



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

AUG 10 2018

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE  
VIA EMAIL

Douglas L. Storhoff  
President  
ProChaska, LLC  
301 Bridge Street  
Green Bay, Wisconsin 54303

Re: ProChaska, LLC, Savage, Minnesota, Consent Agreement and Final Order  
Docket No. EPCRA-05-2018-0010

Dear Mr. Storhoff:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on August 10, 2018.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$21,485 in the manner prescribed in paragraph 38, and reference your check with the docket number EPCRA-05-2018-0010.

Your payment is due on September 10, 2018.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to John P. Stekete, Associate Regional Counsel, at (312) 886-0558. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

cc: Steve Tomlyanovich (w/ enclosure)  
Division of Homeland Security  
and Emergency Management  
444 Cedar Street, Suite 223  
St. Paul, Minnesota 55101

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of:

ProChaska, LLC  
Savage, Minnesota,

Respondent.

Docket No. EPCRA-05-2018-0010

Proceeding to Assess a Civil Penalty Under  
Section 325(c)(1) of the Emergency Planning  
and Community Right-to-Know Act of 1986

Consent Agreement and Final Order  
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) 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, by lawful delegation, the Chief of Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is ProChaska, LLC, a limited liability company doing business in the State of Minnesota.
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 the terms of the 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.

**Statutory and Regulatory Background**

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) or safety data sheet (SDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state commissions, local

committees, and fire departments in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, an MSDS or SDS.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$32,500 per day of violation for each violation that occurred after March 15, 2004 through January 12, 2009, to \$37,500 per day of violation for each violation that occurred after January 12, 2009 through November 2, 2015, The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 note, and the implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$53,907 per day of violation for each violation that occurred after November 2, 2015 and for which penalties are assessed on or after August 1, 2016 but before January 15, 2017, to \$54,789

per day of violation that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2017 but before January 15, 2018, and to \$55,907 per day of violation for each violation that occurred after November 2, 2015, and for which penalties are assessed on or after January 15, 2018.

**Factual Allegations and Alleged Violations**

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 12502 Xenwood Avenue South, Savage, Minnesota (facility).

17. At all times relevant to this CAFO, Respondent was an employer at the facility.

18. 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.

19. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Peracetic acid is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

21. Peracetic acid (CAS #79-21-0) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

22. Peracetic acid (CAS #79-21-0) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

23. Peracetic acid (CAS #79-21-0) is an “extremely hazardous substance” according to

Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

24. During at least one period of time in calendar year 2015, peracetic acid was present at the facility in an amount equal to or greater than the minimum threshold level.

25. OSHA requires Respondent to prepare, or have available, an MSDS for peracetic acid.

26. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including peracetic acid on or before March 1, 2016, for calendar year 2015.

27. At all times relevant to this CAFO, the Minnesota SERC was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

28. At all times relevant to this CAFO, the Savage Fire Department was the fire department with jurisdiction over the facility.

**Count 1** (EPCRA 312/SERC)

29. Complainant incorporates paragraphs 1 through 28 of this CAFO as if set forth in this paragraph.

30. Respondent submitted to the SERC an Emergency and Hazardous Chemical Inventory Form excluding peracetic acid on February 26, 2016, for calendar year 2015.

31. Respondent submitted to the SERC an Emergency and Hazardous Chemical Inventory Form including peracetic acid on December 9, 2016, for calendar year 2015.

32. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including peracetic acid by March 1, 2016, for calendar year 2015, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 2** (EPCRA 312/fire department)

33. Complainant incorporates paragraphs 1 through 28 of this CAFO as if set forth in this paragraph.

34. Respondent submitted to the Savage Fire Department an Emergency and Hazardous Chemical Inventory Form excluding peracetic acid on February 26, 2016, for calendar year 2015.

35. Respondent submitted to the Savage Fire Department an Emergency and Hazardous Chemical Inventory Form including peracetic acid on December 9, 2016, for calendar year 2015.

36. Each day Respondent failed to submit to the Savage Fire Department a completed Emergency and Hazardous Chemical Inventory Form including peracetic acid, by March 1, 2016, for calendar year 2015, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Civil Penalty**

37. Complainant has determined that an appropriate civil penalty to settle this action is \$21,485 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

38. Within 30 days after the effective date of this CAFO, Respondent must pay a



\$21,485 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note the following: ProChaska, LLC, Savage, Minnesota and the docket number of this CAFO EPCRA-05-2018-0010.

39. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, and the case docket number, must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3511

James Entzminger (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

John P. Steketee (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

41. If Respondent does not timely pay the civil penalty, U.S. 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.

42. 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, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

43. Pursuant to 40 C.F.R. §§ 22.5 and 22.6, the parties consent to service of this CAFO by email at the following email addresses: Steketee.john@epa.gov (for Complainant) and dougs@proactivesolutionsusa.com (for Respondent). See 40 C.F.R. §§ 22.5-6.

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

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

46. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

48. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

50. Each person signing this consent 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.


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

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

In the Matter of: ProChaska, LLC, Savage, Minnesota  
Docket No. EPCRA-05-2018-0010

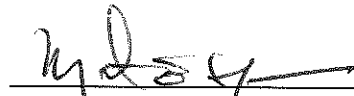
ProChaska, LLC, Respondent

7-20-2018  
Date

  
Douglas L. Storhoff  
President  
ProChaska, LLC

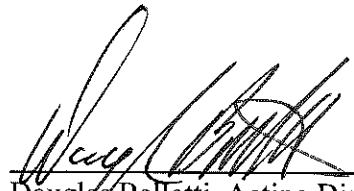
U.S. Environmental Protection Agency, Complainant

8-2-18  
Date

  
Jason El-Zein, Chief  
Emergency Response Branch 1  
U.S. Environmental Protection Agency  
Region 5

Michael E. Hans  
for Joz

8/2/2018  
Date

  
Douglas Ballotti, Acting Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: ProChaska, LLC, Savage, Minnesota**  
**Docket No. EPCRA-05-2018-0010**

**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.

8/7/18  
Date

for Deborah K. Smith  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

In the Matter of: ProChaska, LLC, Savage, Minnesota  
Docket No. EPCRA-05-2018-0010

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on August 10, 2018 in the following manner to the addressees:

Copy by E-mail  
Respondent:

Douglas L. Storhoff  
President  
ProChaska, LLC  
301 Bridge Street  
Green Bay, Wisconsin 54303  
(920) 437-8658  
dougs@proactivesolutionsusa.com

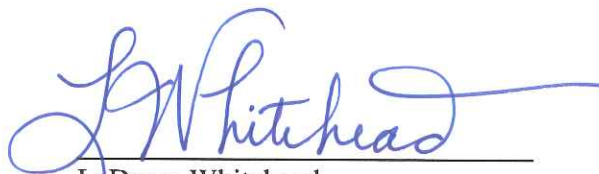
Copy by E-mail to  
Attorney for Complainant:

John P. Steketee  
Steketee.john@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
Coyle.ann@epa.gov

Dated: August 10, 2018



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