

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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THIRD 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 three (3) week extension of time for the parties to file their prehearing exchanges. The purpose of the request is to enable the parties to complete the process of reducing their settlement in principle to a written Consent Agreement and Final Order (CAFO). The filing of that 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.

Background

Complainant commenced this proceeding on September 21, 2012, by filing an administrative complaint and notice of opportunity to request a hearing (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, the parties reached a settlement in principle on February 1, 2013.

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, the parties have worked diligently to reduce their settlement in principle to a written CAFO. Complainant believes, however, that it may need to amend the Complaint in order to ensure that the CAFO accurately reflects the new information provided by Respondent during the settlement negotiations.

Reasons for Granting the Motion

Good cause exists to grant this motion for an extension of time, to complete the process of reducing the parties' settlement to writing. Should amending the Complaint be necessary, as Complainant believes to be the case, Complainant must first file a motion to amend, pursuant to Rule 22.14(c), because Respondent has already filed an answer. To allow adequate time to file

any such motion, and to finalize the CAFO, Complainant, with Respondent's support, respectfully requests that the Court postpone the deadline for filing prehearing exchanges by three weeks. Once the anticipated 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 February 1, 2013 to extend each of the prehearing exchange dates set forth in the Order by a period of three (3) weeks.

Dated: March 1, 2013
New York, New York

Respectfully submitted,



Evans Stamatakis
Office of Regional Counsel

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 FAX: (973) 597 2523

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 Third 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

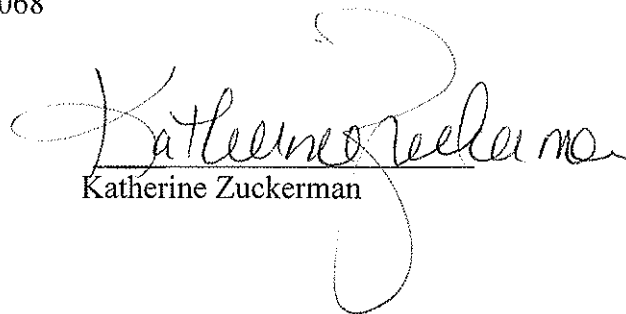
One Copy
Via FAX: (202) 565-0044 and Overnight Mail

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 FAX: (973) 597 2523 and Via Overnight Mail

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

Dated: 3/1/2013
New York, New York


Katherine Zuckerman
Katherine Zuckerman