



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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| In the Matter of: |) | Docket No. CWA-05-2018-0003 |
| |) | |
| Titan Tire Corporation of Bryan |) | Proceeding to Assess a Class II Civil |
| Bryan, Ohio |) | Penalty Under Section 311(b)(6)(A) |
| |) | of the Clean Water Act, 33 U.S.C. |
| <u>Respondent</u> |) | § 1321(b)(6)(A) |

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(ii) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and 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 (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Titan Tire Corporation of Bryan (Respondent), a corporation doing business and incorporated in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including its right to request a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 22.15(c), its right to seek, 5 U.S.C. §§ 701-706; any right to contest the allegations in this CAFO; and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon, among other things, the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

10. 40 C.F.R. § 110.3 provides that discharges of oil in such quantities that EPA has determined may be harmful to the public health or welfare of the environment of the United States include discharges of oil that: (a) violate applicable water quality standards; or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shoreline.

11. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges.

12. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his authority under Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referenced in the preceding paragraph for non-transportation-related onshore facilities.

13. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112, that establish procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States and adjoining shorelines pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*

14. Appendix A to Part 112, (1)(F) and (G), defines "non-transportation-related" facility to include oil storage facilities, including all equipment and appurtenances related thereto, as well as fixed bulk plant storage and terminal oil storage facilities; and industrial, commercial, agricultural or public facilities which use and store oil.

15. Under 40 C.F.R. § 112.1(b), Part 112 applies to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be

harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines.

16. Under 40 C.F.R. § 112.1(d)(2), Part 112 does not apply to any facility that has a completely buried oil storage capacity of 42,000 U.S. gallons or less of oil and an aggregate aboveground oil storage capacity of 1,320 U.S. gallons or less of oil.

17. An owner or operator of an onshore facility subject to 40 C.F.R. § 112.3 must prepare in writing and implement a Spill Prevention Control and Countermeasure (SPCC) Plan in accordance with the requirements of 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

18. Under 40 C.F.R. § 112.3(a)(1), the owner or operator of an onshore facility that was in operation on or before August 16, 2002, must maintain its SPCC Plan, amend it, if necessary to ensure compliance with Part 112, and implement the amended SPCC Plan no later than November 10, 2011.

19. 40 C.F.R. § 112.8(a) requires that the owner or operator of an onshore facility must meet the general requirements for the SPCC Plan listed under 40 C.F.R. § 112.7, and the specific discharge prevention and containment procedures listed in 40 C.F.R. § 112.8.

20. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), defines "oil" as oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

21. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines "discharge" as including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

22. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as waters of the United States. 40 C.F.R. § 112.2 further defines “navigable waters” to include: all navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the CWA and tributaries of such waters; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

23. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, define “onshore facility” as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

24. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B) and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

25. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

26. 40 C.F.R. § 112.2 defines “oil-filled operational equipment” as equipment that includes an oil storage container (or multiple containers) in which the oil is present solely to support the function of the apparatus or the device.

27. 40 C.F.R. § 112.2 defines “bulk storage container” as any container used to store oil.

28. Section 311(b)(6)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A), authorizes the Administrator of EPA to assess a class II civil penalty against any owner,

operator, or person in charge of any onshore facility from which oil or a hazardous substance is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), or who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j).

29. Under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19, the amount of the class II civil penalty for violations of Section 311(b)(3) of the CWA or regulations issued under Section 311(j) of the CWA may not exceed \$16,000 in civil penalties per day for each violation that occurred after December 6, 2013 through November 2, 2015, up to a maximum of \$187,500; and \$18,107 in civil penalties per day for violations occurring after November 2, 2015, up to a maximum of \$226,338.

Factual Allegations and Alleged Violations

30. Respondent is a “person” as that term is defined in Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. § 1321(a)(7) and § 1362(5), and 40 C.F.R. § 112.2.

31. At all times relevant to this CAFO, Respondent was an owner or operator of a truck tire manufacturing facility located at 927 South Union Street, Bryan, Ohio (“Facility”).

