



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

July 20, 2016

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109

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Office of Regional Hearing Clerk

Re: Johnson Matthey Pharmaceutical Materials, Inc., Docket No. CAA-01-2016-0049

Dear Ms. Santiago:

Please file the enclosed original Complaint and Notice of Opportunity for Hearing in Docket No. CAA-01-2016-0049. I also enclose an extra copy of the Complaint.

I certify that this day I have served a copy of the Complaint and Notice of Opportunity for Hearing, with a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, on John B. Fowler, President, Johnson Matthey Pharmaceutical Materials, Inc.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas T. Olivier".

Thomas T. Olivier
Senior Enforcement Counsel

Encl.

cc: Amy Donohue-Babiak, Esq.

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

IN THE MATTER OF)
Johnson Matthey Pharmaceutical Materials, Inc.)
25 Patton Road)
Devens, MA 01434)
)
)
Proceeding under Section)
113 of the Clean Air Act)
)

Docket No. CAA-01-2016-0049

ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

1. The United States Environmental Protection Agency (“EPA”) issues this administrative Complaint and Notice of Opportunity for Hearing pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), to Johnson Matthey Pharmaceutical Materials, Inc. (“Johnson Matthey” or “Respondent”). The Complaint notifies Johnson Matthey that EPA intends to assess penalties for violations of CAA National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources, 40 CFR Part 63, Subpart VVVVVV (the “Chemical Manufacturing NESHAP”).

STATUTORY AND REGULATORY BASIS

2. Sections 113(a) and (d) of the CAA provide for the assessment of administrative penalties for violations of any rule promulgated under Section 112 of the CAA. The Chemical Manufacturing NESAHP is such a rule.

BACKGROUND

3. Johnson Matthey owns and operates a pharmaceutical production facility in North

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Andover, Massachusetts (“the North Andover facility”).

4. Johnson Matthey also owns and operates a pharmaceutical production facility in Devens, Massachusetts (“the Devens facility”).

5. On March 13, 2013 EPA conducted a CAA inspection of the North Andover facility, and on February 6, 2014 inspected the Devens facility.

6. During the inspections, EPA reviewed facility records including leak inspection documents and maintenance records.

VIOLATIONS OF CHEMICAL MANUFACTURING NESHAP REQUIREMENTS

7. The Chemical Manufacturing NESHAP requirements apply to each chemical manufacturing process unit (“CMPU”) that is located at an area source of hazardous air pollutants (“HAP”) and uses a HAP listed in Table 1 of the Chemical Manufacturing NESHAP. See 40 C.F.R. § 63.11494 (a).

8. The North Andover facility operates three process lines, or CMPUs. All three CMPUs use methylene chloride at an individual concentration greater than 0.1% weight, and use manganese at an individual concentration greater than 1.0% by weight. Methylene chloride and manganese are HAPs listed in Table 1 of the Chemical Manufacturing NESHAP.

9. The Devens facility operates three CMPUs. All three CMPUs use methylene chloride at an individual concentration greater than 0.1% weight.

10. The North Andover and Devens facilities are existing affected sources subject to the Chemical Manufacturing NESHAP.

Failures to Submit Notifications

11. The Chemical Manufacturing NESHAP requires an affected source to submit a notification of compliance status (“NOCS”) report to EPA, which specifies the compliance

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options that are used at the facility to comply with the standard. See 40 C.F.R. § 63.11501 (b). The NOCS is to be sent before the 60th day following completion of a compliance demonstration.

Count 1

12. Johnson Matthey submitted a notification of compliance status to EPA for the North Andover facility on March 9, 2016.
13. The compliance date for the North Andover facility was March 21, 2013.
14. The notification of compliance status for the North Andover facility was submitted approximately 35 months after the compliance date, in violation of the Chemical Manufacturing NESHAP.

Count 2

15. Johnson Matthey submitted a notification of compliance status to EPA for the Devens facility on March 9, 2016.
16. The compliance date for the Devens facility was March 21, 2013.
17. The notification of compliance status for the Devens facility was submitted approximately 35 months after the compliance date, in violation of the Chemical Manufacturing NESHAP.

PROPOSED CIVIL PENALTY

18. Under Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413, the Civil Monetary Inflation Rule (see 40 C.F.R. Part 19.4 (Table 1)), and the Federal Civil Penalties Inflation Adjustment Act as amended in 2015, EPA may assess a civil administrative penalty of up to \$25,000 plus the applicable inflation adjustment for each day of violation of the CAA. Based on the allegations above, the EPA proposes to assess the Respondent a civil administrative penalty of \$160,200.

