UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of **TANNER INDUSTRIES, INC.,** **Respondent** Proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).	**Docket No. CAA-01-2010-0061** **ADMINISTRATIVE COMPLAINT and NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

STATUTORY AND REGULATORY AUTHORITY

1. This Administrative Complaint and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the U.S. Environmental Protection Agency ("EPA") by Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d).

2. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. §§ 22.1-22.52 ("the Consolidated Rules of Practice"), EPA hereby provides notice of a proposal to assess a civil penalty against Tanner Industries, Inc., for failing to: 1) identify, evaluate, and control adequately hazards associated with its anhydrous ammonia process; and 2) develop and implement an adequate emergency response program, including an adequate emergency response plan, in violation of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder at 40 C.F.R. §§ 68.1-68.220.

3. Section 112(r) of the Act, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations

and programs to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5), 42 U.S.C. § 7412(r)(5), requires EPA to establish for each such substance a threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of certain regulated substances, including a requirement that an owner or operator of certain stationary sources prepare and implement a risk management plan ("RMP").

4. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), EPA promulgated 40 C.F.R. §§ 68.1-68.220 ("Part 68").

5. Forty C.F.R. § 68.130 lists the substances, and their associated threshold quantities, regulated under Part 68.

6. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by June 21, 1999. In particular, each process in which a regulated substance is present in more than a threshold quantity ("covered process") is subject to one of three programs. Under 40 C.F.R. § 68.12(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is less than the distance to

any public receptor. Under 40 C.F.R. § 68.12(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in certain NAICS codes or subject to the OSHA process safety management standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

7. Under Section 112(r)(7)(e) of the Act, 42 U.S.C. § 7412(r)(7)(e), it is unlawful for any person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

8. Sections 113(a) and (d) of the Act, 42 U.S.C. §§ 7413(a) and (d), provide for the assessment of civil administrative penalties for violations of the Act, including violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

GENERAL ALLEGATIONS

9. Tanner is the owner and operator of a chemical storage and distribution facility (the "Facility") located at 55 Dexter Street, East Providence, Rhode Island 02914.

10. Tanner is a corporation organized under the laws of the State of Pennsylvania, with a principal office at 735 Davisville Road, South Hampton, Pennsylvania.

11. As a corporation, Tanner is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

12. At the Facility, Tanner processes, handles and stores anhydrous ammonia, which is an extremely hazardous toxic substance listed under 40 C.F.R. § 68.130.

13. Anhydrous ammonia is a substance that is toxic and can be a health hazard. It is very

corrosive, and exposure to it might result in chemical-type burns to skin, eyes, and lungs. Effects of inhalation of anhydrous ammonia range from headaches, nausea, and lung irritation to severe respiratory injuries.

14. The Facility is a "stationary source," as that term is defined in 40 C.F.R. § 68.3.

15. Tanner is the "owner or operator," as that term is defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

16. On or about March 25, 2008, duly authorized representatives of EPA conducted a compliance evaluation inspection of the Facility (the "EPA inspection") to determine its compliance with Section 112(r) of the CAA and the Emergency Planning and Community Right-to-Know Act ("EPCRA").

17. On or about January 16, 2009, EPA issued an information request pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), to which Tanner responded on or about March 4, 2009. After reviewing the information received in March 2009, EPA issued a follow-up information request and Tanner subsequently provided additional information.

18. On or about June 7, 2010, EPA issued a Notice of Violation and Administrative Order to Tanner addressing certain violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r) and the RMP regulations at 40 C.F.R. Part 68.

19. Under 40 C.F.R. § 68.130, the threshold quantity for anhydrous ammonia is 10,000 pounds.

20. On the date of the EPA inspection, Tanner produced an inventory of the chemicals currently on site ("Chemical Inventory") which showed that more than 10,000 pounds of

anhydrous ammonia were being stored both in a railcar and in a storage tank located at the Facility.

21. The use, storage, manufacturing, handling or on-site movement of a regulated substance, in this instance anhydrous ammonia, at the Facility is a "process," as defined by 40 C.F.R. § 68.3.

22. On the date of EPA's inspection, Tanner stored more than the threshold amount of regulated anhydrous ammonia in a "covered process," as that term is defined at 40 C.F.R. § 68.3.

23. As the owner and operator of a stationary source that has more than the threshold amount of a regulated substance in a covered process, Tanner is subject to the RMP provisions of Part 68.

24. In particular, Tanner's storage and handling of anhydrous ammonia is subject to the requirements of Program 3, in accordance with the requirements found in 40 C.F.R. § 68.10(d) because: a) the distance to a toxic or flammable endpoint for a worst-case release assessment is greater than the distance to a public receptor; and b) the facility's process is subject to the OSHA process safety management standard at 29 C.F.R. § 1910.119.