32. The Facility was in operation on or before August 16, 2002.

33. At all times relevant to this CAFO, Respondent’s Facility is located on land within the United States.

34. The Facility is an “onshore facility” as that term is defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

35. Respondent is an “owner or operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

36. The Facility's storm sewer discharges to Prairie Creek. Prairie Creek converges with Lick Creek and then Lick Creek discharges to the Tiffin River. The Tiffin River discharges to the Maumee River and the Maumee River discharges to Lake Erie.

37. Prairie Creek, Lick Creek, Tiffin River, Maumee River and Lake Erie are "navigable waters" of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

38. On January 3, 2015, used oil that included general lubricating oils, gear oils and hydraulic oil spilled through a broken valve at the bottom of a 15,200-gallon used oil tank (Used Oil Tank).

39. The oil that spilled from the Used Oil Tank, as referenced in paragraph 38, above, leaked into the condensate pump inlet riser within the secondary containment. The oil was pumped from the containment to the condensate tanks and then to the stormwater outfall that drains to Prairie Creek (January 3, 2015, discharge).

40. Approximately 1000 gallons of oil was discharged to navigable waters.

41. As a result of the January 3, 2015, discharge there was an oil sheen upon Prairie Creek.

42. As a result of the January 3, 2015, discharge, approximately 500 ducks and other birds were impacted and approximately 300 birds died.

43. As a result of the January 3, 2015, discharge, "oil" was "discharged" from the Facility into or upon "navigable waters" of the United States within the meaning of Section 311(a)(1) and (2) of the CWA, 33 U.S.C. § 1321(a)(1) and (2) and Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

44. At all times relevant to this CAFO, Respondent engaged in drilling, producing, gathering, storing, processing, refining, transferring, using, distributing or consuming oil or oil products at the facility.

45. At all times relevant to the CAFO, Respondent stored oil that included equipment and appurtenances related thereto as well as fixed bulk plant storage, pumps and drainage systems used in the storage of oil.

46. The Facility is a "non-transportation-related" facility as that term is defined in 40 C.F.R. Part 112, Appendix A.

47. At all times relevant to the CAFO, the Facility had a total aboveground oil storage capacity of greater than 1,320 U.S. gallons.

48. At all times relevant to this CAFO, Respondent's oil-filled operational equipment included containers as that term is defined under 40 C.F.R. § 112.2.

49. At all times relevant to this CAFO, the Facility, due to its location, could reasonably be expected to discharge oil in quantities that may harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines.

50. At all relevant times to this CAFO, Respondent was an owner or operator of a facility that was in operation on or before August 16, 2002 and was required to maintain and implement its SPCC Plan subject to 40 C.F.R. § 112.

51. At all relevant times to this CAFO, Respondent was an owner or operator of an onshore facility that must meet the general requirements for its SPCC Plan listed under 40 C.F.R. § 112.7 and the specific discharge prevention and containment procedures listed in 40 C.F.R. § 112.8.

52. Respondent developed a SPCC Plan which was certified by a Professional Engineer (PE) on February 19, 2008 (2008 SPCC Plan).

53. Respondent revised its 2008 SPCC Plan on March 20, 2015 (2015 SPCC Plan) and the 2015 SPCC Plan was certified by a PE.

54. On April 20, 2016, EPA conducted a field inspection to determine the facility's compliance with the SPCC rule (2016 Inspection).

Count I: Prohibited Discharge of Oil to Navigable Water

55. Complainant incorporates by reference the allegations contained in paragraphs 1 through 54 of this CAFO.

56. The January 3, 2015, discharge, is a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), which subjects Respondent to civil penalties under Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i).

Count II: Failure to Provide Appropriate Secondary Containment

57. Complainant incorporates by reference the allegations contained in paragraphs 1 through 54 of this CAFO.

58. 40 C.F.R. § 112.7(c) requires the owner or operator of a non-transportation, onshore facility to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. 112.1(b). The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs.

59. At the time of the January 3, 2015, discharge, Respondent failed to provide

appropriate secondary containment that was capable of containing the oil from the Used Oil Tank before cleanup occurred.

60. Respondent's failure to provide appropriate secondary containment, as referenced in paragraph 59, above, is a violation of 40 C.F.R. § 112.7(c) and subjects Respondent to civil penalties under Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A).

