

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Chris Rascher 9/4/12
Name of Case Attorney Date

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

Case Docket Number EPCRA-01-2012-0080

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:

Thomas Saulnier Jay Reddy
Johnson Matthey Pharmaceutical Services
70 Flagship Drive
North Andover, MA 01845

Total Dollar Amount of Receivable \$ 8,190 Due Date: 10/4/12

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
BEFORE THE ADMINISTRATOR**


In the Matter of:)	
)	
Johnson Matthey Pharmaceutical Materials, Inc.)	
70 Flagship Drive)	
North Andover, MA 01845)	
)	
Respondent.)	Docket No. EPCRA-01-2012-0080
)	
Proceeding under Section 325(c) of the)	
Emergency Planning and Community)	
Right-to-Know Act, 42 U.S.C. § 11045(c))	
)	

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order (CAFO) was sent to the following persons, in the manner specified, on the date below:

Original and one copy hand-delivered:	Wanda Santiago Regional Hearing Clerk U.S. EPA, Region 1 5 Post Office Square (Mail Code ORA 18-1) Boston, MA 02109-3912
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Copy of CAFO By mail:	Jay Reddy, General Manager Johnson Matthey Pharmaceutical Materials, Inc 70 Flagship Drive North Andover, MA 01845
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Dated: <u>9/4/12</u>	 Chris Rascher U.S. Environmental Protection Agency, Region 1 Office of Environmental Stewardship RCRA, EPCRA and Federal Facility Programs 5 Post Office Square, Suite 100 (OES 05-1) Boston, MA 02109-3912 Tel: (617) 918-1834 Fax: (617) 918-0834 Email: rascher.chris@epa.gov
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

9/4/12

VIA HAND DELIVERY



Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (Mail Code ORA 18-1)
Boston, MA 02109

Re: In the Matter of Johnson Matthey Pharmaceutical Services, Docket Number EPCRA-01-2012-0080

Dear Ms. Santiago:

Enclosed for filing please find the original and one copy of the Consent Agreement and Final Order and Certificate of Service simultaneously initiating and resolving the above referenced matter.

Sincerely,

A handwritten signature in blue ink that reads "Chris Rascher".

Chris Rascher
Environmental Protection Specialist
U.S. Environmental Protection Agency
Region I
RCRA, EPCRA and Federal Programs Unit

cc: Thomas Saulnier, Manager and CEO, Johnson Matthey Pharmaceutical Services

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

RECEIVED

SEP 04 2012

EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of:)
)
Johnson Matthey Pharmaceutical Materials, Inc.) **CONSENT AGREEMENT**
70 Flagship Drive) **AND FINAL ORDER**
North Andover, MA 01845)
)
Respondent.) Docket No. EPCRA-01-2012-0080
)
)
Proceeding under Section 325(c) of the)
Emergency Planning and Community)
Right-to-Know Act, 42 U.S.C. § 11045(c))
_____)

Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), alleges that Respondent, Johnson Matthey Pharmaceutical Materials, Inc. (“Respondent”), has violated Section 313 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11023 (also known as “the Emergency Planning and Community Right-to-Know Act” or “EPCRA”), and the federal regulations promulgated thereunder.

EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule,” 40 C.F.R. Part 22, EPA and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before any hearing, without adjudication of any issue of fact or law, and upon consent and agreement of EPA and Respondent, it is hereby ordered and adjudged as follows:

I. EPCRA STATUTORY AND REGULATORY AUTHORITY

1. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 325(c) of EPCRA, 42 U.S.C. §11045(c), for an alleged violation of Section 313(a) of EPCRA, 42 U.S.C. §11023(a).

2. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372.

3. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25 and 372.28. If the owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (the alternative threshold certification statement is also known as "Form A"). Each Form R or Form A is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located. Form Rs and Form As are hereinafter referred to as "TRI Forms."

4. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification ("SIC") code or North American Industry Classification

System (“NAICS”) code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year are required to submit a Form R or Form A for each of these substances for that year.

5. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) (as amended by the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and the Debt Collection Improvement Act, 31 U.S.C. § 3701), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, provides that any person who violates any requirement of Section 313 of EPCRA after January 12, 2009 shall be liable to the United State for a civil penalty not to exceed \$37,500 per day for each such violation.

II. GENERAL ALLEGATIONS

6. Respondent is a corporation incorporated under the laws of the State of Delaware with a usual place of business at 70 Flagship Drive, North Andover, MA 01845.

7. Respondent operates a pilot plant that produces chemicals for sale to pharmaceutical companies at its facility located at 70 Flagship Drive, North Andover, MA 01845 (“the Facility”).

