

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for Greg Dain
Name of Case Attorney

6/30/11
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2010-0061

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Tanner Industries, Inc.
735 Davisville Road
Southampton, PA 18966

Total Dollar Amount of Receivable \$ 28,350 Due Date: 7/30

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST \$ _____ on _____

2ND \$ _____ on _____

3RD \$ _____ on _____

4TH \$ _____ on _____

5TH \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

RECEIVED
JUN 30 2011
EPA ORC WJS
Office of Regional Hearing Clerk

In the Matter of)

Docket No. CAA-01-2010-0061

TANNER INDUSTRIES, INC.,)

Respondent)

Proceeding under Section 113(d) of the)
Clean Air Act, 42 U.S.C. § 7413(d).)
_____)

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"),
having filed a Complaint and Notice of Opportunity for Hearing ("Complaint") against
Respondent, Tanner Industries, Inc. ("Respondent" or "Tanner"), on September 20, 2010;

Respondent having received extensions to file an Answer and Request for
Hearing until June 23, 2011, and;

Complainant and Respondent having agreed that settlement of this matter is in the
public interest and that entry of this Consent Agreement and Final Order ("CAFO")
without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleading,
without adjudication of any issue of fact or law, and upon consent and agreement of the
Parties, it is hereby Ordered and Adjudged as follows:

STATUTORY AND REGULATORY AUTHORITY

1. This CAFO resolves an administrative action for the assessment of monetary penalties and other relief pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permit, 40 C.F.R. Part 22.

2. EPA’s Complaint alleged that Tanner:

- (a) failed to comply with 40 C.F.R. § 68.67 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least March 25, 2008 (the date of an EPA inspection) until September 20, 2010, because its initial process hazard analysis did not include an analysis of the hazards relating to a release of anhydrous ammonia from a facility that was: 1) not equipped with monitoring equipment or sensors to detect leaks or the conditions that might result in leaks; and 2) was not routinely staffed except during times when anhydrous ammonia was being received or distributed. The Complaint further alleged that the process hazard analysis failed to address the need for a mechanism to notify, alert and warn the surrounding businesses and community residences that an ammonia release has occurred when Facility personnel are not present at the Facility; and
- (b) failed to comply with 40 C.F.R. §§ 68.90 and 68.95 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least March 25, 2008 (the date of inspection) until September 20, 2010, because it

failed to develop and implement an adequate emergency response program, including an adequate emergency response plan. The Complaint also alleged that Tanner's plan failed to include the required elements for an accidental release of anhydrous ammonia when the Facility was unstaffed, including: i) procedures for informing the public and local emergency response agencies about accidental releases; and ii) procedures and measures for emergency response after an accidental release of a regulated substance. The Complaint further alleged that Tanner failed to coordinate its emergency response plan with the community emergency response plan developed under 42 U.S.C. § 11003.

TERMS OF SETTLEMENT

3. The provisions of this CAFO shall apply to EPA and shall be binding on the Respondent's officers, directors, agents, servants, employees, successors and assigns.

4. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief may be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and without admitting or denying the factual and legal allegations contained in the Complaint, consents to the terms of this CAFO.

5. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and waives its right to appeal the Final Order set forth herein.

6. To the extent relevant in any future proceeding between Respondent and Complainant or other party, other than a proceeding by Complainant against Respondent to enforce the terms of this CAFO, Respondent does not waive any argument or defense relating to the factual or legal allegations set forth herein.

7. Subject to the reservations in Paragraphs 4 and 6 of this CAFO, Respondent certifies that it either has corrected, or is on a schedule to correct pursuant to the terms and conditions of this CAFO, the violations alleged in the Complaint.

WORK

8. Respondent agrees to complete the Work, defined as the activities described in Paragraphs 9 through 12 of this CAFO, at Tanner's ammonia transfer facilities identified in Paragraph 9 of this CAFO. EPA has alleged that the Work is necessary for purposes of compliance with Section 112(r) of the CAA, and its implementing regulations at 40 C.F.R. Part 68.