19. In determining the amount of any penalty to be assessed, Section 113(e) of the CAA, 42 U.S.C. § 7413, requires EPA to consider the size of the violator's business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violations, payment by the violator of penalties previously assessed for the same violations, the economic benefit of the violations, the seriousness of the violations, and such other factors as justice may require. To consider these factors and to derive a proposed penalty, EPA has applied the Clean Air Act Stationary Source Civil Penalty Policy, a copy of which is attached, as adjusted by required inflation factors. The Penalty Policy assigns penalty components reflecting the seriousness or the gravity of the violations and the size of the violator's business. The Penalty Policy also provides for a penalty component based on the estimated economic benefit Respondent derived from the violations. Adjustments to a proposed penalty are considered in light of the violator's degree of willfulness or negligence in committing the violations, its degree of cooperation with the EPA, any good faith efforts to comply, and any pertinent compliance history or previous penalty payments for the same violation.

20. EPA considers the violations to be serious and of long duration. No penalty adjustments are proposed with respect to the history of noncompliance, good faith efforts to comply, or payment of penalties previously assessed for the same violations. EPA is not aware of any substantial economic benefit that Respondent derived from the violations. Finally, EPA has calculated the proposed penalty based, in part, on its current knowledge of Respondent's size and financial condition. The proposed penalty may be adjusted if Respondent properly documents the scope of the economic impact of the penalty on its business, or raises other defenses relevant to the appropriate amount of the penalty.

21. If the Respondent pays the proposed penalty in full within thirty (30) days after receiving this Complaint, the Respondent need not file an Answer. If the Respondent wishes to resolve this matter without having to file an Answer but needs additional time in which to do so, the Respondent may file a written statement with the Regional Hearing Clerk at the address below within thirty (30) days of receiving this Complaint. The written statement must specify that the Respondent agrees to pay the penalty within sixty (60) days of receiving this Complaint. Failure to make such payment within sixty (60) days may subject the Respondent to a default action. See 40 C.F.R. § 22.18(a).

22. Payment of the proposed penalty of \$160,200 must be made by submitting a bank, cashiers, or certified check payable to the “Treasurer, United States of America” to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, copies of the check must also be mailed to the Regional Hearing Clerk and to Thomas T. Olivier, Senior Enforcement Counsel, at the addresses provided below. The penalty check must reference the title of this proceeding (“In the Matter of Johnson Matthey Waste Services, Inc.”) and EPA Docket No. CAA-01-2016-0049.

23. The Respondent has a continuing obligation to comply with the CAA, with the terms and conditions of any applicable permits, and with any order issued under Section 113 of the CAA, 42 U.S.C. § 7413.

OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER

24. In accordance with Section 113 of the CAA and 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact alleged in this Complaint, or to

contest the appropriateness of the proposed penalty. **To request a hearing, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.**

Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORA18-1)
Boston, Massachusetts 02109-3912

Respondent shall serve copies of the Answer and any subsequent pleadings which Respondent files in this action to the following address:

Thomas T. Olivier, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code OES04-3)
Boston, Massachusetts 02109-3912
Telephone: (617) 918-1737

Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22 (copy enclosed). See 40 C.F.R. § 22.15 for the required contents of the Answer.

DEFAULT ORDER

25. Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17 if the Respondent fails to file a timely Answer to the Complaint. For the purposes of this action only, default by Respondent would constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in the default order would be due and payable by Respondent without further proceedings thirty (30) days after the default order became final under 40 C.F.R. § 22.27(c).

SETTLEMENT CONFERENCE

26. Respondent may confer informally with the EPA concerning the alleged violations. Such a conference provides Respondent with an opportunity to provide whatever additional

information may be relevant to the disposition of this matter. Any settlement would be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer of EPA Region I.

27. Please note that a request for an informal settlement conference does not extend the period for filing a written Answer. To explore the possibility of settlement in this matter, Respondent should contact Elizabeth Kudarauskas, Environmental Engineer, at (617) 918-1564, or have legal counsel contact Thomas T. Olivier, Senior Enforcement Counsel, at (617) 918-1737. Pursuant to 40 C.F.R. § 22.5(c)(4), Thomas T. Olivier is authorized to receive service on behalf of EPA.

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

07/08/2016
Date

