of Utah, engaged in the manufacture and sale of chemical products.
3. Thatcher is a “person” as defined in Utah Code § 19-1-103(4) and is subject to all applicable provisions of the Act and the Rules.
4. Thatcher generates and stores solid and hazardous waste, as defined in the Rules, at its approximately 30-acre facility located at 1905 West Fortune Road, Salt Lake City, Salt Lake County, Utah (hereinafter referred to as the “facility”).
5. On August 18, 1980, Thatcher initially notified as a very small quantity generator of hazardous waste D002 and obtained a U.S. Environmental Protection Agency (“EPA”) identification number. Thatcher changed its generator status to a large quantity generator on May 21, 2001 but did not specify any waste codes. On June 14, 2013, Thatcher changed its generator status back to a very small quantity generator for waste code D002.

6. On January 14, 2014, pursuant to Utah Code §§ 19-6-107(2)(d) and 19-6-109, duly authorized representatives of the Director conducted an inspection of the Thatcher facility.¹ Division representatives documented:
 - 6.1. At the time of the inspection, Thatcher blended and repackaged industrial chemicals generating 4,500 different chemical products by blending about 20 to 30 chemicals. *See* 2014 Inspection Report at 2.
 - 6.2. “[W]henever a chemical/product is blended incorrectly or when spilled[,] the result[tant] materials are re-blended into other chemicals/products.” *Id.*
 - 6.3. “Baghouse dusts [were] also re-blended.” *Id.*
 - 6.4. Thatcher generated “small amounts” of used oil during maintenance of gearboxes. *Id.*
 - 6.5. Thatcher generated “small amounts” of “various” laboratory wastes. *Id.*
7. On November 14, 2019, Thatcher “received draft results of a voluntary, third-party environmental compliance audit of their Salt Lake City facility” (“Draft Audit”).²
8. On November 26, 2019, Thatcher emailed a letter to Division staff regarding “Self-Disclosure under the Utah Department of Environmental Quality Self-Evaluation Act” (“Self-Disclosure Letter”) to “voluntarily disclose to the Utah Department of Environmental Quality [] instances of potential non-compliance with laws, regulations, and other requirements relating to the management of solid and hazardous waste identified in a voluntary third party audit, pursuant to the Utah Environmental Self-Evaluation Act[.]”³ Thatcher’s Self-Disclosure Letter stated that:
 - 8.1. The Thatcher Draft Audit determined “the amount of hazardous waste exceeds the threshold for the site to be considered a Large Quantity Generator[.]” *See* Self-Disclosure Letter at ¶ I.1.
 - 8.2. The Thatcher Draft Audit determined that Thatcher stored certain large quantity generator amounts of hazardous waste beyond the 90-day storage period. *Id.* at ¶ I.1.
 - 8.3. The Thatcher Draft Audit determined that “the waste analyses, designation, and associated recordkeeping of these materials was insufficient, and that hazardous waste satellite accumulation containers did not include appropriate labeling.” *Id.* at ¶ I.1.

¹ *See* SQG/CESQG Compliance Evaluation Inspection Report (“2014 Inspection Report”) (DSHW-2014-00261).

² *See* Self-Disclosure Letter from Ben Machlis to Deborah Ng. (November 26, 2019).

³ Thatcher’s Self-Disclosure Letter was addressed and submitted by email to Deborah Ng, Utah Division Waste Management and Radiation Control (Division), Hazardous Waste Section Manager on November 26, 2019. By email dated November 27, 2019, Ms. Ng requested the letter be resubmitted by mail to Mr. Ty Howard, Division Director and by reply email to Ms. Ng that same day counsel for Thatcher confirmed that the Self-Disclosure Letter had been re-addressed and mailed to Mr. Howard with a copy to Ms. Ng. The parties have been unable to locate hardcopies mailed to Mr. Howard and Ms. Ng. In February 2021, the Director formally acknowledged receipt of Thatcher’s Self-Disclosure Letter addressed to Ms. Ng.

