



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 12 2011

REPLY TO THE ATTENTION OF:

SC-5J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

David Binder  
Director Quality, Safety and Regulatory Affairs  
Tanner Industries, Inc.  
735 Davisville Road  
Southampton, PA 18966

Re: **Tanner Industries, Inc., Inkster, Michigan,**  
Consent Agreement and Final Order.  
Docket No. CAA-05-2011-0044

Dear Mr. Binder:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on JUL 12 2011. Please pay the civil penalty in the amount of \$28,350 in the manner prescribed in paragraphs 45-51 and reference your check with the number BD 2751103A042 and docket number. In addition, please perform the Work in the manner prescribed in paragraphs 52-73.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jeffrey A. Cahn, Associate Regional Counsel, at (312) 886-6670. Thank you for your assistance in resolving this matter.

Sincerely yours,

Bob Mayhugh, Acting Chief  
Chemical Emergency  
Preparedness & Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
REG CLERK  
U.S. EPA REGION 5

2011 JUL 12 PM 3:18

<b>In the Matter of:</b>	)	
	)	<b>CONSENT AGREEMENT</b>
<b>Tanner Industries Inc.</b>	)	
<b>2736 Edsel Road</b>	)	<b>FINAL ORDER</b>
<b>Inkster, Michigan 48144</b>	)	
	)	
<b>EPA ID: 10000083767</b>	)	<b>Docket No. CAA-05-2011-0044</b>
	)	
<b>Respondent</b>	)	
	)	

**CONSENT AGREEMENT AND FINAL ORDER**

**I. AUTHORITY**

1. The United States Environmental Protection Agency (“Complainant” or “U.S. EPA”), and Tanner Industries Inc. (“Respondent”), 2736 Edsel Road, Inkster, Michigan 48144, have agreed to settle this action and thus this action is simultaneously commenced and concluded by the execution and filing of this Consent Agreement and Final Order (“CAFO”) pursuant to 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”), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3).

**II. JURISDICTION**

2. This is an administrative action for the assessment of civil penalties instituted pursuant to Sections 113(a)(3)(A) and (d) of the Clean Air Act (the “CAA” or the “Act”), 42 U.S.C. § 7413(a)(3)(A) and (d), and the Consolidated Rules, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder.

3. The Complainant is, by lawful delegation, the Director of the Superfund Division,

U.S. EPA, Region 5, Chicago, Illinois.

4. Respondent is and was at all times relevant to this action the owner or operator of a stationary source located at 2736 Edsel Road, Inkster, Michigan 48144.

5. This CAFO is based on Complainant's allegations that Respondent has violated Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), and the provisions of 40 C.F.R. Part 68 as referenced at 40 C.F.R. §§ 68.12(a) and (c), at the above-referenced stationary source.

### **III. STATUTORY AND REGULATORY BACKGROUND**

6. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under that subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to § 112(r)(3) of the Act or any other extremely hazardous substance.

7. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

8. Section 112(r)(7)(A) of the CAA, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

9. Section 112(r)(7)(B)(i) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(i), provides that

within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

10. Section 112(r)(7)(B)(ii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under that subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

11. Pursuant to authority under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 FR 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

12. Pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), the Administrator has listed ammonia (CAS No. 7664-47-7) as a substance regulated under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), identifying a threshold quantity of 10,000 lbs. of ammonia (CAS No. 7664-47-7) as causing regulations promulgated thereunder to be applicable. 40 C.F.R. § 68.130, Table 1.

13. Pursuant to authority under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)” 61 FR 31668 (June 20, 1996), which have

since been codified, and amended, at 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions.

14. On September 25, 2009, pursuant to authority under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and U.S. Attorney General jointly determined that an administrative penalty action was an appropriate remedy for the alleged violations in this matter of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), not otherwise precluded by any statute of limitations.

#### **IV. VIOLATIONS AND PENALTY PROVISIONS**

15. Section 112 (r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

16. Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for each violation of Section 112(r) of the Act that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred after March 15, 2004 through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000, for violations that occurred after January 12, 2009.

17. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the

administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

**V. FINDINGS OF FACT AND CONCLUSION OF LAW**

18. Respondent is a “person,” as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
19. Respondent owns and operates a facility, located at 2736 Edsel Road, Inkster, Michigan, 48144, which consists of buildings and operating equipment (“the Facility”).
20. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, Respondent submitted a Risk Management Plan to U.S. EPA in June 1999 and in June 2004.
21. In the Risk Management Plans submitted to U.S. EPA, Respondent stated the following:
  - a. that the Facility fell within NAICS Code 42469, as Other Chemical and Allied Products Merchant Wholesalers;
  - b. that it used ammonia, CAS No. 7664-47-7, as a process chemical during its operations; and
  - c. that, at the time of each submission of its Risk Management Plan, it stored more than 10,000 lbs. of ammonia, CAS No. 7664-47-7 at the Facility.
22. On July 25, 2007, an authorized representative of U.S. EPA conducted an inspection at the Facility to determine its compliance with 40 C.F.R. Part 68.
23. The Administrator has defined “stationary source” to mean “any buildings,

structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.” 40 C.F.R. § 68.3.

24. The Facility, identified at Paragraph 19, is a “stationary source” as defined at 40 C.F.R. § 68.3.

25. 40 C.F.R. § 68.115 provides that a “threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

26. The Administrator has defined “process” to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” 40 C.F.R. § 68.3.

27. As of June 1999, having stored more than 10,000 lbs. of ammonia (CAS No. 7664-47-7) at the Facility, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and was governed by 40 C.F.R. Part 68.

28. Pursuant to the compliance schedule identified at 40 C.F.R. § 68.10, Respondent was required to comply with the requirements of 40 C.F.R. Part 68 no later than June 21, 1999.

29. For purposes of compliance with 40 C.F.R. Part 68, in its Risk Management Plan, Respondent acknowledged that it was required to meet Program 3 eligibility requirements.

30. The Respondent is subject to “Program 3” eligibility requirements for its ammonia process because the process does not meet the requirements of 40 C.F.R. § 68.10(b),

since the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. § 68.25 is greater than the distance to any public receptor and the process is subject to the OSHA PSM standard set forth at 29 C.F.R. § 1910.119, 40 C.F.R. § 68.10(d).

31. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single Risk Management Plan, as provided in 40 C.F.R. §§ 150–185.

32. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirement of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

33. During the inspection of the Facility conducted on July 25, 2007, Complainant identified the following alleged violations of Risk Management Program requirements:

- a. failure to maintain documentation on evaluation of consequences of deviation, as required under 40 C.F.R. § 68.65(c)(1)(v);
- b. failure to meet the requirements for process hazard analysis (“PHA”) as follows: adequately identify, evaluate, and control the hazards involved in a process through the facility’s initial PHA, as required under 40 C.F.R. § 68.67(a); adequately identify and evaluate all hazards of the covered process in its PHA, as required under § 68.67(c)(1); and identify, in a PHA, engineering and administrative controls applicable to the hazards and their interrelationships, as required under § 68.67(c)(3);
- c. failure to develop and implement written operating procedures as follows:

address conditions under which emergency shutdown is required and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner, as required under § 68.69(a)(1)(iv); address consequences of deviation and steps required to correct or avoid deviations, as required under § 68.69(a)(2)(i) and § 68.69(a)(2)(ii); certify operating procedures annually, as required under § 68.69(c); and implement written procedures to maintain the on-going integrity of process equipment, as required under 40 C.F.R. § 68.73(b);

d. failure to ensure that the frequency of inspections and tests of process equipment is consistent with applicable manufacturer's recommendations, good engineering practices, and prior operating experiences or procedures, as required under 40 C.F.R. § 68.73(d)(3);

e. failure to document that deficiencies noted in the compliance audit conducted have been corrected, as required under § 68.79(d);

f. failure to obtain and maintain contractor's safety information, as required under § 68.87(b)(1); and

g. failure to include in an emergency action plan, mechanisms to notify emergency responders when there is a need for a response, as required under § 68.90(b)(3).

34. The above-described alleged violations of the Risk Management Program regulations are violations of Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

35. The Administrator and the Attorney General of the United States, each through

their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in the CAFO.

