



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
February 10, 2015

REPLY TO THE ATTENTION OF:  
LC- 8J

**CERTIFIED MAIL: No.7011 1150 0000 2643 8258**  
**RETURN RECEIPT REQUESTED**

Mr. Brian Miller  
ProVia Door, Inc.  
2150 State Route 39  
Sugarcreek, Ohio 44681

Expedited Agreement and Final Order In the Matter of  
ProVia Door, Inc. Docket No.      **EPCRA-05-2015-0008**

Mr. Miller:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on February 10, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$22,888 is to be paid in the manner described in paragraphs 41 and 42. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by March 12, 2015 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Shaw".

Maynard Shaw  
Pesticides and Toxics Compliance Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

**ProVia Door, Inc.  
Sugarcreek, Ohio**

**Respondent.**

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**Docket No. EPCRA-05-2015-0008**

**Proceeding to Assess a Civil Penalty  
Under Section 325(c) of the Emergency  
Planning and Community Right-to-Know  
Act of 1986, 42 U.S.C. § 11045(c)**

**Consent Agreement and Final Order**

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), 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. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is ProVia Door, Inc., a corporation doing business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 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 assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

### **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 its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

### **Statutory and Regulatory Background**

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed or otherwise used a toxic chemical in an amount exceeding an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used

at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Section 313 of EPCRA that occurred after January 12, 2009, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

13. Respondent is a "person" as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2150 State Route 39, Sugarcreek, Ohio.

15. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

16. Respondent's facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person.

17. Respondent's facility is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

18. The facility has a SIC code of 3442, a covered SIC code as defined at Section 313 of

EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

19. In conformity with the Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations (the Self-Disclosure Policy), 65 Fed. Reg. 19618 (April 11, 2000), the violations of Section 313 of EPCRA, 42 U.S.C. § 11023, at Respondent's facility which are the subject of this CAFO were voluntarily disclosed to EPA by letters dated June 16, 2011 and April 23, 2012 and by Respondent's affidavits dated July 11, 2011 and July 27, 2012.

### **Count 1**

20. During calendar year 2008, Respondent's facility otherwise used, as that term is defined at 40 C.F.R. § 372.3, Xylene (mixed isomers) a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 12,122 pounds which is greater than 10,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

21. Respondent was required to submit to the Administrator of EPA and to Ohio a Form R for Xylene (mixed isomers) for calendar year 2008 by July 1, 2009.

22. Respondent did not submit to the Administrator of EPA and to Ohio Form R for Xylene (mixed isomers) for calendar year 2008 by July 1, 2009.

23. Respondent submitted Form R for Xylene (mixed isomers) to the Administrator of EPA and to Ohio on June 16, 2011 for calendar year 2008.

24. Respondent's failure to submit timely a Form R for Xylene (mixed isomers) to the Administrator of EPA and to Ohio for calendar year 2008 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

### **Count II**

25. During calendar year 2009, Respondent's facility otherwise used, as that term is defined at 40 C.F.R. § 372.3, Xylene (mixed isomers), a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 12,122 pounds which is greater than 10,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

26. Respondent was required to submit to the Administrator of EPA and to Ohio a Form R for Xylene (mixed isomers) for calendar year 2009 by July 1, 2010.

27. Respondent did not submit to the Administrator of EPA and to Ohio a Form R for Xylene (mixed isomers) for calendar year 2009 by July 1, 2010.

28. Respondent submitted Form R for Xylene (mixed isomers) to the Administrator of EPA and to Ohio on June 16, 2011 for calendar year 2009.

29. Respondent's failure to submit timely a Form R for Xylene (mixed isomers) to the Administrator of EPA and to Ohio for calendar year 2009 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

### **Count III**

30. During calendar year 2009, Respondent's facility manufactured or processed, as that term is defined at 40 C.F.R. § 372.3, Diisocyanate Compounds, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 124,230 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

31. Respondent was required to submit to the Administrator of EPA and to Ohio a Form R for Diisocyanate Compounds for calendar year 2009 by July 1, 2010.