25. Tanner prepared and submitted a Program 3 RMP.

26. As a follow up to the EPA inspection, EPA conducted an "Offsite Consequences Analysis" ("OCA") for the more than 10,000 pounds of anhydrous ammonia stored and processed in a "covered process" at the Facility.

27. The OCA for anhydrous ammonia shows that the distance to a toxic endpoint for a worst case release of anhydrous ammonia from the Facility is greater than the distance from the process to a public receptor.

28. According to year 2000 United States census data, there are over 504,000 persons residing within 6.9 miles of the process at the Facility.

VIOLATIONS

29. Allegations numbered 9 to 28 are hereby incorporated by reference.

COUNT 1: FAILURE TO ADEQUATELY IDENTIFY, EVALUATE, AND CONTROL HAZARDS

30. Forty C.F.R. § 68.67 requires the owner or operator of a Program 3 facility to perform an initial process hazard analysis (hazard evaluation) on covered processes. Pursuant to C.F.R. § 68.67(a),(d),(e),(f), and (g), the owner or operator must perform a process hazard analysis that identifies, evaluates and controls the hazards involved in the process, using a qualified team of people with expertise in engineering and process operations; establish a system to promptly address and implement the team's findings and recommendations; update the process hazard analysis every five years; and comply with documentation retention requirements.

31. Forty C.F.R. § 68.67(c)(3) requires that the process hazard analysis include engineering and administrative controls applicable to the hazards and their interrelationships, such as appropriate application of detection methodologies to provide early warning of releases. (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as ammonia sensors).

32. Forty C.F.R. § 68.67 requires the process hazard analysis to be completed as soon as possible but not later than June 21, 1999.

33. Tanner violated 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 the inspection) until the present, 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 process hazard analysis also 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.

COUNT 2: FAILURE TO DEVELOP ADEQUATE EMERGENCY RESPONSE PROGRAM

34. Pursuant to 40 C.F.R. § 68.90, a Program 3 facility must comply with the emergency response program requirements of 40 C.F.R. § 68.95 unless the facility's employees do not respond to accidental releases of regulated substances and: 1) for stationary sources with any regulated toxic substance held in process above a threshold quantity, the stationary source is included in the community emergency response plan developed under 42 U.S.C. § 11003; 2) for stationary sources with only regulated flammable substances held in process above a threshold quantity, the owner or operator has coordinated response actions with the local fire department; and 3) appropriate mechanisms are in place to notify emergency responders when there is a need for a response. Forty C.F.R. § 68.95 requires the owner or operator of a Program 3 facility to develop and implement an emergency response program, including the preparation of a written emergency response plan, for the purpose of protecting public health and the environment. Pursuant to 40 C.F.R. § 68.95(a)(1), such emergency response plan shall include, inter alia, i)

procedures for informing the public and local emergency response agencies about accidental releases; ii) documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and iii) procedures and measures for emergency response after an accidental release of a regulated substance. Under 40 C.F.R. § 68.95(c), the owner or operator of a Program 3 facility must coordinate the required emergency response plan with the community emergency response plan developed under 42 U.S.C. § 11003.

35. Pursuant to 40 C.F.R. § 68.90, at all times relevant to the allegations made in this Complaint, Tanner was required to comply with the emergency response program requirements of 40 C.F.R. § 68.95 because Tanner did not ensure that appropriate mechanisms were in place to notify emergency responders when there would be a need for a response in cases involving a release of ammonia from the Facility while the Facility was unstaffed.

36. Tanner violated 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 the present, because it failed to develop and implement an adequate emergency response program, including an adequate emergency response plan. 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. Tanner also failed to coordinate its emergency response plan with the community emergency response plan developed under 42 U.S.C. § 11003.

NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

37. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator of EPA and the Attorney General of the United States jointly determined to waive the statutory limitations relating to penalty amount and period of violation in Section 113(d) because this case is appropriate for administrative penalty action.

38. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the assessment of a civil administrative penalty of up to $25,000 per day for each violation. The Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, as mandated by the Debt Collection Improvement Act, 31 U.S.C. § 3701, authorizes the assessment of civil administrative penalties of up to $32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009 and up to $37,500 per day for each violation that occurs after January 12, 2009.