8. On September 12, 2011, an authorized employee of the EPA inspected the Facility for the purpose of determining Respondent’s compliance with EPCRA Section 313 reporting requirements.

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

10. 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. § 372.3.

11. The Facility has 10 or more “full-time employees,” as that term is defined by 40 C.F.R. § 372.3.

12. The Facility is classified in a SIC code or NAICS code set forth in 40 C.F.R. § 372.23.

13. During the calendar years 2009 and 2010, Respondent manufactured, processed or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 at the Facility in quantities exceeding the established thresholds.

14. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to Respondent’s facility.

15. The respondent filed TRI forms for the TRI chemicals dichloromethane, methanol, and methyl tert-butyl ether for reporting year 2009 and dichloromethane, methanol, and toluene for reporting year 2010 on or before July 1, 2010 and July 1, 2011, respectively.

III. EPCRA VIOLATIONS

Failure to File TRI Form for Acetonitrile for Reporting Years 2009 and 2010

16. The foregoing paragraphs 1 through 15 are incorporated by reference as if fully set forth herein.

17. During the calendar years 2009 and 2010, Respondent manufactured, processed or otherwise used acetonitrile, a chemical listed under 40 C.F.R. § 372.65, at the Facility in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a TRI Form for calendar years 2009 and 2010 for these chemicals on or before July 1, 2010 and July 1, 2011, respectively.

18. Respondent failed to submit a TRI form for acetonitrile to the Administrator of EPA for calendar years 2009 and 2010 on or before July 1, 2010 and July 1, 2011, respectively.

19. Respondent's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

VI. TERMS OF SETTLEMENT

20. Respondent certifies that it has corrected the alleged violation cited in this CAFO and will operate the Facility in compliance with Section 313 of EPCRA and the regulations promulgated thereunder at 40 C.F.R. Part 372.

21. Respondent agrees that EPA has jurisdiction over the subject matter alleged in this CAFO and hereby waives any defenses it might have as to jurisdiction and venue.

22. Respondent acknowledges that it has been informed of its right to request a hearing in this proceeding and hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.

23. Without admitting or denying the facts and violations alleged in this CAFO, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of the civil penalty set forth herein.

24. Pursuant to the relevant factors for penalties issued pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and taking into account any such matters as justice may require, Complainant has determined that it is fair and proper that Respondent pay a total civil penalty in the amount of eight thousand, one hundred and ninety dollars (\$8,190) to resolve the violations of Section 313 of EPCRA alleged herein.

25. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a cashier's or certified check in the amount of \$8,190, payable to "Treasurer, United States of America," and referencing the title and docket number of this action ("*In the Matter of Johnson Matthey Pharmaceutical Materials, Inc.*, EPCRA-01-2012-0080"). The check shall be

mailed via first class U.S. Postal Service mail to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. 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 should be forwarded to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (Mail Code ORA 18-1)
Boston, Massachusetts 02109-3912

and

Chris Rascher, Environmental Engineer
Office of Environmental Stewardship (OES 05-1)
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

26. 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 cost of processing and handling a delinquent claim. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, 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 penalty charge of six percent per year, compounded annually, will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it

will be assessed as of the first day payment becomes due, in accordance with 31 C.F.R. § 901.9(d).

27. The penalty provided for herein is a “penalty” within the meaning of 26 U.S.C. § 162(f) and is not deductible for purposes of federal, state, or local taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

28. The provisions of this CAFO shall be binding upon Respondent and Respondent’s officers, directors, agents, servants, employees, and successors or assigns.

29. Respondent shall bear its own costs and attorneys fees in this proceeding and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

30. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA for the violations specifically 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, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

31. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the

allegations in this CAFO are based, or for Respondent's violation of any other applicable provision of federal, state or local law.

32. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

33. 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.

FOR RESPONDENT, **Johnson Matthey Pharmaceutical Materials, Inc.:**

By: Jay Reddy
Jay Reddy

Date: August 17, 2012

General Manager, Johnson Matthey Pharmaceutical Materials, Inc.
70 Flagship Drive
North Andover, MA 01845

FOR COMPLAINANT, **United States Environmental Protection Agency:**

By: Joanna Jerison
Joanna Jerison

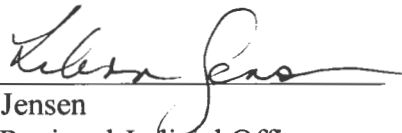
Date: 8/28/12

Legal Enforcement Manager
Office of Environmental Stewardship
EPA, Region 1

VII. FINAL ORDER

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

Date: 8/29/12



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1