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October 22, 2012

VIA FEDEX

Ms. Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 OCT 23 A 10:19
REGIONAL HEARING
CLERK

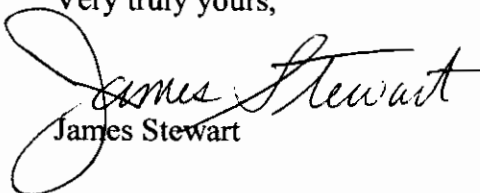
**Re: In re Johnson Matthey Inc.
Index No. CAA-02-2012-1222**

Dear Ms. Maples:

I enclose on behalf of Johnson Matthey Inc. in the above matter an original and two copies of its Answer to Complaint and Request for Hearing. Kindly return the extra copy of the Answer stamped "filed" to me in the enclosed self-addressed stamped envelope. By copy of the letter I am also serving a copy of the Answer upon Assistant Regional Counsel Evans J. Stamatakis.

Thank you for your kind attention.

Very truly yours,


James Stewart

JS:ab

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10/22/12 21890847.1

Enclosure(s)

cc: Evans J. Stamatakis, Esq. (w/enc., via Federal Express)
Edward Choromanski, Director (w/enc., via regular mail)
Amy Donohue Babiak, Esq. (w/enc., via email)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In re

Johnson Matthey Inc.

Respondent

In a proceeding under § 113(d) of the Clean Air Act

Answer to Complaint and Request for Hearing

Index No. CAA- 02-2012-1222

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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

ANSWER

Johnson Matthey Inc. answers the Complaint of the United States Environmental Protection Agency ("EPA"), which alleges violations of the Pharmaceutical Maximum Available Control Technology regulations ("Pharmaceutical MACT"), 40 C.F.R. part 63, subpart GGG, 40 C.F.R. §§ 63.1250-63.1289 as follows.

STATUTORY, REGULATORY AND PERMITTING BACKGROUND

1. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 1 of the Complaint and respectfully refers the Court to Clean Air Act § 113(d) for its terms.

2. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 2 of the Complaint and respectfully refers the Court to Clean Air Act § 302(e) for its terms.

3. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 3 of the Complaint and respectfully refers the Court to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A for their terms.

4. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 4 of the Complaint and respectfully refers the Court to EPA Delegation of Authority 7-6-C for its terms.

5. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 5 of the Complaint and respectfully refers the Court to the August 27, 2012 Department of Justice determination for its terms.

CAA SECTIONS 112 AND 114

6. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 6 of the Complaint and respectfully refers the Court to Clean Air Act § 112 for its terms.

7. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 7 of the Complaint and respectfully refers the Court to Clean Air Act § 112 and 40 C.F.R. Parts 61 and 63 for their terms.

8. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 8 of the Complaint and respectfully refers the Court to Clean Air Act §§ 112(a)(1), (a)(2), (AB) and (a)(e) for their terms.

9. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 9 of the Complaint and respectfully refers the Court to Clean Air Act § 112(i)(3)(A) for its terms.

10. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 10 of the Complaint and respectfully refers the Court to Clean Air Act § 114 for its terms.

The Part 63 General Provisions – 40 C.F.R. Part 63, Subpart A

11. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 11 of the Complaint and respectfully refers the Court to Clean Air Act §§ 112 and 114 and 40 C.F.R. Part 63, Subpart A for their terms.

12. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 12 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.1(a)(4) for its terms.

13. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 13 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.1(b) for its terms.

14. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 14 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.1(c) for its terms.

15. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 15 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.2 for its terms.

16. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 16 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.2 for its terms.

17. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 17 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.2 for its terms.

18. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 18 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.2 for its terms.

19. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 19 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.6(c) for its terms.

The Pharmaceutical MACT

20. Johnson Matthey Inc. admits that EPA promulgated the Pharmaceutical MACT regulations.

21. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 21 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.250(a)(i) for its terms.

22. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 22 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.1250(f)(i) for its terms.

23. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 23 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.1250(a)(2) for its terms.

Pharmaceutical MACT Leak Detection and Repair Provisions

24. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 24 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.1255(a)(i) for its terms.

25. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 25 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.1255(c)(2)(iii) for its terms.

26. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 26 of the Complaint and respectfully refers the Court to 40 C.F.R. § 63.1255(a)(3) for its terms.

CAA Title V Operating Permit Program and the New Jersey Administration Code

CAA Title V and New Jersey's Title V Operating Permit Program

27. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 27 of the Complaint and respectfully refers the Court to 42 U.S.C. §§ 7661-7661f for its terms.

28. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 28 of the Complaint and respectfully refers the Court to Title V of the Clean Air Act for its terms.

29. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 29 of the Complaint and respectfully refers the Court to Clean Air Act §501(a) for its terms.

30. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 30 of the Complaint and respectfully refers the Court to Clean Air Act §502(a) for its terms.

31. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 31 of the Complaint and respectfully refers the Court to Clean Air Act § 502(b) for its terms.

32. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 32 of the Complaint and respectfully refers the Court to Clean Air Act § 502(d) for its terms.

33. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 33 of the Complaint and respectfully refers the Court to Clean Air Act § 502(e) for its terms.

34. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 34 of the Complaint and respectfully refers the Court to Clean Air Act § 503 for its terms.

35. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 35 of the Complaint and respectfully refers the Court to Clean Air Act § 502(b)(2) for its terms.

36. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 36 of the Complaint and respectfully refers the Court to Clean Air Act §504 for its terms.

37. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 37 of the Complaint and respectfully refers the Court to 40 C.F.R. Parts 70 and 71 for their terms.

38. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 38 of the Complaint and respectfully refers the Court to the June 17, 1996 EPA interim approval for its terms.

39. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 39 of the Complaint and respectfully refers the Court to the November 30, 2001 EPA full approval for its terms.

New Jersey Administration Code

40. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 40 of the Complaint and respectfully refers the Court to N.J.A.C. 7:27-22.19(a) for its terms.

41. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 41 of the Complaint and respectfully refers the Court to N.J.A.C. 7:27-22.19(f) for its terms.

Title V Operating Permit Requirements

42. Johnson Matthey Inc. admits the allegations contained in Paragraph 42 of the Complaint.

43. Johnson Matthey Inc. admits the allegations contained in Paragraph 43 of the Complaint.

44. Johnson Matthey Inc. admits the allegations contained in Paragraph 44 of the Complaint.

45. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 45 of the Complaint and respectfully refers the Court to the 2002, 2007 and 2010 Permits for their terms.

46. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 46 of the Complaint and respectfully refers the Court to the 2002, 2007 and 2010 Permits for their terms.

47. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 47 of the Complaint and respectfully refers the Court to the 2002, 2007 and 2010 Permits for their terms.

48. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 48 of the Complaint and respectfully refers the Court to the 2002, 2007 and 2010 Permits for their terms.

FINDINGS OF FACT

49. Johnson Matthey Inc. admits the allegations contained in Paragraph 49 of the Complaint.

50. Johnson Matthey Inc. admits the allegations contained in Paragraph 50 of the Complaint.

51. Johnson Matthey Inc. admits that EPA inspectors conducted an inspection of the Facility on August 11 and 12, 2010 as alleged in Paragraph 51 of the Complaint.

52. Johnson Matthey Inc. admits the allegations contained in Paragraph 52 of the Complaint.

53. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Complaint.

54. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint.

55. Johnson Matthey Inc. admits the allegations contained in Paragraph 55 of the Complaint. However, Ms. Tate's understanding of the relevant facts was incorrect. No pumps equipped with dual mechanical seals were used in organic hazardous air pollutant service at the Facility at the time of the EPA inspection. Accordingly, there were no pumps at the Facility that were subject to the LDAR requirements of the Pharmaceutical MACT and that were, therefore, required to be inspected weekly.

56. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint. However, any such determination was erroneous as there were no pumps with dual mechanical seals subject to LDAR requirements of the Pharmaceutical MACT at the time of the EPA Inspection.

57. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint.

58. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint.

59. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint.

60. Johnson Matthey Inc. admits the allegations contained in Paragraph 60 of the Complaint.

61. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint.

62. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint.

63. Johnson Matthey Inc. admits only that during the “close-out” meeting, the EPA expressed certain concerns to Johnson Matthey Inc.’s representatives.

64. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64 of the Complaint.

65. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65 of the Complaint. To the extent

that EPA made such a request, EPA was in error because there were no pumps with dual mechanical seals at the Facility subject to the LDAR requirements of the Pharmaceutical MACT or required to be monitored weekly.

66. Johnson Matthey Inc. admits the allegations contained in Paragraph 66 of the Complaint.

67. Johnson Matthey Inc. admits the allegations contained in Paragraph 67 of the Complaint.

68. Johnson Matthey Inc. admits the allegations contained in Paragraph 68 of the Complaint.

69. Johnson Matthey Inc. admits the allegations contained in Paragraph 69 of the Complaint.

70. Johnson Matthey Inc. admits the allegations contained in Paragraph 70 of the Complaint.

71. Johnson Matthey Inc. admits the allegations contained in Paragraph 71 of the Complaint. However, there were no pumps with dual mechanical seals subject to the LDAR requirements of the Pharmaceutical MACT or required to be inspected weekly in September, 2010. The pumps listed on the Visual Pump Leak Inspection Form are vacuum pumps in gas/vapor service and exempt from all LDAR requirements of the Pharmaceutical MACT under 40 C.F.R. § 63.1255(a)(8).

72. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72 of the Complaint.

73. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73 of the Complaint.

74. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74 of the Complaint.

75. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 75 of the Complaint.

76. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76 of the Complaint.

77. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77 of the Complaint.

78. Johnson Matthey Inc. does not answer the allegations in Paragraph 78 of the Complaint on the grounds that they are unintelligible.

79. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79 of the Complaint.

80. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 80 of the Complaint. The pumps listed in Table 5.1 of the NOCS are leakless pumps without penetrating shafts and are excluded from Method 21 and any weekly inspection under 40 C.F.R. §63.1255(c)(6).

81. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 81 of the Complaint.

82. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82 of the Complaint.

83. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 83 of the Complaint. Any such

determination is erroneous because no pumps equipped with dual mechanical seals were used in organic hazardous air pollutant service at the Facility and were, therefore, not subject to the LDAR requirements of the Pharmaceutical MACT in 2007.

84. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 84 of the Complaint. Any such determination is erroneous because no pumps equipped with dual mechanical seals were used in organic hazardous air pollutant service at the Facility and were, therefore, not subject to the LDAR requirements of the Pharmaceutical MACT in 2008.

85. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 85 of the Complaint. Any such determination was erroneous because no pumps equipped with dual mechanical seals were used in organic hazardous air pollutant service at the Facility and were, therefore, not subject to the LDAR requirements of the Pharmaceutical MACT in 2009.

86. Johnson Matthey Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 86 of the Complaint. Any such determination was erroneous because no pumps equipped with dual mechanical seals were used in organic hazardous air pollutant service at the Facility and were, therefore, not subject to the LDAR requirements of the Pharmaceutical MACT in 2010.

Conclusions of Law

87. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 87 of the Complaint, which call for a legal conclusion.

88. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 88 of the Complaint, which call for a legal conclusion.

89. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 89 of the Complaint, which call for a legal conclusion.

90. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 90 of the Complaint, which call for a legal conclusion.

91. Johnson Matthey Inc. does not answer the allegations contained in Paragraph 91 of the Complaint, which call for a legal conclusion.

COUNT I

92. Johnson Matthey Inc. repeats and incorporates herein its answers contained in Paragraphs 1 through 91 of this Answer.

93. Johnson Matthey Inc. denies the allegation contained in Paragraph 93 of the Complaint.

94. Johnson Matthey Inc. denies the allegation contained in Paragraph 94 of the Complaint.

95. Johnson Matthey Inc. denies the allegation contained in Paragraph 95 of the Complaint.

COUNT II

96. Johnson Matthey Inc. repeats and incorporates herein its answers to Paragraphs 1 through 95 of this Answer.

97. Johnson Matthey Inc. denies the allegations contained in Paragraph 97 of the Complaint.

98. Johnson Matthey Inc. denies the allegations contained in Paragraph 98 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

During 2007 through 2010 there were no pumps with dual mechanical seals at the Facility that were subject to the LDAR requirements of the Pharmaceutical MACT.

SECOND AFFIRMATIVE DEFENSE

The allegations of, and penalties assessed in, the Complaint are without basis to the extent they rely on vacuum pumps in gas/vapor service. See 40 C.F.R. §63.1255(a)(8).

THIRD AFFIRMATIVE DEFENSE

The allegations of, and penalties assessed in, the Complaint are without basis to the extent they rely on seal-less pumps without penetrating shafts, which are exempt from Method 21 and any weekly inspection requirement. See 40 C.F.R. §63.1255(c)(6).

FOURTH AFFIRMATIVE DEFENSE

Johnson Matthey Inc.'s annual certified compliance certifications were accurate and in compliance with the Pharmaceutical MACT and Title V obligations.

FIFTH AFFIRMATIVE DEFENSE

Johnson Matthey Inc.'s annual certified compliance certifications were accurate based on its good faith understanding of the Pharmaceutical MACT and Title V obligations.

SIXTH AFFIRMATIVE DEFENSE

The penalties assessed in the Complaint are excessive.

SEVENTH AFFIRMATIVE DEFENSE

The penalties assessed in the Complaint are arbitrary, capricious and unreasonable.

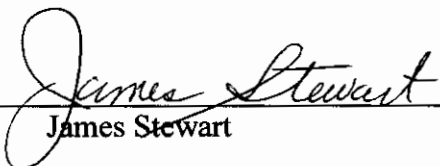
EIGHTH AFFIRMATIVE DEFENSE

Johnson Matthey Inc. was prejudiced by EPA's delay in filing this action and in particular by EPA's failure to provide Johnson Matthey Inc. with any written notification of the violations it allegedly discovered during the August 2010 inspection for more than 2 years and until it filed its Complaint in this action.

REQUEST FOR HEARING

Johnson Matthey Inc. requests an administrative hearing to contest material facts, challenge the amount of the penalty proposed in the Complaint and to seek a judgment as to applicable legal issues.

LOWENSTEIN SANDLER P C
Attorneys for Johnson Matthey Inc.

By: 
James Stewart

Dated: October 22, 2012