36. Accordingly, the above-described alleged violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

37. On July 13, 2010, Complainant issued to Respondent its “Notice of Intent to File a Civil Administrative Complaint Against Tanner Industries, Inc., Inkster, Michigan (the “Notice Letter”). The Notice Letter identified the above-described alleged violations to Respondent, as well as other alleged violations identified during the July 25, 2007, inspection.

38. Respondent responded to the Notice Letter and provided facts and information to EPA with respect to each of Complainant’s alleged violations identified therein. In its response to the Notice Letter, Respondent denied the allegations of violation and denied that a civil penalty was appropriate. In light of the information provided to U.S. EPA by Respondent after its receipt of the Notice Letter, Complainant determined that it would not pursue certain of the allegations identified in the Notice Letter.

## **VI. TERMS OF SETTLEMENT**

39. Complainant and Respondent agree that the settlement of this matter pursuant to Section 22.13(b) of the Consolidated Rules, 40 C.F.R. § 22.13(b), is in the public interest and that the entry of this CAFO without engaging in litigation is the most appropriate means of resolving this matter.

40. Respondent stipulates that Complainant has jurisdiction over the subject matter of this CAFO, and Respondent waives any jurisdictional defenses.

41. Respondent neither admits nor denies the factual allegations and conclusions of law set forth above in this CAFO.

42. Respondent consents to the issuance of this CAFO, payment of a civil penalty, and completion of the Work as set forth below in this CAFO.

43. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, and waives its right to appeal the Final Order accompanying this Consent Agreement.

44. 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.

#### **VII. PENALTIES AND FEES**

45. U.S. EPA agrees to resolve this matter in consideration for Respondent's agreement to perform at the specified ammonia transfer facilities the Work described below, and in consideration of Respondent's agreement to pay a civil penalty in the amount of \$28,350.00.

46. Respondent shall pay the \$28,350.00 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

47. Tanner Industries, Inc., shall send the check to:

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

48. A transmittal letter, stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check.

Respondent must send copies of the check and transmittal letter to:

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

and

Monika Chrzaszcz  
Chemical Emergency Preparedness and Prevention Section  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (SC-5J)  
Chicago, Illinois 60604

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

50. If the Respondent does not timely pay the civil penalty, U.S. EPA may bring an action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The parties agree that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action in this matter.

51. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a penalty at the rate of at least six percent per year on any principal amount

not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

### **VIII. WORK**

52. The Respondent agrees to complete the Work, defined as the activities described in Paragraphs 53-68 of this CAFO, at the ammonia transfer facilities specified in Paragraph 53 of this CAFO.

53. The Respondent agrees to install an ammonia leak detection system that provides continuous leak detection monitoring of the ammonia transfer and storage areas at each of the following Tanner Industries facilities: Lincoln, Alabama; Inkster, Michigan; Belvidere, Illinois; Council Bluffs, Iowa; Neosho, Missouri; Morgantown, West Virginia; Mount Hope, West Virginia; and Fayetteville, North Carolina.

54. At a minimum, each ammonia leak detection system shall be comprised of the following equipment and shall be installed, operated, and maintained as follows: (1) each system shall include a series of electrochemical type sensors working in conjunction with a multi-channel monitoring station providing continuous monitoring for ammonia vapors, along with all necessary control panels, annunciator panels, power supplies, auto dialers, etc., needed for the operation of each system. Respondent shall work with the appropriate local authorities, e.g., the LEPC and/or fire department, to establish appropriate detection thresholds which would cause the ammonia leak detection system to emit an ammonia alarm alerts and alarm signals, but, 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; (2) each ammonia

leak detection system shall include an emergency power backup system in the event of power loss to a facility; (3) each ammonia leak detection systems shall be supported by routine maintenance and calibration schedules; and (4) 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) alert and alarm signals shall be continuously monitored by an external manned 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. In the event of an alarm signal, the call list shall include, 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 subparagraphs 54.(3)(a) and 53.(3)(b), above, shall monitor ammonia alerts and alarms; or

(d) such other monitoring protocols as may be required by the local authority, but in no case shall the monitoring protocols be less stringent than the requirements contained in subparagraphs 54(a) through (c), above.

