

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

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U.S. Environmental
Protection Agency
Region 2

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In the Matter of :
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 :
 Jos. H. Lowenstein & Sons, Inc., :
 :
 Respondent. :
 :
 :
 Proceeding Under Section 16(a) of :
 the Toxic Substances Control Act :
 and Section 325 (c) of Title III of :
 the Superfund Amendments and :
 Reauthorization Act :
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CONSENT AGREEMENT/FINAL ORDER
Docket No. TSCA-02-2016-9243

PRELIMINARY STATEMENT

This civil administrative proceeding is instituted pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a) and Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 *et seq.* [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”)]. The United States Environmental Protection Agency (“EPA”) has promulgated regulations governing the toxic substance reporting requirements at Title 40 of the Code of Federal Regulations (“C.F.R.”) at Part 711 and the toxic chemical release reporting and community right to know requirements at 40 C.F.R. Part 372.

Pursuant to 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. § 22.18(b).

The parties agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving the TSCA and EPCRA claims specified herein against Jos. H. Lowenstein & Sons, Inc., without litigation. No adjudicated findings of fact or conclusions of law have been made in either a judicial or administrative forum. The following constitute EPA’s Findings of Fact and Conclusions of Law based on information of which EPA, Region 2, was aware as of August 15, 2016.

EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Jos. H. Lowenstein & Sons, Inc. ("Lowenstein" or "Respondent").
2. Respondent is a corporation organized pursuant to the laws of the State of New York.
3. Respondent has owned and continues to own a facility located at 420 Morgan Avenue, Brooklyn, New York ("facility" or "Respondent's facility") whose Toxic Chemical Release Inventory ("TRI") Facility ID No. is 110000323392.
4. On June 5, 2014, duly authorized representatives of EPA conducted a multimedia inspection of Respondent's facility ("the Inspection").

TSCA

5. The Inspection was performed pursuant to TSCA Section 11 for the purpose of determining compliance with TSCA and the regulations promulgated thereto.
6. Respondent is a "person" within the meaning of 40 C.F.R. § 720.3.
7. Respondent is a "manufacturer" within the meaning of 40 C.F.R. § 711.3.
8. Respondent's facility is a "site" within the meaning of 40 C.F.R. § 711.3.
9. During the Inspection, EPA found that Respondent imported chemical substances in quantities greater than 100,000 pounds during the applicable principal reporting year Calendar Year 2011. Subsequent to the inspection, EPA determined that these chemical substances were listed on the TSCA Master Inventory File at the beginning of the applicable submission period February 1, 2012 through August 13, 2012 as specified in 40 C.F.R. § 711.20 and thus subject to the reporting requirements at 40 C.F.R. Part 711.
10. Respondent failed to submit required information for the reportable chemical substances on its 2012 TSCA Chemical Data Reporting during the submission period in violation of TSCA Section 8, 15 U.S.C. § 2607, and the regulations relating to TSCA Chemical Data Reporting Requirements codified at 40 C.F.R. Part 711.
11. Failure to meet the reporting requirements of 40 C.F.R. § 711.15 is a violation of 40 C.F.R. § 711, which is a violation of TSCA Sections 8(a) and 15(3), 15 U.S.C. §§ 2607(a) and 2614(3), respectively.

EPCRA

12. The Inspection was also performed pursuant to EPCRA Section 313 to determine whether Respondent was in compliance with the TRI reporting requirements of 40 C.F.R. Part 372. TRI reports are due July 1 of each year for each listed TRI chemical that exceeds the manufactured, processed, or otherwise used threshold in the previous calendar year.

13. Respondent is a “person” within the meaning of EPCRA Section 329(7), 42 U.S.C. § 11049(7).
14. Respondent is and was an “owner” and “operator” of a “facility” as those terms are defined or used in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and in 40 C.F.R. § 372.5.
15. Respondent is subject to the requirements of EPCRA Section 313(b), 42 U.S.C. § 11023(b) and 40 C.F.R. § 372.22.
16. As a result of the Inspection, EPA determined that Respondent failed to: (a) submit, in a timely manner, a complete and correct Form R report for p-phenylenediamine for the calendar year 2012 and (b) submit, in a timely manner, a complete and correct Form R report for catechol for the calendar year 2012.
17. Respondent had submitted and certified TRI Form R reports for phenylenediamine and catechol on January 23, 2014, several months past the due date. Respondent asserts that it timely uploaded the required reports on the USEPA Central Data Exchange website prior to the conclusion of the reporting period.
18. Each failure to submit a Form R report, in a timely manner, constitutes a violation of EPCRA Section 313, 42 U.S.C. § 11023, and of 40 C.F.R. § 372.30.

