

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Steven C. Schlang 8/2/11
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2011-0058

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Lindt E. Sprungli (USA), Inc.
One Fine Chocolate Place
Stratham, NH 03885

Total Dollar Amount of Receivable \$ 19,300 Due Date: 9/1/11

SEP due? Yes _____ No _____ Date Due

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____

2nd \$ _____ on _____

3rd \$ _____ on _____

4th \$ _____ on _____

5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square Suite 100
Boston, MA 02109

Steven C. Schlang
Enforcement Counsel
617-918-1773 (phone)
617-918-1809 (fax)

RECEIVED
JUL 29 2011
EPA ORC
Office of Regional Hearing Clerk WS

July 29, 2011

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1
5 Post Office Square
Mail Code – ORA18-1
Boston, Massachusetts 02109-3912

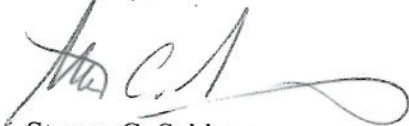
Re: In the Matter of: Lindt & Sprungli (USA), Inc.
Docket Number: EPCRA-01-2011-0058

Dear Ms. Santiago,

Please find enclosed for filing an original and one copy of the Consent Agreement and Final Order and Certificate of Service pertaining to the above-matter.

Please do not hesitate to contact me should you have any questions regarding the enclosed.

Sincerely,



Steven C. Schlang

cc: Maureen D. Smith, Esq. for Lindt & Sprungli
Len Wallace, EPA

In the Matter of: Lindt & Sprungli (USA), Inc.
Docket Number TSCA-01-2011-0058

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy
hand delivered:

Wanda Santiago
Regional Hearing Clerk (RAA)
U.S. EPA, Region I
Mailcode ORA18-1
5 Post Office Square
Boston, MA 02109-3912

Copy by Certified Mail-
Return Receipt Requested

Maureen D. Smith, Esq.
Orr & Reno, P.A.
One Eagle Square
P.O. Box 3550
Concord, NH 03302-3550

Date: _____

7/29/2011



Steven C. Schlang
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
Five Post Office Square, Suite 100
Mail Code OES04-4
Boston, MA 02109-3219
tel: (617) 918-1773
fax: (617) 918-0773

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

RECEIVED

JUL 29 2011

EPA ORC WSS
Office of Regional Hearing Clerk

In the Matter of:)
)
Lindt & Sprungli (USA), Inc.)
One Fine Chocolate Place)
Stratham, NH 03885)
)
Respondent.)
)
Proceeding under Section 325(c) of the Emergency)
Planning and Community Right-to-Know Act, 42)
U.S.C. § 11045(c))
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No.
EPCRA-01-2011-0058

The Complainant, United States Environmental Protection Agency, Region 1 ("EPA") and Lindt & Sprungli (USA), Inc. ("Respondent"), enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. By this CAFO, Respondent agrees to pay a civil penalty for alleged violations of Section 312(a) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11022(a), and the federal regulations that set out in greater detail these statutory requirements, 40 C.F.R. Part 370.¹

Under Section 312(a) and (b) of EPCRA and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.44 and 370.45 (formerly §§ 370.20 and 370.25), a facility must prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II form) to the local emergency planning committee ("LEPC"), the state emergency response commission ("SERC"), and the local fire department if the facility (a) is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder and (b)

exceeds minimum threshold levels established for such chemical. Pursuant to 40 C.F.R. §§ 370.40 and 370.45 (formerly § 370.20(d)), the Tier I or Tier II form must be submitted annually on or before March 1 and is required to contain information with respect to the preceding calendar year.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

Complainant and Respondent (the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

NOW THEREFORE, before any hearing or the taking of any testimony, and without adjudication of any issue of law or fact herein, the Parties agree to comply with the terms of this CAFO.

I. PRELIMINARY STATEMENT

1. EPA alleges that Respondent violated Section 312(a) of EPCRA and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.44 and 370.45 (formerly §§ 370.20 and 370.25) by failing to submit to the LEPC, SERC, and local fire department, chemical inventory forms for hazardous chemicals stored at Respondent's facility located at One Fine Chocolate Place,

¹ Part 370 of 40 C.F.R. was revised on November 30, 2008 (73 Fed. Reg. 65478). The current regulations are cited herein, with a cross-reference to the regulations in effect at the time of the alleged violations.

Stratham, New Hampshire ("facility") in quantities equal to or greater than the chemical-specific minimum threshold for these chemicals set forth at 40 C.F.R. § 370.10 (formerly § 370.20(b)).

II. GENERAL ALLEGATIONS

2. Respondent is a corporation with its principal place of business located in Stratham, New Hampshire.
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and 40 C.F.R. § 370.66 (formerly § 370.2)
4. Respondent's primary activity is the manufacture of chocolate and cocoa products.
5. Respondent is an owner or operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. §11049(4), and 40 C.F.R. § 370.66.
6. At all times relevant to the allegations cited herein, Respondent stored hazardous chemicals at the Facility in quantities that exceed the minimum threshold level ("MTL") set forth in 40 C.F.R. § 370.10 (formerly § 370.20(b)). Specifically, EPA alleges that Respondent stored lead and sulfuric acid in batteries, diesel fuel in emergency generators, and propylene glycol in refrigeration systems in quantities exceeding the MTL
7. At all times relevant to the allegations cited herein, Respondent was required, pursuant to the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder ("OSHA"), to prepare or have available a MSDS for these substances onsite.