Count III: Failure to Use Manually Activated Pump to Prevent Discharge

61. Complainant incorporates by reference the allegations contained in paragraphs 1 through 54 of this CAFO.

62. Under 40 C.F.R. § 112.8(b)(1), the specific discharge prevention and containment procedure is to restrain drainage from dikes storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such a discharge. The owner or operator of an onshore facility may empty diked areas by pumps or ejectors; however, the owner or operator must manually activate these pumps or ejectors.

63. On January 3, 2015, Respondent did not meet the procedure to manually operate its pumping system when oil spilled from the Used Oil Tank's broken valve into containment and was automatically pumped to the condensate collection system.

64. Respondent's failure to manually operate its pumping system to prevent a discharge into the drainage system, as referenced in paragraph 63, above, in accordance with 40 C.F.R. § 112.8(b)(1) is a violation of 40 C.F.R. § 112.8(a) and subjects Respondent to civil penalties under Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A).

Count IV: Failure to include a Facility Diagram of Location and Contents of Used Oil Storage Area in the 2015 SPCC Plan

65. Complainant incorporates by reference the allegations contained in paragraphs 1 through 54 of this CAFO.

66. 40 C.F.R. § 112.7(a)(3) requires, among other things, that the owner or operator of an onshore facility describe in its SPCC Plan the physical layout of the facility and include a facility diagram of the storage area where mobile or portable containers are located. The facility diagram must also include all transfer stations.

67. At the time of the 2016 Inspection, EPA observed, among other things, oil storage areas at the southeast corner and west part of the main building where mobile or portable containers were located and transfer stations.

68. Respondent's 2015 SPCC Plan did not include a facility diagram that identified the storage area at the southeast corner of the main building where at least nine portable oil storage containers were located.

69. Respondent's 2015 SPCC Plan did not include a facility diagram that marked the oil storage area in the west part of the main building where at least two mobile or portable containers were located.

70. Respondent's 2015 SPCC Plan did not include a facility diagram that included the transfer stations for eight fixed oil storage tanks.

71. Respondent's failure to include in its 2015 SPCC Plan a diagram of the facility which included the location of the oil storage and transfer areas, as referenced in paragraphs 67 - 70, above, is a violation of 40 C.F.R. § 112.7(a)(3) and subjects Respondent to civil penalties under Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A).

Count V: Failure to Provide the Type of Oil and Storage Capacity for each Used Oil Container in the 2015 SPCC Plan

72. Complainant incorporates by reference the allegations contained in paragraphs 1 through 54 of this CAFO.

73. 40 C.F.R. § 112.7(a)(3)(i) requires the owner or operator of an onshore facility to provide in its SPCC Plan the type of oil and storage capacity for each container or provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities.

74. At the time of the 2016 Inspection, EPA inspectors observed, among other things, at least eleven mobile and portable containers at the southeast corner and west part of the main building and at least two oil-filled operational equipment at the Facility.

75. Respondent's 2015 SPCC Plan failed to include the type of oil and storage capacity for each container, including the oil-filled operational equipment, identified in paragraph 74, above.

76. Respondent's 2015 SPCC Plan failed to provide an estimate of the potential number of mobile or portable containers and the types of oil and anticipated storage capacities for each of these containers, including the oil-filled operational equipment, identified in paragraph 74, above.

77. Respondent failure to include in the its 2015 SPCC Plan the type of oil and storage capacity for each container or an estimate of the potential number of mobile or portable containers and the types of oil and anticipated storage capacities for each of the containers identified in paragraph 74, above, is a violation of 40 C.F.R. § 112.7(a)(3)(i) and subjects Respondent to civil penalties under Section 311(b)(6)(A) of the CWA, 33 U.S.C.

§ 1321(b)(6)(A).

Count VI: Failure to Include Discharge and Drainage Controls in 2015 SPCC Plan

78. Complainant incorporates by reference the allegations contained in paragraphs 1 through 54 of this CAFO.

79. 40 C.F.R. § 112.7(a)(3)(iii) requires the owner or operator of an onshore facility to provide in its SPCC Plan discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

80. Respondent's 2015 SPCC plan failed to include the discharge and drainage controls around the mobile and portable containers, including the oil-filled operational equipment identified in paragraph 74, above.