CONSENT AGREEMENT

Pursuant to TSCA Section 16(a), 15 U.S.C. § 2615(a) and EPCRA Section 325(c), 42 U.S.C. § 11045(c), and 40 C.F.R. § 22.18(b) of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits that EPA has jurisdiction under TSCA Section 16(a), 15 U.S.C. § 2615(a) and EPCRA Section 325(c), 42 U.S.C. § 11045(c), to commence a civil administrative proceeding for the violations described in EPA’s Findings of Fact and Conclusions of Law section above; (b) neither admits nor denies EPA’s Findings of Fact and/or EPA’s Conclusions of Law; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to TSCA Section 16(a), 15 U.S.C. § 2615(a) and EPCRA Section 325(c), 42 U.S.C. § 11045(c), and 40 C.F.R. § 22.18(b), Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms:

1. Respondent shall hereinafter maintain compliance with all applicable provisions and statutory requirements of TSCA Section 8 and EPCRA Section 313 and their implementing regulations.
2. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is now in full compliance with the provisions and

statutory requirements of TSCA and EPCRA and their implementing regulations that are applicable to Respondent's activities relating to the TSCA Chemical Data Reporting Requirements and EPCRA Toxic Chemical Release reporting requirements.

3. Respondent shall pay a civil penalty to EPA in the total amount of **SIXTY-FIVE THOUSAND DOLLARS (\$65,000)**. The total sum shall be divided into three (3) payments: an initial payment of Fifteen Thousand Dollars (\$15,000) and two (2) payments of Twenty-Five Thousand Dollars (\$25,000). Such payments shall be made by cashier's or certified check or by Electronic Fund Transfer ("EFT"). If payments are made by check, then the checks shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

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

Each check shall be identified with a notation thereon listing the following: *In the Matter of Jos. H. Lowenstein & Sons, Inc.*, and shall bear thereon the **Docket No. TSCA-02-2016-9243**. If Respondent chooses to make payments by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
 - 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045.**
 - 3) Account Code for Federal Reserve Bank of New York receiving payment: **68010727.**
 - 4) Federal Reserve Bank of New York ABA routing number: **021030004.**
 - 5) Field Tag 4200 of the Fedwire message should read **D 68010727** Environmental Protection Agency.
 - 6) Name of Respondent: **Jos. H. Lowenstein & Sons, Inc.**
 - 7) Case Number: **TSCA-02-2016-9243.**
4. The initial payment of Fifteen Thousand Dollars (\$15,000) shall be received (if made by check) or effected (if implemented by EFT) on or before thirty (30) calendar days of the Effective Date of this CA/FO followed by two payments of Twenty-Five Thousand Dollars (\$25,000) each sixty (60) days apart thereafter. Under said payment plan, full payment to the United States shall be made within five (5) months after the Effective Date. (Each date by which each payment must be received shall hereinafter be referred to as the "due date.")
 - a. Failure to pay the requisite civil penalty amounts in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.

- b. Furthermore, if payments are not made on or before the date specified in this document, interest for said payments shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payments were required to have been made through the date said payments have been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payments were to have been made, in which payments of the amounts remain in arrears.
 - c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.
5. The civil penalty herein or any stipulated penalty due hereunder constitutes a “penalty” within the meaning of 26 U.S.C. § 162(f), and is not a deductible expenditure for purposes of federal or state law. In addition to any late fees as set forth above, if Respondent fails to make any payment as required and in accordance with the schedule set forth above, Respondent shall pay stipulated penalties for each day that a required payment is late, and such stipulated penalties shall be as follows: (a) \$200 for each day a required payment is late, and this shall apply from the first to the thirtieth (30th) day that Respondent has failed to make such payment(s); (b) \$300 for each day thereafter that a required payment is late, and this shall apply from the thirty-first (31st) to the ninetieth (90th) that Respondent has failed to make such payment(s); and \$500 for each day thereafter that a required payment is late, and this shall apply to every day after the ninetieth (90th) day that Respondent has failed to make such payment(s).
6. Respondent shall utilize the same procedures as set forth above to pay any stipulated penalty(ies) that becomes due pursuant to the provisions set forth above. EPA in its sole discretion may reduce or eliminate any stipulated penalty(ies) otherwise due.
7. Whether the payments are made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payments have been made to both:

Karen L. Taylor, Assistant Regional Counsel
Office of Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, Room 1631
New York, New York 10007-1866

8. Complainant shall mail to Respondent (to the representatives designated in Paragraph 9, below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.
9. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

John Gorman, Chief
Pesticides and Toxic Substances Branch
US Environmental Protection Agency 2
2890 Woodbridge Avenue (MS-105) or
Edison, New Jersey 08837

and

Karen L. Taylor, Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007

EPA shall address any written communications to Respondent at the following address:

Rich Cahayla-Wynne, Vice President
Jos. H. Lowenstein & Sons, Inc.
42 Morgan Avenue, Brooklyn, New York
Brooklyn, New York 11222

10. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims described in EPA's Findings of Fact and Conclusions of Law section. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
11. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and EPCRA and the regulations promulgated thereunder or with any applicable federal, state, or local rules, regulations, and laws. Nothing in this document is intended nor shall be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.

12. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
13. This Consent Agreement and any provision herein shall not be construed as an admission of any fact or of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
14. Respondent waives its right to request a hearing on this Consent Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.
15. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
16. Each party hereto shall bear its own costs and fees in this matter.
17. Pursuant to 40 C.F.R. § 22.31(b), the Effective Date of the Consent Agreement and Final Order herein shall be the date when the Final Order is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In the Matter of Jos. H. Lowenstein & Sons, Inc.,
Docket No. TSCA-02-2016-9243

RESPONDENT: **JOS. H. LOWENSTEIN & SONS, INC.**

BY: Richard Cahayla Wypre
Authorizing Signature

NAME: Richard Cahayla Wypre
(PLEASE PRINT)

TITLE: V.P.

DATE: 21 Sept 2016

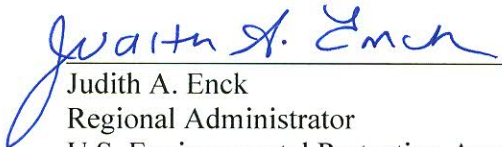
COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

Dore LaPosta
Dore LaPosta, Director
Environmental Protection Agency - Region 2
Division of Enforcement and Compliance Assistance U.S.
290 Broadway
New York, New York 10007
DATE: 9/27, 2016

In the Matter of Jos. H. Lowenstein & Sons, Inc.,
Docket No. TSCA-02-2016-9243

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated by reference herein, and issued pursuant to TSCA Section 16(a) and EPCRA Section 325(c) and 40 C.F.R. § 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: 9/28/16, 2016

In the Matter of Jos. H. Lowenstein & Sons, Inc.,
Docket No. TSCA-02-2016-9243

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Anthony J. Reitano, Esq.
Herold Law Professional Association
25 Independent Boulevard
Warren, New Jersey 07059

Rich Cahayla-Wynne, Vice President
Jos. H. Lowenstein & Sons, Inc.
42 Morgan Avenue, Brooklyn, New York
Brooklyn, New York 11222

Dated: _____, 2016

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for filing

In the Matter of Jos. H. Lowenstein & Sons, Inc.,
Docket No. TSCA-02-2016-9243

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I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

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Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

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Return Receipt Requested:

Anthony J. Reitano, Esq.
Herold Law Professional Association
25 Independent Boulevard
Warren, New Jersey 07059

Rich Cahayla-Wynne, Vice President
Jos. H. Lowenstein & Sons, Inc.
42 Morgan Avenue, Brooklyn, New York
Brooklyn, New York 11222

Dated: 9/30, 2016

Yolanda Motis