8. EPA alleges that, during the calendar year 2008, Respondent stored the following substances at the facility in quantities that exceeded the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.10(a)(2) (formerly §370.20(b)(4)): lead (89,076 pounds); diesel fuel (30,330 pounds); and propylene glycol (34,000 pounds). In addition, EPA alleges that Respondent stored 3,960 pounds of sulfuric acid, a quantity that exceeded the MTL of 500 pounds, as set forth in 40 C.F.R. § 370.10(a)(1) (formerly §370.20(b)(1)).

9. EPA alleges that, during the calendar year 2007, Respondent stored lead (82,784 pounds) and propylene glycol (18,474 pounds) in quantities that exceeded the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.10(a)(2) (formerly §370.20(b)(4)). In addition, EPA alleges that Respondent stored 3,666 pounds of sulfuric acid, a quantity that exceeded the MTL of 500 pounds, as set forth in 40 C.F.R. § 370.10(a)(1) (formerly §370.20(b)(1)).

10. EPA alleges that, during the calendar year 2006, Respondent stored lead (46,109 pounds); and propylene glycol (18,474 pounds) in quantities that exceeded the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.10(a)(2) (formerly §370.20(b)(4)). In addition, EPA alleges that Respondent stored 2,069 pounds of sulfuric acid a quantity that exceeded the MTL of 500 pounds, as set forth in 40 C.F.R. § 370.10(a)(1) (formerly §370.20(b)(1)).

III. TERMS OF SETTLEMENT

11. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that the allegations in this CAFO state a claim upon which relief can be

granted. Respondent waives any defenses it might have as to jurisdiction and venue.

12. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement. Without admitting or denying the allegations herein, Respondent consents to this CAFO.

13. This CAFO shall apply to and be binding upon Respondent, its officers, directors, agents, successors and assigns.

14. Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set out in this CAFO.

15. Respondent certifies that it is now operating its business in compliance with Section 312 of EPCRA, 42 U.S.C. § 11022(a) and 40 C.F.R. §§ 310.10, 370.20, 370.40, 370.44 and 370.45 (formerly §§ 370.20 and 370.25).

16. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), in light of the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is \$19,300.

17. Within thirty (30) days of the effective date of the Final Order, Respondent shall submit a cashier's or certified check, with the title of the CAFO ("In the Matter of: Lindt & Sprungli (USA), Inc.) and docket number ("EPCRA-01-2011-0058") noted on the check, to the order of the "Treasurer, United States of America," in the amount of \$19,300 to:

In The Matter of Lindt & Sprungli (USA), Inc.
Docket Number EPCRA-01-2011-0058

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check must be mailed to the Regional Hearing Clerk:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
Mailcode ORA18-1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and to:

Steven C. Schlang
Senior Enforcement Counsel
U.S. EPA, Region 1
Mailcode OES04-4
5 Post Office Square, Suite 100
Boston, MA 02109-3912

18. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with all applicable requirements of federal law.

19. The terms of this CAFO constitute a full settlement by EPA of all claims for civil penalties for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the

responsibility of Respondent to comply with all applicable provisions of federal, state, and local law. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. This CAFO does not operate as a waiver of any defenses in governmental or third party actions against the Respondent for matters not addressed in this CAFO.

20. This CAFO does not constitute a waiver, suspension or modification of the requirements of EPCRA, 42 U.S.C. § 11022 et seq., or any regulations promulgated thereunder.

21. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. In the event that the penalty is not paid when due, the penalty plus additional interest shall be payable without demand. Interest will begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which

In The Matter of Lindt & Sprungli (USA), Inc.
Docket Number EPCRA-01-2011-0058

remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. See 31 C.F.R. § 901.9(d). In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

22. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Respondent further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

23. Respondent shall bear its own costs in connection with the action resolved by this CAFO, including attorney's fees. Respondent specifically waives any right to recover such costs from the other party pursuant to the Equal Access for Justice Act, 5 U.S.C. § 504, or other applicable laws.

24. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

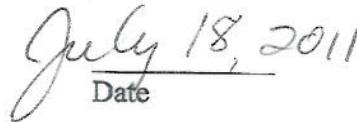
25. In accordance with 40 C.F.R. § 22.31(b), the effective date is the date on which this CAFO is filed with the Regional Hearing Clerk.

In The Matter of Lindt & Sprungli (USA), Inc.
Docket Number EPCRA-01-2011-0058

Lindt & Sprungli (USA), Inc.:
By its Attorneys,
Orr & Reno, P.A.
One Eagle Square
P.O. Box 3550
Concord, NH 03302-3550

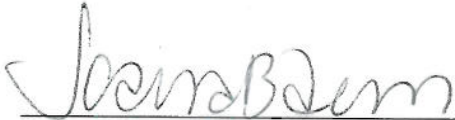


Maureen D. Smith, Esq.
NH Bar #4857
(603) 223-9166
msmith@orr-reno.com


Date

In The Matter of Lindt & Sprungli (USA), Inc.
Docket Number EPCRA-01-2011-0058

For Complainant:



Joanna B. Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I

Date: 7/27/11

In The Matter of Lindt & Sprungli (USA), Inc.
Docket Number EPCRA-01-2011-0058

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: July 28, 2011 Jill T. Metcalf
Jill T. Metcalf
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region I