81. Respondent's failure to include the discharge and drainage controls around the mobile and portable containers, including the oil-filled operational equipment, as referenced in paragraph 74, above, in its 2015 SPCC Plan is violation of 40 C.F.R. § 112.7(a)(3)(iii) and subjects Respondent to civil penalties under Section 311(b)(6)(A) of the CWA, 33 U.S.C.

§ 1321(b)(6)(A).

Count VII: Failure to keep Inspection Records and Tests with 2015 SPCC Plan

82. Complainant incorporates by reference the allegations contained in paragraphs 1 through 54 of this CAFO.

83. 40 C.F.R. § 112.7(e) requires that the owner or operator of an onshore facility conduct inspections and tests required by 40 C.F.R. Part 112 in accordance with written procedures that the owner or operator or the certifying engineer develops for the facility. The owner or operator must keep a record of these inspections and tests, signed by the appropriate

supervisor or inspector, with the SPCC Plan for three years.

84. 40 C.F.R. § 112.8(c)(3)(ii) requires the owner or operator of an onshore facility to not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless the owner or operator, among other things, inspects the retained rainwater to ensure that its presence will not cause a discharge as described in 40 C.F.R. § 112.1(b).

85. 40 C.F.R. § 112.8(c)(6) requires the owner or operator of an onshore facility to test or inspect each aboveground container for integrity including, but not limited to, visual inspection, on a regular schedule and whenever the owner or operator makes material repairs.

86. According to the 2015 SPCC Plan, visual inspections of aboveground tanks are completed weekly to verify tank integrity.

87. During the 2016 Inspection, EPA inspectors asked to review the records of all inspections and tests required by 40 C.F.R. § 112.7(e) for the previous three years.

88. For the 30,000-gallon Process Oil Tank and Used Oil Tank dikes areas, Respondent was unable to produce any records or logs of drainage inspections that occurred between March 2013 and February 2015.

89. Respondent was unable to produce the records of its weekly, visual inspections of each aboveground container for integrity from March 2013 through February 2015.

90. Respondent's failure to keep records of its drainage logs and its weekly integrity inspections, as identified in paragraphs 85 - 89, above, with the 2015 SPCC Plan from March 2013 to February 2015, is a violation of 40 C.F.R. § 112.7(e) and subjects Respondent to civil penalties under Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A).

**Count VIII: Failure to Provide a Complete Discharge Briefing
for Oil Handling Personnel**

91. Complainant incorporates by reference the allegations contained in 1 paragraphs through 54 of this CAFO.

92. 40 C.F.R. §112.7(f)(3) requires that the owner and operator of an onshore facility schedule and conduct discharge prevention briefings for oil handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in 40 C.F.R. §112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.

93. Respondent had not conducted a discharge prevention briefing highlighting or describing the January 3, 2015, oil spill or failures, malfunctioning components, and any recently developed precautionary measures for oil handling personnel, except management, from 2015 until at least the 2016 Inspection.

94. Respondent's failure to schedule and conduct a discharge prevention briefing, as indicated in paragraph 93, above, is a violation of 40 C.F.R. § 112.7(f)(3) and subjects Respondent to civil penalties under 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A).

**Count IX: Failure to Use Valves of Manual, Open-and-Closed Design for the
Drainage of Diked Areas**

95. Complainant incorporates by reference the allegations contained in 1 paragraphs through 54 of this CAFO.

96. Under 40 C.F.R. § 112.8(a) and (b)(1), the owner or operator of an onshore facility must restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system.

97. At the time of the 2016 Inspection, EPA inspectors observed that the secondary containment basin or diked area around the 250-gallon outside kerosene tank did not have a valve.

98. At the time of the 2016 Inspection, EPA inspectors observed that the secondary containment basin or diked area around the 250-gallon outside gasoline tank did not have a valve.

99. Respondent did not meet the requirement to restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system from the 250-gallon outside kerosene and gasoline tanks.

100. Respondent failure to restrain drainage from diked storage areas by valves as referenced in paragraphs 97 - 99, above, in accordance with 40 C.F.R. § 112.8(b)(1) is a violation of 40 C.F.R. § 112.8(a) and subjects Respondent to civil penalties under Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A).