55. Upon installation of the ammonia leak detection systems and their associated

alarming systems, Tanner shall coordinate with the appropriate local authorities, e.g., the LEPC and/or fire department, to ensure that they are familiar with the warning and alarm systems installed and the appropriate protective actions to take in the event the alarms are triggered by an ammonia leak. Tanner shall also ensure that procedures are established that provide reliable and timely notification by the facility emergency coordinators and/or the community emergency coordinator to persons designated in the emergency plan that a release has occurred, and that appropriate protective actions, such as shelter-in-place or evacuation, should be taken. Tanner must also conduct adequate outreach and training about the ammonia leak detection systems in order that emergency responders understand the meaning of the on-site warning strobe light and warning horn or siren, if they are activated.

56. Beginning within thirty (30) days after the effective date of this CAFO, Respondent shall commence installation of the ammonia leak detection systems, as described in Paragraphs 53 and 54, at one or more of the facilities identified in Paragraph 53. On or before April 1, 2013, Respondent shall have completed installation of the ammonia leak detection systems, as described in Paragraphs 53 and 54, at each of the listed transfer facilities. Upon completion of the installation of an ammonia leak detection system at any of individual facilities listed in Paragraph 53, 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 agrees to undertake reasonable efforts to implement an adequate procedure for notifying the local emergency response personnel of an ammonia leak from the facility.

57. As part of this settlement Respondent agrees to operate and maintain the ammonia

leak detection system at each transfer facility listed in Paragraph 53.

58. The total capital cost of the ammonia leak detection equipment for the specified transfer facilities is estimated to total \$70,235.00. The total installation cost of the ammonia leak detection equipment for the specified transfer facilities is estimated to total \$67,025.00.

Accordingly, the total of the capital cost and installation cost of the ammonia leak detection system for the facilities identified in Paragraph 53 is \$137,260.00. 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 \$18,904.00. Respondent must spend at least \$175,068.00 on the ammonia leak detection systems described in Paragraphs 53, 54, and 55, above. For purposes of accounting only, the \$175,068.00 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.

59. U.S. EPA may inspect the ammonia transfer facilities listed in Paragraph 53 at any time to monitor Respondent's compliance with this CAFO's Work requirements.

60. Respondent must maintain copies of the underlying research and data, if any, for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying research and data, if any, to U.S. EPA within seven days of U.S. EPA's request for the information.

61. The Respondent shall submit an ammonia leak detection system Construction Completion Report to U.S. EPA by June 1, 2013. 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 ammonia transfer facility;

b. copies of all operating plans, operating protocols, or manuals for each ammonia leak detection system, including copies of the operating and maintenance plans, for each of the ammonia transfer facilities listed in Paragraph 53 of this CAFO;

c. itemized costs of goods and services used to complete the Work, documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services; and

d. certification that Respondent has completed the construction and installation Work in compliance with this CAFO.

62. Within 30 days after the end of the two (2) year period that commences after Respondent completes installation and makes operational the last ammonia leak detection system (in no case shall this two year period commence later than on April 1, 2013), Respondent shall submit an ammonia leak detection system Operation and Maintenance Report to U.S. EPA. The Operation and Maintenance Report shall contain the following information:

a. a description of the operation and maintenance of the ammonia leak detection system built and installed at each ammonia transfer facility;

b. a description of all ammonia leak detection system operating problems (e.g., problems with the operation of warning lights or sirens; functionality of the phone tree; problems in giving required notices) and the actions taken to correct the problems at each of the ammonia transfer facilities listed in Paragraph 53;

- c. itemized costs of goods and services used to complete the Work, documented by copies of invoices, purchase orders, or canceled checks not previously submitted to U.S. EPA as part of the Construction Completion Report, that specifically identify and itemize the individual costs of the goods and services; and
- d. certification that Respondent has completed the Work in compliance with this CAFO.

63. The Respondent must submit the Construction Completion Report and the Operation and Maintenance Report to:

Attn: Monika Chrzaszcz (SC-5J)  
Chemical Emergency Preparedness and Prevention Section  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

64. The Respondent must certify that the Construction Completion Report and the Operation and Maintenance Report are true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, 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.