9. Respondent shall install an ammonia leak detection system that provides continuous leak detection monitoring throughout the ammonia transfer and storage areas at each of the following Tanner facilities: Butner, North Carolina; East Providence, Rhode Island; Tamaqua, Pennsylvania; Philadelphia, Pennsylvania; New Castle, Pennsylvania; and Natalbany, Louisiana. At a minimum, each ammonia leak detection system shall be comprised of the following equipment and shall be installed, operated, and maintained as follows: each system shall include a series of electrochemical sensors, working in conjunction with a multi-channel monitoring station, and shall provide continuous monitoring for ammonia vapors, along with all necessary control panels,

annunciator panels, power supplies, auto dialers, etc., needed for operation of the system. Tanner shall work with the appropriate local authorities, e.g., the Local Emergency Planning Committee ("LEPC") and/or fire department, to establish appropriate detection thresholds which would cause the ammonia leak detection system to emit ammonia alarm alerts and alarm signals. In no case shall such limits be set at greater than 25 to 50 parts per million for alarm alerts and 230 to 250 parts per million for alarm signals. Whenever an ammonia alarm or alert signal is generated, an on-site warning strobe light and a warning horn or siren shall be activated. Each ammonia leak detection system shall include an emergency power backup system in the event of power loss to a facility. Each ammonia leak detection system shall be supported by routine maintenance and calibration schedules. All ammonia alert and ammonia alarm signals shall be monitored 24 hours a day and seven days a week under one of the following four approaches:

(a) all alert and alarm signals shall be continuously monitored by an external third-party alarm agency. The alarm agency shall follow a defined hierarchy protocol for immediate notification of site personnel, Tanner management, and local emergency responders;

(b) all alert and alarm signals shall be continuously monitored by an automatic dialing system programmed to provide immediate voice phone call notification to a predetermined call list that includes, at a minimum, local emergency response personnel. The automatic dialing system shall continue to provide voice phone call notifications until a security code is entered to terminate the calls;

(c) a combination of third-party monitoring and automatic dialing notifications, i.e., a combination of the specific requirements set forth in (a) and (b), above, shall

system at any one of the individual facilities listed in Paragraph 9 of this CAFO, Respondent shall commence and continue operation of such system at that facility. Prior to installation and operation of an ammonia leak detection system at a particular facility, Respondent shall undertake reasonable efforts to implement an adequate procedure for notifying the local emergency response personnel of an ammonia leak from that facility.

12. As part of this settlement Respondent agrees to operate and maintain the ammonia leak detection system at each Tanner facility listed in Paragraph 9 of this CAFO.

13. The total capital cost of the ammonia leak detection equipment for the Tanner facilities identified in Paragraph 9 of this CAFO is estimated to total sixty-six thousand, four hundred forty-nine dollars (\$66,449). The total installation cost of the ammonia leak detection equipment for the specified transfer facilities is estimated to total seventy four thousand, seventy-five dollars (\$74,075). Accordingly, the total of the capital cost and installation cost of the ammonia leak detection systems for the Tanner facilities identified in Paragraph 9 of this CAFO is one hundred forty thousand, five hundred twenty-four dollars (\$140,524). The total cost of operating and maintaining the ammonia leak detection equipment for the specified transfer facilities for a one year period is estimated to total fifteen thousand, ninety-eight dollars (\$15,098). Respondent must spend at least one hundred seventy thousand, seven hundred twenty dollars (\$170,720) on the ammonia leak detection systems described in Paragraphs 9 through 12 of this CAFO. For purposes of accounting only, the one hundred seventy thousand, seven hundred twenty dollars (\$170,720) includes the capital and installation costs identified above in this Paragraph and the costs associated with two years of operation

and maintenance of the ammonia leak detection systems.

14. EPA may inspect the Tanner facilities listed in Paragraph 9 of this CAFO at any time in order to monitor Respondent's compliance with this CAFO.

15. Respondent shall maintain copies of the underlying research and data, if any, for all reports submitted to EPA in accordance with this CAFO. Respondent shall provide documentation of any underlying research and data to EPA within seven (7) days of EPA's request for that information.