32. Respondent did not submit to the Administrator of EPA and to Ohio a Form R for

Diisocyanate Compounds for calendar year 2009 by July 1, 2010.

33. Respondent submitted Form R for Diisocyanate Compounds to the Administrator of EPA and to Ohio on June 29, 2012 for calendar year 2009.

34. Respondent's failure to submit timely a Form R for Diisocyanate Compounds to the Administrator of EPA and to Ohio for calendar year 2009 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

#### **Count IV**

35. During calendar year 2010, Respondent's facility otherwise used, as that term is defined at 40 C.F.R. § 372.3, Diisocyanate Compounds, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 150,751 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

36. Respondent was required to submit to the Administrator of EPA and to Ohio a Form R for Diisocyanate Compounds for calendar year 2010 by July 1, 2011.

37. Respondent did not submit to the Administrator of EPA and to Ohio a Form R for Diisocyanate Compounds for calendar year 2010 by July 1, 2011.

38. Respondent submitted Form R for Diisocyanate Compounds to the Administrator of EPA and to Ohio on June 29, 2012 for calendar year 2010.

39. Respondent's failure to submit timely a Form R for Diisocyanate Compounds to the Administrator of EPA and to Ohio for calendar year 2010 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

#### **Civil Penalty**

40. Based upon the initial self-disclosure and the information in Respondent's

subsequently submitted affidavit, Complainant has determined that Respondent has satisfied eight of the nine Self-Disclosure Policy criteria. Therefore, a 75 percent reduction of the gravity-based portion of the civil penalty to be assessed in this matter is appropriate under the Self-Disclosure Policy. Complainant has determined that there was no economic benefit associated with the alleged violations. Therefore, Complainant has determined that the appropriate penalty to settle this action is \$23,888.

41. Within 30 days after the effective date of this CAFO, Respondent must pay a \$23,888 civil penalty for the EPCRA violations by an electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state ProVia Door, Inc., and the docket number of this CAFO.

42. Respondent must send a notice of payment that states Respondent’s name, complete address, and the case docket number to EPA at the following addresses when it pays the penalty:

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

Maynard Shaw (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604



Erik Olson (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

44. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 40, EPA may bring an action 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 validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

45. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

46. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

47. None of the foregoing agreements, statements, findings and actions taken by the Respondent shall be deemed an admission by the Respondent of the allegations contained within this Consent Agreement and Final Order.

48. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

49. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws.

50. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 313 of EPCRA.

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


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

53. Each party agrees to bear its own costs and attorneys fees in this action.

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


**ProVia Door, Inc., Respondent**

12/16/14  
Date

  
Brian R. Miller  
President  
ProVia Door, Inc.

**United States Environmental Protection Agency, Complainant**

2/4/2015  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division


In the Matter of:  
ProVia Door, Inc.  
Docket No.

**EPCRA-05-2015-0008**

**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.

2-6-15  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**In The Matter of:** ProVia Door, Inc. (Sugar creek, Ohio)  
**Docket Number:** EPCRA-05-2015-0008

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the forgoing **Consent Agreement and Final Order, In the Matter of ProVia Door, Inc.**, on the parties listed below in the manner indicated:

**Copy by Certified Mail  
Return Receipt:**

**No.7011 1150 0000 2643 8258**

Mr. Brian Miller  
ProVia Door, Inc.  
2150 State Route 39  
Sugar creek, Ohio 44681

**Copy by E-mail to  
Attorney for Complainant:**

**Erik Olson**  
[Olson.erik@epa.gov](mailto:Olson.erik@epa.gov)

**Copy by E-mail to  
Regional Judicial Officer:**

Ann Coyle  
[Coyle.ann@epa.gov](mailto:Coyle.ann@epa.gov)

Dated

*February 10, 2015*



LaDawn Whitehead  
Regional Hearing Clerk, Region 5  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
(312) 886-3713