39. Based on the foregoing allegations and pursuant to the authority of Section 113(d) of the Act, 42 U.S.C. § 7413(d), Complainant proposes to assess against Respondent a civil penalty of one hundred forty-nine thousand and eighty dollars ($149,080). In accordance with Section 113(e) of the Act, 42 U.S.C. § 7413(e), and EPA's August 15, 2001 Combined Enforcement Policy for § 122(r) of the Clean Air Act, a copy of which is enclosed, Complainant considered the following in determining the amount of the proposed civil penalty: 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, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, and other factors as justice may require.

40. The amount of the civil penalty proposed in paragraph 39 was calculated as follows:

Gravity Component of Proposed Civil Penalty

Factors	Comments	Amount
Seriousness of Violation	Failure to perform adequate initial process hazard analysis and failure to develop and implement adequate emergency response program. Extent of deviation is major.	$50,000
Duration of Violation	30 months beginning with the date of EPA's inspection.	$27,000
Size of Violator	Gross sales from Dun & Bradstreet report are $22 million.	$35,000
Adjustments	**Inflation:** See Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (EffectiveJanuary 12, 2009); December 29, 2008 memorandum from Granta Y. Nakayama: 17.23%: for period March 2008 to January 2009; 28.75% for period February 2009 to September 2010. **Explanation of inflation adjustment:** Total period of violations = 30 months. Ten of those 30 months (or 33.3%) are subject to a 17.23% inflation factor, as follows: 33.3% of the $112,000 Gravity Subtotal = $37,296. And $37,296 * 1.173 = $43,748. Twenty of those 30 months (66.6%) are subject to a 28.75% inflation factor, as follows: 66.6% of the $112,000 Gravity Subtotal = $74,592. And $74,592 * 1.2875 = $96,037. **Total inflation adjusted gravity component penalty is $139,785.**	$27,785

Economic Benefit Component of Proposed Civil Penalty

Factors	Comments	Amount
Delayed Cost Benefit	Associated with delayed installation of ammonia sensors.	$9,295

TOTAL PROPOSED PENALTY: $149,080

41. The proposed penalty was based on the best information available to EPA at this time and may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the amount of the proposed penalty.

42. Neither assessment nor payment of a civil penalty shall affect Respondent's continuing obligation to comply with the Act, the regulations promulgated thereunder, or any other applicable Federal, State or local law. Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), contains provisions that affect the burden of proof with respect to violations that continue following issuance of a notice of violation.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

43. Pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and Section 22.14 of the Consolidated Rules of Practice, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged in this Complaint or on the appropriateness of any proposed penalty. Any such hearing will be conducted in accordance with the Consolidated Rules of Practice, a copy of which is enclosed.

44. Under Section 22.15 of the Consolidated Rules of Practice, if Respondent contests any

material fact upon which the Complaint is based, contends that the proposed civil penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent shall file an Answer to this Complaint with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

To be entitled to a hearing, Respondent must include its request for a hearing in its Answer to this Complaint.

45. Under Section 22.18 of the Consolidated Rules of Practice, if Respondent elects to resolve this proceeding by paying the civil penalty proposed in this Complaint, it need not file an Answer. Respondent either may pay the proposed civil penalty in full within thirty (30) days of receipt of this Complaint or may pay the proposed civil penalty in full within sixty (60) days of receipt of this Complaint if Respondent notifies the Regional Hearing Clerk at the address in paragraph 44 above in writing that it intends to pay the proposed penalty. Such written statement must specify that the Respondent agrees to pay the penalty within sixty (60) days of receiving this Complaint. Failure to make such payment within sixty (60) days may subject the Respondent to a default action. See 40 C.F.R. § 22.18(a).

Informal Settlement Conference

46. Whether or not Respondent requests a hearing, Respondent may request an informal conference concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent's attorney is encouraged to contact Gregory Dain, Senior

Enforcement Counsel, at (617) 918-1884, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference. **Please note that a request for an informal settlement conference does not enlarge the thirty-day period within which a written Answer must be submitted to avoid default.**

47. Pursuant to Section 22.5(c)(4) of the Consolidated Rules of Practice, the following individual is authorized to receive service on behalf of EPA:

Gregory Dain
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

48. If Respondent does not file a timely Answer to this Complaint, Respondent may be found in default. Default constitutes, for purposes of this action only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to a hearing on factual allegations contained therein. Thirty (30) days after entry of a final default order, the civil penalty proposed in this Complaint shall become due and payable by Respondent without further proceedings.

Date: 9-17-10

Sam Silverman, acting for
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

Docket No. CAA-01-2010-0061

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing ("Complaint") have been hand-delivered to the EPA Region 1 Regional Hearing Clerk and that a copy of the Complaint 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
Southampton, PA 18966

Gregory Dain

Gregory Dain

9/20/10

Date