

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 AUG 23 P 4 48  
REGIONAL HEARING  
CLERK

In the Matter of:

Johnson Matthey Inc.,

Respondent,

In a proceeding under Section 113(d)  
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

CAA-02-2013-1216

**Preliminary Statement**

The purpose of this Consent Agreement and Final Order (CAFO) is to simultaneously commence and conclude an administrative penalty proceeding by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the United States Environmental Protection Agency (EPA) Region 2, against Johnson Matthey Inc. (Johnson Matthey), pursuant to Section 113(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413(d), and EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22.

The Consent Agreement portion of this CAFO is signed by Complainant and Johnson Matthey, while the Final Order portion is to be executed by the EPA Region 2 Regional Judicial Officer. Pursuant to EPA Region 2 Delegation of Authority 7-6-A, the Complainant is delegated

the authority, in Region 2, to issue CAA Section 113(d) administrative penalty complaints, and to agree to settlements and sign consent agreements memorializing those settlements. Pursuant to EPA Delegation of Authority 7-6-C, the Region 2 Regional Judicial Officer is delegated the authority, in Region 2, to execute CAA Section 113(d) Final Orders in matters involving less than \$37,500 in civil penalties.

### **Consent Agreement**

#### General Provisions

1. The purpose of this Consent Agreement is to resolve the alleged violations of law set forth below in the section of this Consent Agreement entitled "Alleged Violations." Together with the attached Final Order, execution and filing of this Consent Agreement will simultaneously commence and conclude EPA's administrative penalty proceeding concerning those alleged violations.

2. Consistent with Consolidated Rule of Practice 22.18(b), for the purposes of this administrative civil penalty proceeding, and to avoid the expense of protracted litigation,

Johnson Matthey:

- a. Admits the jurisdictional allegations set forth below in the section of this Consent Agreement entitled "Jurisdictional Allegations;"
- b. Stipulates to the facts set forth below in the section of this Consent Agreement entitled "Stipulated Facts;"
- c. Consents to the payment of the civil penalty specified below in the "Settlement" section of this Consent Agreement, on the terms specified in that section;
- d. Consents to the issuance of the attached Final Order; and
- e. Waives any right to contest the allegations set forth in the "Alleged Violations" section of this Consent Agreement and any right to appeal the attached Final Order.

### Jurisdictional Allegations

3. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters.

4. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

5. Johnson Matthey is a “person” within the meaning of Section 302(e) of the CAA.

### Legal Background

6. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 111 and 112 of the Act.

### Stipulated Facts

7. Pursuant to Section 114 of the CAA, EPA inspected Johnson Matthey’s West Deptford, New Jersey, pharmaceutical manufacturing facility (the Facility) in August 2010.

8. During the inspection and shortly thereafter, and in response to questions asked by EPA inspectors, Johnson Matthey provided EPA with information suggesting, incorrectly, that the Facility contained certain pumps subject to the leak detection and repair requirements of



40 C.F.R. Part 63 Subpart GGG, and that Johnson Matthey had failed to comply with those requirements at those pumps.

9. After EPA commenced an administrative penalty proceeding alleging, based on the information referenced in Paragraph 8 above, that Johnson Matthey had violated 40 C.F.R. Part 63 Subpart GGG, Johnson Matthey provided EPA with additional information demonstrating that the Facility did not in fact contain the pumps that Johnson Matthey had previously led EPA to believe it did contain.

#### Alleged Violations

10. Based on the Stipulated Facts set forth above, Complainant finds that Johnson Matthey violated Section 114 of the CAA by providing the inaccurate, incomplete and/or misleading information about the Facility's pumps referenced in Paragraph 8 above.

#### Settlement

11. Pursuant to Section 113(d) of the Act, Johnson Matthey shall pay a civil penalty of **\$7,000**. Johnson Matthey shall have the option of paying the entire \$7,000, either by corporate, cashiers' or certified check within thirty (30) days from the date of filing of the attached Final Order (Due Date). Johnson Matthey shall: (1) clearly type or write the docket number (**CAA-02-2013-1216**) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

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

Johnson Matthey shall send notice of payment to the following:

Kenneth Eng, Chief, Air Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2

290 Broadway – 21st Floor  
New York, New York 10007

and

Evans Stamataky  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 16th Floor  
New York, New York 10007

12. If Johnson Matthey fails to make full and complete payment of the civil penalty that it is required to pay by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Johnson Matthey shall pay the following amounts:

- a. Interest. If Johnson Matthey fails to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Johnson Matthey fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Johnson Matthey shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Johnson Matthey's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

13. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Johnson Matthey's alleged violations of the Act set forth in Paragraph 10 above.

14. Nothing in this Consent Agreement and attached Final Order shall relieve Johnson Matthey of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of Johnson Matthey to comply with such laws and regulations.

15. This Consent Agreement and attached Final Order shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

16. This Consent Agreement, attached Final Order, and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

17. Johnson Matthey explicitly waives any right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.

18. Johnson Matthey waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator, the Deputy Regional Administrator or the Regional Judicial Officer, where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

19. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and attached Final Order.

20. The Consent Agreement and attached Final Order shall be binding on Johnson Matthey and its successors and assignees.



21. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

Signatures

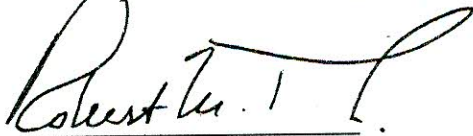
For Complainant:



Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
United States Environmental  
Protection Agency, Region 2

Date AUGUST 2, 2013

For Respondent Johnson Matthey Inc.



Robert M. Talley  
President - Corporate, General Counsel & Secretary  
Johnson Matthey Inc.

Date 6/26/2013





Johnson Matthey Inc.  
CAA-02-2013-1216

**FINAL ORDER**

The Regional Judicial officer of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of *Johnson Matthey Inc. CAA-02-2013-1216*. The Consent Agreement, entered into by Complainant and Respondent Johnson Matthey Inc., is hereby approved and issued, as a Final Order, effective upon filing with the Regional Hearing Clerk.

DATE: August 13, 2013

Helen Ferrara

Helen Ferrara  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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AND FINAL ORDER**

**DOCKET NUMBER  
CAA-02-2013-1216**

**Certificate of Service**

I, Katherine Zuckerman, certify that on August 23, 2013, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above referenced docket number, on the persons listed below in the following manner:

✓ Original and One Copy By Hand	Office of Regional Hearing Clerk U.S. Environmental Protection Agency - Region 2 290 Broadway, 16th floor New York, New York 10007-1866
One Copy Via Overnight Mail	Honorable M. Lisa Buschmann Administrative Law Judge U.S. EPA Office of Administrative Law Judges Ronald Regan Building, Rm. M1200 1300 Pennsylvania Ave., NW Washington, D.C. 20460
One Copy Via Overnight Mail	James Stewart, Esq. Lowenstein Sandler 65 Livingston Avenue Roseland, New Jersey 07068
One Copy By Hand	Helen S. Ferrara Regional Judicial Officer U.S. Environmental Protection Agency 290 Broadway, 16 <sup>th</sup> Floor New York, New York 10007-1866


One Copy  
Via Overnight Mail

Blake Edwards  
U.S. Environmental Protection Agency  
26 West Martin Luther King Drive  
Mail Code: NWD  
Cincinnati, OH 45268

One Copy  
By Hand

Evans Stamatakis  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Dated: Aug. 23, 2013  
New York, New York

  
Katherine Zuckerman