

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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).

CAA-02-2012-1222

Hon. M. Lisa Buschmann,
Administrative Law Judge

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FOURTH MOTION FOR AN EXTENSION OF TIME
TO FILE PREHEARING EXCHANGES.

Summary

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (EPA), through her attorney, requests the Court grant a two week (2) week extension of time for the parties to file their prehearing exchanges (PHEs). The parties have produced a Consent Agreement (CA) agreeable to persons of each party (principles), who have expressed their intention of executing the CA. However, due to the complex procedures required for this settlement and an the inability to sign the CA until April 1, additional time is required and sought to bring this matter to a conclusion.

The parties seek to delay the PHE process until the principles sign the already agreed upon (CA). This action is the first step in the formal process to conclude this matter. Additional time to file PHEs is also required because immediately after the CA is signed, the Complainant will file a "Motion for Leave To Amend Complaint Through a Consent Agreement." This

motion filed in accordance with Section 22.14(c) of the Consolidated Rules of Practice (CROP), 40 C.F.R. Part 22, will ask the Court to allow for the subject Complaint to be amended to include a new allegation. Should the court grant leave to amend the Complaint, additional time will also be needed for the Region 2 Judicial Officer (RJO) to render a decision on this matter and, should the RJO execute the Final Order, additional time will be needed for Complainant to file the fully executed Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk. The filing of the CAFO will terminate this proceeding and moot the need for prehearing exchanges.

Johnson Matthey Inc. (Respondent), through its counsel, James Stewart, Esq. of the firm of Lowenstein Sandler PC, has participated in the development of this Motion and concurs with Complainant's request for an extension of time. Respondent consents to the yet to be filed "Motion for Leave To Amend Complaint Through a Consent Agreement."

Background

Complainant commenced this proceeding on September 21, 2012, by filing the Complaint against Respondent. Respondent filed an answer and request for a hearing on October 22, 2012. The parties then engaged in settlement negotiations. During the course of those negotiations, Respondent provided EPA with additional information that was not previously known to EPA. After discussing that additional information, Complainant identified a new allegation and the parties reached a settlement in principle on February 1, 2013, which considered the new allegation.

Also on February 1, 2013, the Court issued a scheduling order providing as follows: "In the event the parties have not filed a fully executed Consent Agreement and Final Order settling this matter beforehand, Complainant shall file its prehearing Exchange on or before March 8,

2013, Respondent shall file its prehearing exchange on or before April 5, 2013, and Complainant shall file its Rebuttal prehearing Exchange on or before April 19, 2013.”

Since February 1, 2013, under extensions of time granted by the Court, the last of which runs through March 29th, the parties worked diligently to include a new allegation and to reduce their global settlement in principle to the CA. By March 26th, principles for both parties agreed to the CA; however, due to the unforeseen unavailability of the principle for the Respondent will not be able to sign the CA until April 1, 2013. As a consequence of this delay, the other tasks necessary to bring this global matter to a conclusion will also be delayed beyond the March 29th.

Reasons for Granting the Motion

Good cause exists to grant this motion for an extension of time, to complete the process, to bring this matter to a conclusion. The parties have produced the global CA, which the principles have agreed to but could not execute timely. Incorporation of the new allegation into the Complaint must be done in accordance with the CROP. Because the parties cannot produce a CA before April 1st there will be a delay in seeking leave of the Court to include the new allegation. As a consequence of this delay the required procedural actions will also be delayed. Consequently, the Complainant, with Respondent’s support, respectfully requests that the Court postpone the deadline for filing PHEs by two (2) weeks beyond March 29, 2013. Once the CAFO is filed, this proceeding will be terminated and the need to file prehearing exchanges will be moot.

Conclusion

For the reasons given above, EPA respectfully moves the Court, pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.7(b), 22.16(a) and 22.19(a), for an order amending the March 7, 2013 Order, to extend each of the prehearing exchange dates set forth in the Order by a period of two (2) weeks beyond March 29th 2013.

Dated: March 27, 2013
New York, New York

Respectfully submitted,



Evans Stamatakis
Office of Regional Counsel

In the Matter of Johnson Matthey, Inc., Docket No. CAA-02-2012-1222

CERTIFICATE OF SERVICE

I, Katherine Zuckerman, certify that the foregoing "Fourth Motion For An Extension of Time To File Prehearing Exchanges", was sent this day in the following manner to the addressees listed below:

One Copy via e-mail

To: OALJfiling@epa.gov

Original and One Copy
Via Overnight Mail

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To: Sybil Anderson
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One Copy
Via FAX: (202) 565-0044 and Overnight Mail

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Dated: 3/27/2013
New York, New York


Katherine Zuckerman