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

- a. it has completed the Work described in the Construction Completion Report in a manner consistent with the terms of this CAFO;

b. there are deficiencies in the construction and installation Work, there are deficiencies in the operating plans, operating and maintenance plans, operating protocols, and manuals for each ammonia leak detection system, or there are deficiencies in the Construction Completion Report, and that U.S. EPA will give the Respondent 30 days to correct the deficiencies; or

c. Subject to Paragraph 69.a., Respondent has not completed the construction and installation Work, the operating plans, operating and maintenance plans, operating protocols, and manuals for each ammonia leak detection system, or the Construction Completion Report consistent with the terms of this CAFO, and U.S. EPA will seek stipulated penalties under Paragraph 69.

66. Following receipt of the Operation and Maintenance Report, U.S. EPA will notify Respondent in writing that:

a. it has completed the Work described in the Operation and Maintenance Report in a manner consistent with the terms of this CAFO;

b. there are deficiencies in the operation or maintenance of the ammonia leak detection system, or there are deficiencies in the Operation and Maintenance Report and that U.S. EPA will give the Respondent 30 days to correct the deficiencies; or

c. Subject to Paragraph 69.a., Respondent has not completed the operation or maintenance of the ammonia leak detection system or the Operation and Maintenance Report consistent with the terms of this CAFO, and U.S. EPA will seek stipulated penalties under Paragraph 69.

67. If Respondent timely submits the Construction Completion Report under the terms of this CAFO, and if U.S. EPA does not provide notice to Respondent under the provisions of Paragraph 65, above, within 45 days from receipt of the Construction Completion Report, then it shall be deemed that U.S. EPA has approved the Construction Completion Report under Section “a” of Paragraph 65. If Respondent timely submits the Operation and Maintenance Report under the terms of this CAFO, and if U.S. EPA does not provide notice to Respondent under the provisions of Paragraph 66, above, within 45 days from receipt of the Operation and Maintenance Report, then it shall be deemed that U.S. EPA has approved the Operation and Maintenance Report under Section “a” of Paragraph 66.

68. If U.S. EPA exercises option “b” under Paragraph 65 or 66, above, then Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA’s receipt of Respondent’s objection to reach an agreement. If the parties cannot reach an agreement, then U.S. EPA’s Region 5 Superfund Division Director will give Respondent a written decision on Respondent’s objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the Work as required by U.S. EPA’s decision, Respondent will pay stipulated penalties to the United States under Paragraph 69 below.

69. If Respondent violates any requirement of this CAFO relating to the Work, then Respondent must pay stipulated penalties to U.S. EPA as follows:

- a. if Respondent does not complete the Work in a manner consistent with the terms of this CAFO as determined by U.S. EPA, but U.S. EPA determines that Respondent: (i) made good faith and timely efforts to complete the Work; and (ii)

certified, with supporting documents, that it spent at least 80 percent of the required amount on the Work, Respondent will not be liable for any stipulated penalty.

b. If Respondent completes the Work in a manner consistent with the terms of this CAFO as determined by U.S. EPA, but spent less than 80 percent of the required amount on the Work, Respondent shall pay a penalty equal to the difference between the estimated cost of the Work (\$175,068.00) and the amount actually spent on the Work, plus an additional ten percent (10%) of \$175,068.00 added to the difference.

c. If Respondent fails to complete the Work consistent with the terms of this CAFO, then Respondent must pay a stipulated penalty of \$750 for each day Respondent fails to complete the Work and continuing until such time as the Work is completed consistent with the terms of this CAFO.

d. If Respondent fails submit the Construction Completion Report required by Paragraph 61, above, consistent with the terms of this CAFO, then Respondent must pay a stipulated penalty of \$500 for each day Respondent fails to submit the Construction Completion Report until such time as the Construction Completion Report is submitted consistent with the terms of this CAFO.

e. If Respondent fails submit the Operation and Maintenance Report required by Paragraph 62, above, consistent with the terms of this CAFO, then Respondent must pay a stipulated penalty of \$500 for each day Respondent fails to submit the Operation and Maintenance Report until such time as the Operation and

Maintenance Report is submitted consistent with the terms of this CAFO.

f. If Respondent permanently shuts down any facility identified in Paragraph 53, 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 the 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 58, above.