- 8.4. The Thatcher Draft Audit “identified a substantial amount of materials that were being stored for rework and recycling” that have insufficient documentation to determine if the “materials” are hazardous waste and meet applicable recycling requirements. Thatcher stated that “[s]uch material may qualify as being ‘speculatively accumulated’...” *Id.* at ¶ I.2.
- 8.5. Thatcher had not updated its EPA ID generator status to a large quantity generator although a Thatcher auditor determined the “facility likely qualifies as [a] [Large Quantity Generator].” *Id.* at ¶ I.3.
- 8.6. The Thatcher Draft Audit identified universal waste management issues, including “[s]ome containers of used oil were improperly marked, aerosol cans were not properly disposed of, and storage time limits were not observed.” *Id.* at ¶ I.4.
- 8.7. Thatcher maintained that the Draft Audit issues “fall[] within the requirements of Utah DEQ’s Audit Policy.” *Id.* at ¶¶ II.1 – II.8.
9. The Director has not taken a position whether the “potential instances of non-compliance” acknowledged in the Thatcher Self-Disclosure Letter qualify for a waiver of civil penalties as specified in the Environmental Self-Evaluation Act, Utah Code § 19-7-109.
10. On March 13, 2020, Thatcher updated its EPA ID generator status to a large quantity generator for waste codes: D001, D002, D003, D004, D005, D006, D008, D009, D010, D011, D018, D035, and D039.
11. On March 23, 2020, Thatcher submitted for Division review and approval a draft “Waste Inventory and Characterization Plan” (the “WICP”) (DSHW-2020-006313), dated March 11, 2020, that proposed an approach to addressing Thatcher’s waste issues identified in the Self-Disclosure Letter in four phases:
- Phase 1 – laboratory chemicals;
 - Phase 2 – an estimated 1,106 containers in the northwest storage area (“NWSA”) and an estimated 200 containers directly east of the NWSA fence line;
 - Phase 3 – an estimated 650 containers in various onsite storage areas; and
 - Phase 4 – material management for continuous operation.
- See* WICP at 6.
12. On April 3, 2020, on behalf of Thatcher, Clean Harbors Environmental Services requested the Director issue a “temporary emergency license [or permit] for onsite treatment of 10 potentially unstable, hazardous waste containers of [] Hexene (1x100ml), Diethyl Ether (1x4L), Tetrahydrofuran (1x4L), 1,4 Dioxane (4x100ml), Styrene (1x1L), Acrylonitrile (1x250ml), [and]

2,4 Dinitrophenylhydrazine (1x100g).”⁴ The Emergency Permit Request stated “[t]he material in question has been deemed expired or unstable for transport and disposal and will require treatment prior to shipment.”

13. On April 7, 2020, the Director issued Emergency Permit #UT-010-2020 (DSHW-2020-005287) to Thatcher to treat 10 potentially unstable containers of hazardous waste onsite.
14. The *Thatcher Company Hazard Project After-Action Report*, dated April 23, 2020 (DSHW-2020-006633), stated in addition to treatment of the unstable hazardous waste containers identified in the Emergency Permit Request (DSHW-2020-005606), Clean Harbors treated onsite three additional containers of unstable compounds: Tetrahydrofuran (1x100ml), 1,4, Dioxane (1x100ml), and Benzoyl Peroxide (1x50g).
15. Between January – March, 2021, pursuant to Utah Code §§ 19-6-107(2)(d) and 19-6-109, authorized representatives of the Director inspected Thatcher’s facility to evaluate compliance with Utah Admin. Code R315-262-17 and other applicable Rules. Based on observations from the inspections, on January 29, 2021, the Director issued a *Notice of Immediate Action Required* (DSHW-2021-001342) to Thatcher requiring certain actions to be taken. In letters dated February 1, 2021, February 5, 2021, and March 1, 2021, Thatcher provided the responses required by the *Notice of Immediate Action Required*. The Division has not yet issued an inspection report or other documentation of its findings from the inspection.
16. Thatcher has been implementing the WICP and completed Phase 1 of the WICP on April 10, 2020. During Phase 1, Thatcher characterized a total of 99 containers, 75 of which were characterized and disposed of as hazardous waste. The remaining 24 containers were determined to be non-hazardous. Thatcher completed Phase 2 of the WICP on May 28, 2021. During Phase 2, Thatcher characterized 1,093 containers in the NWSA. 687 of those containers were characterized and disposed of as hazardous waste, and the remaining 406 containers were identified as non-hazardous. Another 412 containers which were staged next to the NWSA were also processed in Phase 2, 279 of which were characterized and disposed of as hazardous waste and 133 were determined to be non-hazardous. Prior to pausing implementation of Phase 3 due to concerns raised by the Division, Thatcher characterized 55 containers, 40 of which were characterized and disposed of as hazardous waste. The remaining 15 containers were identified as non-hazardous.⁵ Thatcher will resume implementation of Phase 3 once it receives Division approval of the work plan to be submitted pursuant to ¶ 18.5.

