

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

RECEIVED BY OALJ  
2012 DEC 13 AM 9:54

In the Matter of:

Johnson Matthey, Inc.

Respondent

In a proceeding under the Clean Air Act,  
42 U.S.C. § 7401, et seq., 42 U.S.C.  
§ 7413(d), Section 113(d)

CAA-02-2012-1222

Hon. M. Lisa Buschmann,  
Administrative Law Judge

MOTION FOR AN EXTENSION OF TIME TO FILE  
PREHEARING EXCHANGES

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 60-day extension of time for the parties to file their 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 upon this request. For the reasons set forth below, good cause exists for granting the motion.

On September 21, 2012, pursuant to 42 U.S.C. § 7401, et seq., 42 U.S.C. § 7413(d), Section 113(d), the Clean Air Act (CAA or the Act), Complainant filed an administrative complaint and notice of opportunity to request a hearing (Complaint) against Respondent for alleged violations of Section 112 and 114, 42 U.S.C. §§ 7412 and 7413, of the Act, the “National Emissions Standards for Pharmaceutical Production” (Pharmaceutical regulations) set for that 40

C.F.R. Part 63, Subpart GGG, and the Title V Operating Permit, which is associated with the Respondent's facility where the alleged violations occurred, and which includes the Pharmaceutical regulations as applicable requirements. The total amount of the penalty proposed by Complainant is \$195,760. On October 22, 2012, Respondent filed an answer and request for a hearing.

By Prehearing Order (Order) dated November 30, 2012, the Court directed the parties to engage in a settlement conference and to file a status report on or before December 28, 2012. The Court also directed that if a Consent Agreement and Final Order is not finalized on or before January 11, 2013, the parties shall submit their prehearing exchanges as per the following schedule:

- January 11, 2013 - Complainant's initial prehearing exchange;
- February 8, 2013 - Respondent's prehearing exchange, including any direct and/or rebuttal evidence; and
- February 22, 2013 - Complainant's rebuttal prehearing exchange.

In accordance with 40 C.F.R. § 22.7(b), the parties believe that good cause is shown to satisfy granting this joint motion for an extension of time to file prehearing exchange.

Briefly, during an EPA inspection of Respondent's facility, an agent for the Respondent informed the EPA inspectors that certain equipment was subject to the Pharmaceutical regulation's leak detection and repair (LDAR) regulations. Based upon that representation and other information, Complainant alleged that Respondent had violated LDAR requirements. Respondent replied, among other things, that the information provided by its agent was not accurate and the equipment was not subject to the Pharmaceutical regulation's LDAR requirements. Counsel for the parties had a number of telephone conversations and agreed to attempt to settle this matter without any litigation. Counsel also agreed that in order to resolve

factual disputes between the parties, EPA needs to evaluate additional technical information. Counsel for Respondent has informed EPA that Respondent will be providing EPA with information regarding more than 150 pumps, including the manufacturer, model number and identification number. Counsel for Respondent also informed EPA that his client expects to provide this information to EPA during the week of December 17, 2012.

Mindful of the Order and the desire to settle this matter, Complainant will undertake a thorough analysis of this new information, and the parties will engage in a formal settlement conference and follow-up conferences as needed. As directed by the Court, Complainant must file a status report as to the progress of settlement on or before December 28, 2012.

It is in the interest of both parties and judicial economy to bring this matter to conclusion prior to incurring costs in preparing and submitting prehearing exchanges. The Respondent has offered to provide what it considers to be exculpatory information, and the Complainant has committed to a thorough review that material. Both parties have stated their preferences to attempt to resolve this matter outside of litigation and will work towards achieving that goal. Consequently, the parties seek a 60-day extension of time to allow for additional time to submit and review new material and to bring this matter to a conclusion.

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 November 30, 2012 Order to extend each of the prehearing exchange dates set forth in the Order by a period of 60-days.

Dated: December 12, 2012  
New York, New York

Respectfully submitted,



Evans Stamatakis  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866  
212-637-3211/FAX: 212-637-3199

VIA FAX: (202) 565-0044  
VIA OVERNIGHT MAIL  
To: Honorable M. Lisa Buschmann  
Administrative Law Judge  
U.S. EPA Office of Administrative Law Judges  
1099 14th Street, N.W.  
Suite 350W, Franklin Court  
Washington, D.C. 20005

VIA OVERNIGHT MAIL  
To: ✓ Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA Office of Administrative Law Judges  
1099 14th Street, N.W.  
Suite 350W, Franklin Court  
Washington, D.C. 20005

VIA OVERNIGHT MAIL  
To: James Stewart, Esq.  
Lowenstein Sandler  
65 Livingston Avenue  
Roseland, New Jersey 07068

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

**CERTIFICATE OF SERVICE**

I, Katherine Zuckerman, certify that the foregoing Motion for Extension of Time to File Prehearing Exchange was sent this day in the following manner to the addressees listed below:

Original and One Copy  
Via Overnight Mail

To: ✓ Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA Office of Administrative Law Judges  
1099 14th Street, N.W.  
Suite 350W, Franklin Court  
Washington, D.C. 20005

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

To: Honorable M. Lisa Buschmann  
Administrative Law Judge  
U.S. EPA Office of Administrative Law Judges  
1099 14th Street, N.W.  
Suite 350W, Franklin Court  
Washington, D.C. 20005

One Copy  
Via Overnight Mail

To: James Stewart, Esq.  
Lowenstein Sandler  
65 Livingston Avenue  
Roseland, New Jersey 07068

Dated: 12/12/12  
New York, New York

  
Katherine Zuckerman