Count X: Failure to Conduct Integrity Testing by Industry Standards

101. Complainant incorporates by reference the allegations contained in 1 paragraph through 54 of this CAFO.

102. Under 40 C.F.R. § 112.8(a) and (c)(6), an owner or operator of an onshore facility must test or inspect each aboveground container for integrity on a regular schedule and whenever the owner or operator makes material repairs. The owner or operator must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections.

103. At the time of the 2016 inspection, integrity testing in accordance with industry

standards had never been conducted for the 30,000-gallon 547 Process Oil Tank and the Used Oil Tank.

104. The 2015 SPCC Plan does not include the appropriate qualifications for personnel performing tests and inspections.

105. The 2015 SPCC Plan does not include the frequency of integrity testing and inspections for the 30,000-gallon 547 Process Oil Tank and the Used Oil Tank.

106. Respondent's failure to conduct integrity testing and to include the appropriate qualifications for personnel performing tests and inspections and the frequency of integrity testing and inspections in its 2015 SPCC Plan, as referenced in paragraphs 103 – 105, above, in accordance with 40 C.F.R. § 112.8(c)(6), is a violation of 40 C.F.R. § 112.8(a) and subjects Respondent to civil penalties under Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A).

Civil Penalty

107. Based on an analysis of the factors set forth in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), and in the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, taking into account the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$136,032. Respondent agrees to pay this amount as a civil penalty.

108. Within 30 days after the effective date of this CAFO, Respondent must pay the \$136,032 civil penalty by electronic funds transfer (EFT) to:

Federal Reserve Bank of NY
ABA 021030004
Account 68010727
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency."

109. Respondent must submit copies of the EFT confirmation to the following persons:

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Ellen Riley (SC-5J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Tamara Carnovsky (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

110. This civil penalty is not deductible for federal tax purposes.

111. Failure by Respondent to pay timely this civil penalty may subject Respondent to a civil action to collect any unpaid portion of the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

112. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: carnovsky.tamara@epa.gov (for Complainant), and mike.troyanovich@titan-intl.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

113. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations alleged in this CAFO.

114. This CAFO does not affect Respondent’s responsibility to comply with the Act and any other applicable federal, state and local laws.

115. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA.

116. Respondent certifies that it has addressed the violations alleged in this CAFO and is now in compliance with Section 311 of the Act, 33 U.S.C. § 1321, and its implementing regulations.

117. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31 and the EPA’s Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act.

118. The terms of this CAFO bind Respondent and its successors and assigns.

119. The CAFO does not constitute a waiver, suspension, or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder.

120. If Respondent fails to comply with this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for non-compliance with the CAFO.

121. EPA has provided a thirty-day opportunity for public notice and comment on this proposed CAFO pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

122. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this CAFO within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the CAFO on the basis of material evidence not considered.

123. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

124. Each party agrees to bear its own costs and attorney's fees in this action.

125. This CAFO constitutes the entire agreement between the parties.

126. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

In the Matter of:
Titan Tire Corporation of Bryan
Docket No. CWA-05-2018-0003

Titan Tire Corporation of Bryan, Respondent



1-6-18

James Froisland, Chief Financial Officer
Titan International, Inc.

Date



1-8-18

Michael G. Troyanovich, Corporate Secretary/General Counsel
Titan International, Inc.

Date

United States Environmental Protection Agency, Complainant



1/12/18

for Robert Kaplan
Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

Date

In the Matter of:
Titan Tire Corporation of Bryan
Docket No. CWA-05-2018-0002

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date: _____

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: Titan Tire Corporation of Bryan, Bryan, Ohio
Docket No. CWA-05-2018-0003

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order,
which was filed on _____ in the following manner to the addresses:

Copy by e-mail to
Attorney for the Respondent: Michael Troyanovich
Titan International, Inc.
2701 Spruce Street
Quincy, Illinois 62301
mike.troyanovich@titan-intl.com

Copy by e-mail to
Attorney for the Complainant: Tamara Carnovsky
carnovsky.tamara@epa.gov

Copy by e-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: _____

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5