⁴ See Letter from Jason J. Widows, Clean Harbors Environmental Services, to Ty Howard (“Emergency Permit Request”) (DSHW-2020-005606) (dated April 1, 2020).

⁵ NTD: When Thatcher submitted the letter to the Division on March 1, Thatcher indicated that it had inventoried 352 Phase 3 containers. This included containers that were located directly outside of the NWSA; however, in the WICP, those containers were included in the universe of Phase 2 containers. This summary will correct the designation of these containers as Phase 2 containers instead of Phase 3 containers.

STIPULATION AND CONSENT ORDER

17. This CONSENT ORDER has been negotiated in good faith and the parties now wish to resolve the issues identified in the Self-Disclosure Letter and provide for the continued implementation of the work necessary to address those issues without administrative or judicial proceedings.
18. The parties hereby stipulate that Thatcher shall manage its hazardous waste without a permit as follows:
 - 18.1. With respect to all hazardous waste generated at the facility, except as specifically provided for in ¶¶ 18.2 – 18.4 of this CONSENT ORDER, Thatcher shall comply with all applicable provisions of the Act and its implementing Rules. Nothing in this CONSENT ORDER authorizes Thatcher to violate or suspend any other state, federal, or local rule, license, permit, or other mandate.
 - 18.2. Labeling Phase 3 WICP containers:
 - 18.2.1. Thatcher shall label each container storing hazardous material or unknown material with the actual accumulation date. If the accumulation date is unknown, Thatcher shall label the container with the “Phase 3 Accumulation Date” which is the unique date that Thatcher first identifies each Phase 3 container.
 - 18.2.2. On or before the Phase 3 Accumulation Date, Thatcher shall label each hazardous material and unknown material Phase 3 container with the words “hazardous waste” and the hazard, if known. Thatcher may add a label to containers with Phase 3 unknown material indicating the designation of hazardous waste confirmation is pending.
 - 18.3. Recycling of known, Phase 3 material:
 - 18.3.1. Thatcher shall limit the reuse of Phase 3 material to material stored in containers in good condition with labels clearly identifying the chemical contents of the container. This material may be referenced as “known Phase 3 material.”
 - 18.3.2. Within in one year of each container’s Phase 3 Accumulation Date, at its discretion and upon proper documentation of legitimate recycling, Thatcher may reuse known Phase 3 hazardous secondary materials which are commercial chemical products.
 - 18.3.3. If Thatcher desires to reuse known Phase 3 hazardous secondary materials which are not commercial chemical products:

- 18.3.3.1. Thatcher shall request in writing that the Director pre-approve types of anticipated Phase 3 hazardous secondary materials which are not commercial chemical products that may be considered for reuse. At a minimum, Thatcher's request shall include the legitimate recycling criteria set forth in the Phase 3 work plan in ¶ 18.5.
- 18.3.3.2. Upon the Director's written pre-approval to reuse types of material as specified in ¶ 18.3.3.1 and upon proper documentation of legitimate recycling, Thatcher may reuse Phase 3 hazardous secondary materials which are not commercial chemical products, within nine months of the Phase 3 Accumulation Date.
- 18.3.4. Thatcher shall document legitimate recycling in ¶¶ 18.3.2 and 18.3.3 in accordance with the procedures described in the Phase 3 work plan approved by the Director in writing as required in ¶ 18.5, which shall include detailed criteria of all information that will be tracked to document the legitimacy of the recycling.
- 18.4. Unless stored for legitimate recycling in accordance with ¶¶ 18.3.2 or 18.3.3.2, Thatcher may store Phase 3 containers containing hazardous waste for no more than 90 days from the Phase 3 Accumulation Date. Upon written request, the Director may extend the hazardous waste storage time in writing upon a demonstration that an extension is necessary due to unforeseen, temporary, and uncontrollable circumstances.
- 18.5. On or before 30 days from the effective date of this CONSENT ORDER, Thatcher shall submit to the Director, for review and written approval, a plan and schedule for completing Phase 3 of the WICP and to assess the immediate risk from uncharacterized WICP material and any need for interim measures.
- 18.5.1. On or before 15 days from the receipt of the plan described in ¶ 18.5 the Director will either approve the plan in writing or provide comments to Thatcher.
- 18.5.1.1. The parties shall meet to discuss and resolve differences regarding the assessment of onsite risk and the plan to complete Phase 3. If the parties fail to timely resolve differences, pursuant to Utah Code § 19-6-107, upon reasonable consideration of the potential risk, the Director may separately order Thatcher to assess and manage the risk from onsite waste accumulation.
- 18.5.1.2. Thatcher shall implement the plan and schedule in ¶ 18.5 as approved by the Director in writing or as separately ordered.
- 18.6. On or before the 15th day of each month until Phase 3 of the WICP is completed, Thatcher shall submit a monthly report to the Director summarizing its progress, including the number of containers sampled, the number of containers overpacked, description of any discharge of unknown Phase 3 material and the response, and the number of containers disposed of as hazardous waste and nonhazardous waste.

- 18.7. To address Utah Code § 19-7-109(2)(d) and prevent reoccurrence of the potential violations, on or before 90 days from the effective date of this CONSENT ORDER, Thatcher shall submit to the Director, for review and written approval, a plan outlining reasonable steps to identify, characterize, and manage its material, including future unusable, expired, or discarded chemicals, laboratory reagents, spent solvents, spilled chemical product, universal waste, used oil, and other discarded material at the facility and a recordkeeping process to retain information regarding the chemical traits when designated as hazardous secondary materials or discarded material. At a minimum, this plan shall adopt the same management procedures as provided in the Phase 3 work plan required in ¶ 18.5.
- 18.7.1. On or before 45 days from the receipt of the plan described in ¶ 18.7 the Director will either approve the plan in writing or provide comments to Thatcher.
- 18.7.2. The parties shall meet to discuss and resolve differences regarding the plan.
- 18.7.3. For a minimum of four years from the date the Director approves the plan, Thatcher shall comply with the future management plan described in ¶ 18.7 as approved by the Director in writing.
- 18.8. On or before 180 days from the effective date of this CONSENT ORDER, Thatcher shall submit to the Director, for review and written approval, a plan to evaluate the need to investigate and conduct corrective action at the facility in accordance with Utah Admin. Code R315-263-31 and potentially R315-101.
- 18.8.1. On or before 45 days from the receipt of the plan described in ¶ 18.8 the Director will either approve the plan in writing or provide comments to Thatcher.
- 18.8.2. The parties shall meet to discuss and resolve differences regarding the assessment of onsite risk. If the parties fail to timely resolve differences, pursuant to Utah Code § 19-6-107, upon reasonable consideration of the potential risk, the Director may separately order Thatcher to assess and manage the risk from onsite waste accumulation.
- 18.8.3. Thatcher shall comply with the corrective action plan described in ¶ 18.8 as approved by the Director in writing.
- 18.9. All submittals required under this CONSENT ORDER shall be signed by a duly authorized representative of Thatcher stating, "I certify under penalty of law that this document and any and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and

complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

19. Thatcher agrees to pay for the time reasonably spent by Division staff to review the various plans and schedules of compliance specified in ¶¶ 18.5–18.8. Staff time will be reimbursable at a rate of \$110 per hour, up to a maximum of 150 hours. The Division shall send an invoice quarterly, which invoice shall include sufficient information for Thatcher to determine that the time spent is reasonable for the review conducted. Thatcher shall pay any undisputed amount invoiced within 60 days of receiving the invoice.
20. The Director agrees not to bring a separate enforcement action or impose penalties for the following issues related to WICP Phase 1, 2, or 3 hazardous waste stored in good containers and specifically disclosed in Thatcher’s Self-Disclosure Letter: (i) for failure to timely make hazardous waste determinations pursuant to R315-262-11; (ii) for storing hazardous waste in lieu of disposal pursuant to R315-261-2(b)(3); and (iii) for failing to comply with the 90-day accumulation time limit pursuant to R315-262-17(a) so long as the material was processed during Phase 1, 2, or 3 of the WICP or is addressed in accordance with this CONSENT ORDER. The Director further agrees not to bring an enforcement action or impose penalties for the following additional issues specifically disclosed in Thatcher’s Self-Disclosure Letter: (i) up until November 30, 2019, for failure to properly label satellite accumulation containers pursuant to R315-262-15; (ii) for failure to update and notify as a large quantity generator pursuant to R315-262-18; (iii) up until November 30, 2019, for failure to use best management practices in managing its universal waste; and (iv) for failure to report in 2019 pursuant to R315-262-18. Except as specifically set forth in this CONSENT ORDER, including this paragraph, this CONSENT ORDER does not resolve any potential liability for alleged violations of the Act or the Rules applicable to a large quantity generator, management of hazardous waste in satellite accumulation storage areas, or related to the discharge of hazardous waste arising from the Division’s inspection of the facility or other times. The Division does not waive its authority to issue a notice of violation, order, or to take other actions, including seeking penalties relating to such alleged violations and Thatcher does not waive any right to dispute or contest any such alleged violations.

EFFECT OF CONSENT ORDER

21. For the purpose of this CONSENT ORDER, the parties agree and stipulate to the above stated facts and findings. The obligations in this CONSENT ORDER apply to and are binding upon the Division of Waste Management and Radiation Control and upon Thatcher Company, Inc. and any of Thatcher’s successors, assigns, or other entities or persons otherwise bound by law.
22. The stipulations contained herein are for the purposes of settlement and shall not be considered admissions by any party and shall not be used by any person related or unrelated to this CONSENT ORDER for purposes other than determining the basis of this CONSENT ORDER. Nothing contained herein shall be deemed to constitute a waiver by the State of Utah of its right to initiate enforcement action, including civil penalties, against Thatcher for willfully, knowingly, recklessly, or criminally violating the Act or the Rules; in the event of future non-compliance with this CONSENT ORDER, with the Act or with the Rules; nor shall the State of

Utah be precluded in any way from taking appropriate action should such a situation arise again at the Thatcher facility. However, entry into this CONSENT ORDER shall relieve Thatcher of all liability for civil violations which did arise or could have arisen prior to the Effective Date for matters specifically addressed in this CONSENT ORDER.

EFFECTIVE DATE

- 23. This CONSENT ORDER shall become effective upon the date of execution by the Director.

PUBLIC PARTICIPATION

- 24. This CONSENT ORDER shall be subject to public notice and comment for a period of at least 30 days (“Comment Period”) in accordance with Utah Admin. Code R315-124-34. The Director reserves the right to withdraw or withhold its consent if any comment received during the Comment Period discloses facts or consideration indicating the CONSENT ORDER is inappropriate, improper, or inadequate.

SIGNATORY

- 25. The undersigned representative of the Thatcher Company, Inc. certifies he is authorized to enter into this CONSENT ORDER and to execute and legally bind Thatcher Company, Inc.

Pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code § 19-6-101, *et seq.*, the parties hereto mutually agree and consent to STIPULATION AND CONSENT ORDER 2102006 as evidenced below:

THATCHER COMPANY, INC.

THE STATE OF UTAH
DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL

DRAFT – DO NOT SIGN

DRAFT – DO NOT SIGN

Craig N. Thatcher, President

Douglas J. Hansen, Director

Date: _____

Date: _____