16. Respondent shall submit an ammonia leak detection system Construction Completion Report to EPA by June 1, 2013 at the address identified in Paragraph 18 of this CAFO. The Construction Completion Report shall contain the following information:

- a. A description of the ammonia leak detection system as built and as installed at each Tanner facility identified in Paragraph 9 of this CAFO;
- b. Copies of all operating plans, operating protocols, or manuals for each ammonia leak detection system, for each of the Tanner transfer facilities listed in Paragraph 9 of this CAFO;
- c. An itemized list of costs of goods and services used to complete the Work in accordance with this CAFO, documented by copies of invoices, purchase orders, or canceled checks, that specifically identifies and itemizes the individual costs of the goods and services; and a certification that Respondent has completed the construction and installation Work in compliance with this CAFO.

17. Within thirty (30) days after the end of the two (2) year period that

Jim Gaffey
Office of Environmental Stewardship, Mail Code OES-05
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

19. Respondent shall certify that the Construction Completion Report and the Operation and Maintenance Report are true and complete, by including the following statement in each, signed by one of Respondent's officers:

I certify that I am familiar with the information in this document and, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

20. Following receipt of the Construction Completion Report, EPA will notify Respondent in writing that:

- a. Respondent has completed the Work required by this CAFO and described in the Construction Completion Report in a manner consistent with the terms and conditions of this CAFO;
- b. There are deficiencies in the construction and installation Work, there are deficiencies in the operation and maintenance plans, operating protocols, maintenance plans, and/or manuals for one or more ammonia leak detection systems, and/or there are deficiencies in the Construction Completion Report, and that EPA will give Respondent thirty (30) days to correct such deficiencies; or
- c. Subject to paragraph 24.a. if Respondent has not completed, in a manner consistent with the terms and conditions of this CAFO, the construction and installation Work, the operation and maintenance plans, and/or

operating protocols, for each ammonia leak detection system, and/or the Construction Completion Report, then EPA will seek stipulated penalties under Paragraph 24 of this CAFO.

21. Following receipt of the Operation and Maintenance Report, EPA will notify Respondent in writing that:
- a. Respondent has completed the Work required by this CAFO and described in the Operation and Maintenance Report in a manner consistent with the terms and conditions of this CAFO;
 - b. There are deficiencies in the operation or maintenance of the ammonia leak detection system, and/or there are deficiencies in the Operation and Maintenance Report and EPA will give the Respondent thirty (30) days to correct the deficiencies; or
 - c. Subject to paragraph 24.a. if Respondent has not completed the operation or maintenance of the ammonia leak detection system, and/or the Operation and Maintenance Report, in a manner consistent with the terms and conditions of this CAFO, then U.S. EPA will seek stipulated penalties under Paragraph 24 of this CAFO.

22. If Respondent timely submits the Construction and Completion Report pursuant to this CAFO, and if EPA does not provide notice to Respondent under the provisions of Paragraph 20 of this CAFO, within forty-five (45) days from receipt of the Construction Completion Report, then it shall be deemed that EPA has approved the Construction Completion Report under Paragraph 20.a. of this CAFO. If Respondent timely submits the Operation and Maintenance Report pursuant to this CAFO, and if EPA

and conditions of this CAFO, but spends less than 80 percent of the required dollar amount on the Work, Respondent shall pay a penalty equal to the difference between the estimated cost of the Work, one hundred seventy thousand, seven hundred twenty dollars (\$170,720), and the amount actually spent on the Work, plus an additional ten percent (10%) of the estimated amount of one hundred seventy thousand, seven hundred twenty dollars (\$170,720)

- c. If Respondent fails to complete the Work in a manner consistent with the terms and conditions of this CAFO then Respondent shall pay a stipulated penalty of \$750 for each day that the Work has not been completed in a manner consistent with the terms and conditions of this CAFO, until Respondent completes the Work in a manner consistent with the terms and conditions of this CAFO.
- d. If Respondent fails to timely submit the Operation and Maintenance Report required by this CAFO, then Respondent shall pay a stipulated penalty of \$500 for each day that such report is late until the date such report is submitted to EPA. If Respondent fails to timely submit the Construction Completion Report required by this CAFO, then Respondent shall pay a stipulated penalty of \$500 for each day that such report is late until the date such report is submitted to EPA.