70. U.S. EPA's determinations of whether Respondent completed the Work consistent with the terms of this CAFO and whether it made good faith, timely efforts to complete the Work consistent with the terms of this CAFO will bind Respondent.

71. The Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraphs 46, 47, and 48, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

72. Any public statement that the Respondent makes referring to the Work must include the following language, "Tanner Industries, Inc. undertook this Work under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for alleged violations of Section 112(r) of the Act, 40 C.F.R. Part 68."

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

a. Respondent must notify U.S. EPA in writing within 10 days after learning

of an event which caused or may cause a delay in completing the Work. The notice must 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 U.S. EPA according to this Paragraph, Respondent will 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 U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the Work, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the Work will 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 will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

#### **IX. GENERAL TERMS OF SETTLEMENT**

74. This CAFO shall constitute full settlement of all civil and administrative claims alleged in this CAFO.

75. Nothing in this CAFO shall relieve Respondent from complying with any provision of the Act or any other applicable federal, state, or local environmental law or regulation.

76. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

77. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and with the regulations cited above, and to seek a civil penalty in an amount allowed by statute.

78. After Tanner has completed all requirements contained in Section VIII (Work) of this CAFO, including, but not limited to, submission of the ammonia leak detection system Operation and Maintenance Report under Paragraph 62 of this CAFO, and U.S. EPA has provided written notice to Tanner under Paragraph 66.a. of this CAFO that Tanner has completed the Work described in the Operation and Maintenance Report in a manner consistent with the terms of this CAFO, and Tanner has complied with all other requirements of this CAFO, and has paid the penalty required in Paragraph 45 of this CAFO, and has paid any accrued stipulated penalties as required by this CAFO, Tanner may submit to U.S. EPA a Request for Termination, stating that Tanner has satisfied those requirements, together with all necessary supporting documentation.

79. Following receipt by EPA of Tanner's Request for Termination, U.S. EPA and

Tanner shall confer informally concerning the Request for Termination and any disagreement that the parties may have as to whether Tanner has satisfactorily complied with the requirements for termination of this CAFO. U.S. EPA will respond to Tanner's request for termination, and if U.S. EPA agrees in writing that this CAFO may be terminated, then the CAFO shall so terminate upon the date of such written notice to Tanner.

80. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory parties in identical form, then the entire CAFO shall be null and void.

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

82. Respondent and Complainant agree to bear their own respective costs and attorneys' fees.

83. The terms of this CAFO bind Respondent, its successors, and assigns. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the facility.

84. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

85. Respondent and U.S. EPA agree to the issuance and entry of the accompanying Final Order.

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

2011 JUL 12 PM 3:18

**Consent Agreement and Final Order**  
**Tanner Industries, Inc.**  
**Docket No. CAA-05-2011-0044**

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry:

**U.S. Environmental Protection Agency**  
**Complainant**

7-7-11  
Date: 6/21/11  
rcd

By: Richard C Karl  
Richard C. Karl, Director  
Superfund Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Tanner Industries, Inc.**  
**Respondent**

Date: 6/21/11

By: David Rindon  
Print Name: David Rindon  
Print Title: Director Quality, Safety +  
REG. ACP/AMU  
Address: 735 Davisville Rd  
3rd Floor  
Southampton PA 18966

REGIONAL HEARING CLERK  
U.S. EPA REGION 5

2011 JUL 12 PM 3:18

**Consent Agreement and Final Order**  
**Tanner Industries, Inc.**  
Docket No. CAA-05-2011-0044

**FINAL ORDER**

The foregoing Consent Agreement, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 7-11-11

By:   
\_\_\_\_\_

Susan Hedman  
Regional Administrator  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Consent Agreement and Final Order**  
**Tanner Industries, Inc.**  
Docket No. CAA-05-2011-0044

REGIONAL HEARING CLERK  
U.S. EPA REGION 5

2011 JUL 12 PM 3:18

**Certificate of Service**

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

David Binder  
Director Quality, Safety and Regulatory Affairs  
Tanner Industries, Inc.  
735 Davisville Road  
Southampton, PA 18966

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 12<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
Monika Chrzaszcz  
U.S. Environmental Protection Agency  
Region 5