25. EPA's determinations as to whether Respondent has completed the Work, and whether Respondent made good faith, timely efforts to complete the Work, in a manner consistent with the terms and conditions of this CAFO, shall be binding upon

Respondent.

26. If Respondent permanently shuts down any facility identified in Paragraph 9, then the terms of this CAFO shall not apply to such facility on or after the shutdown date. However, any costs incurred at such facility prior to the shutdown date for construction, installation, or operation and maintenance of ammonia sensors pursuant to this CAFO shall be included for purposes of determining compliance with the cost provisions of this CAFO pursuant to paragraph 13, above.

27. Respondent must pay any stipulated penalties within fifteen (15) days of receiving EPA's written demand for such penalties. Respondent shall use the method of payment specified in Paragraph 31 of this CAFO, and shall also pay interest, handling charges, and nonpayment penalties on any overdue amounts.

28. Any public statement by Respondent referring to the Work shall include the following language, "Tanner Industries, Inc., undertook this Work as part of the terms of settlement of an enforcement action brought by the United States Environmental Protection Agency against Tanner Industries, Inc. for alleged violations of Section 112(r) of the Clean Air Act and its implementing regulations at 40 C.F.R. Part 68."

29. If an event occurs which causes or may cause a delay in completing the Work required by this CAFO:

a. Respondent shall notify EPA in writing within ten (10) days after learning of an event which caused or may cause a delay in completing the Work. Such notice shall describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions

to avoid or minimize any delay. If Respondent fails to notify EPA in accordance with this Paragraph, Respondent shall not receive an extension of time to complete the Work.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the Work, the parties will stipulate to an extension of time no longer than the period of delay.

c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the Work, EPA will notify Respondent in writing of its decision and any delays in completing the Work shall not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the Work. Increased costs for completing the Work shall not be a basis for an extension of time under subparagraph 29.b. of this CAFO. Any delay in achieving an interim step required by this CAFO shall not necessarily justify or excuse any delay in achieving subsequent steps.

30. Respondent shall submit all notices and reports required by this CAFO, by first class mail, to:

Jim Gaffey
Office of Environmental Stewardship, Mail Code OES-05
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

31. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be

as follows: Respondent shall submit a certified or cashier's check payable to the order of the "Treasurer, United States of America," referencing the case name and docket number of this action on the face of the check, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000;

Respondent shall provide copies of the check to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 1, Suite 100, Mail Code ORA18-1
5 Post Office Square
Boston, MA 02109-3912

and

Gregory Dain, Attorney
Office of Regional Counsel
U.S. Environmental Protection
Agency, Region 1, Suite 100, Mail Code ORC-18
5 Post Office Square
Boston, MA 02109-3912

Interest and late charges shall be paid as stated in Paragraphs 33 and 34 of this CAFO.

32. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and taking into account the relevant statutory penalty criteria, the facts alleged in the Complaint and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of twenty-eight thousand, three hundred and fifty dollars (\$28,350) for the violations alleged in this matter.

33. The total penalty amount of twenty-eight thousand, three hundred and fifty dollars (\$28,350) shall be paid in full within thirty (30) calendar days of the effective


FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

06/29/11
Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date this CAFO is filed with the Regional Hearing Clerk for EPA Region 1.



Jill T. Metcalf
Acting Regional Judicial Officer



Date

Docket No. CAA-01-2010-0061

CERTIFICATE OF SERVICE

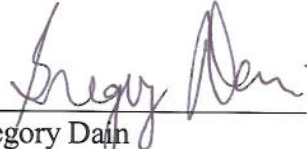
I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") has been hand-delivered to the EPA Region 1 Regional Hearing Clerk and that a copy of the CAFO has been mailed to the following persons on the date indicated below:

By Certified Mail, Return Receipt Requested:

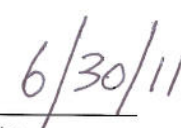
Stephen B. Tanner, President, CEO, COO
Tanner Industries, Inc.
735 Davisville Road
Southampton, PA 18966

Mr. David B. Binder
Tanner Industries, Inc.
735 Davisville Road
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Carol F. McCabe, Esquire
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004



Gregory Dain



Date