

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In re:

Johnson Matthey, Inc.,

Respondent

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

COMPLAINT
and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING

CAA-02-2012-1222

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 SEP 21 P 2:49
REGIONAL HEARING
CLERK

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) under the authority of Section 113(d), 42 U.S.C. § 7413(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 *et seq.*, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2. The Complainant is delegated, on behalf of Region 2, the authority to issue administrative Complaints under Section 113(d) of the CAA for violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

Section 113(d) of the Act authorizes EPA to bring an administrative penalty action in a matter involving a violation that occurred more than twelve months prior to the initiation of an action, and to seek an administrative penalty that exceeds the amount provided by Statute, where

the Administrator and the Attorney General jointly determine that such an action is appropriate. On [Insert Date], the United States Department of Justice (DOJ) granted EPA's request for a waiver of the time limitation provided in Section 113(d) of the Act.

In this Complaint, the Director finds that Respondent's West Deptford, New Jersey pharmaceutical facility (Facility) is subject to and in violation of the pharmaceutical Maximum Achievable Control Technology (MACT) regulations set forth in 40 C.F.R. Part 63, Subpart GGG, (§§ 63.1250 – 63.1261) (Pharmaceutical MACT) and the corresponding provisions in the Facility's CAA Title V Operating Permits, and the CAA Title V Annual Compliance Certification requirement.

Pursuant to Section 113(d) and (e) of the Act, the Clean Air Act Stationary Source Civil Penalty Policy, and the Debt Collection Improvement Act of 1996, EPA proposes a civil administrative penalty for those violations of \$195,760.

STATUTORY, REGULATORY, and PERMITTING BACKGROUND

Legal Background

EPA's Authority to Impose Civil Penalties for CAA Violations

1. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 112 and 114 of the Act.

2. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

3. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

4. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Region 2 Regional Administrator the authority to execute CAA Section 113(d) Final Orders.

5. As contemplated by Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on August 27, 2012, the United States Department of Justice (DOJ) granted EPA’s request for a waiver of the CAA Section 113(d) 12-month time limitation on EPA’s authority to initiate an administrative penalty action in this matter.

CAA Sections 112 and 114

6. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants (HAPs), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

7. Emissions standards promulgated pursuant to Section 112 are commonly known as National Emissions Standards for Hazardous Air Pollutants, or NESHAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. Part 63 NESHAPs are sometimes known as MACT standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the maximum achievable control technology (MACT).

8. Section 112(a) of the Act contains definitions relevant to Section 112. More specifically:

- a. Section 112(a)(1) of the Act defines “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.
- b. Section 112(a)(2) of the Act defines “area source” as any stationary source of hazardous air pollutants that is not a major source.”
- c. Section 112(a)(3) of the Act defines “stationary source” as any building, structure, facility or installation which emits or may emit any air pollutant.
- d. Section 112(a)(9) defines “owner or operator” as any person who owns, leases, operates, controls or supervises a stationary source.

9. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

10. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 111 and 112 of the Act.

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

11. On March 16, 1994, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart A (Part 63 General Provisions). The Part 63 General Provisions set forth general definitions, procedures and requirements that apply to every Part 63 NESHAP, unless the individual NESHAP in question provides differently.

12. 40 C.F.R. § 63.1(a)(4) provides that each relevant standard in 40 C.F.R. Part 63 must identify explicitly whether each provision in the General MACT is or is not included in such relevant standard.

13. 40 C.F.R. § 63.1(b) provides that the provisions of 40 C.F.R. Part 63 apply to the owner or operator of any stationary source that (i) emits or has the potential to emit any HAP listed in or pursuant to Section 112(b) of the Act, and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to Part 63.

14. 40 C.F.R. § 63.1(c) provides that if a relevant standard has been established under Part 63, the owner or operator of an affected source must comply with the provisions of that standard and of the General MACT, as provided in 40 C.F.R. § 63.1(a)(4).

15. 40 C.F.R. § 63.2 defines “affected source,” for the purposes of Part 63, as the stationary sources, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to Section 112 of the Act.

16. 40 C.F.R. § 63.2 defines “existing source” as any affected source that is not a new source.

17. 40 C.F.R. § 63.2 defines “new source” as any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under Part 63 establishing an emission standard applicable to such source.

18. 40 C.F.R. § 63.2 defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

19. 40 C.F.R. § 63.6(c) provides that after the effective date of a relevant standard established under 40 C.F.R. Part 63, the owner/operator of an existing source must comply with such standard by the compliance date established by the Administrator in the applicable Subpart(s) of 40 C.F.R. Part 63,

The Pharmaceutical MACT

20. On September 21, 1998, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart GGG, §§ 63.1250 – 63.1261, the NESHAP for pharmaceuticals production (previously defined as the Pharmaceutical MACT).

21. 40 C.F.R. § 63.1250(a)(1) provides that except as provided by 40 C.F.R. § 63.1250(d), an “affected source” is a pharmaceutical manufacturing operation, as defined in 40 C.F.R. § 63.1251 that:

- a. manufactures a pharmaceutical product, as defined in 40 C.F.R. § 63.1251;
- b. is located at plant site that is a major source, as defined in Section 112(a) of the Act; and
- c. processes, uses or produces any HAP.

22. 40 C.F.R. § 63.1250(f)(1) provides that an owner or operator of an existing affected source must comply with the provisions of the Pharmaceutical MACT no later than October 21, 2002, unless an extension is granted in accordance with 40 C.F.R. § 63.1250(f)(6)(i).

23. 40 C.F.R. § 63.1250(a)(2) provides that an owner or operator of an affected source shall report, to the permitting authority, as part of an operating permit application or as otherwise specified by the permitting authority, the source's Pharmaceutical MACT applicability determination.

Pharmaceutical MACT Leak Detection and Repair Provisions:

24. The Pharmaceutical MACT requirements include, among others, that pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, control devices, and closed-vent systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year and that are located at a pharmaceutical MACT processing unit subject to the Pharmaceutical MACT meet the equipment maintenance, monitoring, recordkeeping and reporting standards of 40 C.F.R.

§ 63.1255. *See* 40 C.F.R. § 63.1255(a)(1).

25. 40 C.F.R. § 63.1255(c)(2)(iii) requires that each pump in light organic HAP liquid service and each agitator in organic HAP gas/vapor service or in light organic HAP liquid service must be checked by visual inspection each calendar week for indications of liquids dripping from the pump or agitator seal.

26. 40 C.F.R. § 63.1255(g)(3) requires that, for any visual inspection of equipment subject to the provisions of § 63.1255(c)(2)(iii), the owner or operator of a PMO subject to the Pharmaceutical MACT shall document that the inspection was conducted and the date of the inspection and that these records be retained for 2 years

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

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

27. Title V of the CAA consists of Sections 501 to 507 of the Act, 42 U.S.C. §§ 7661-7661f.

28. In general, Title V of the CAA requires each “major source” to obtain an operating permit setting forth all of the air pollution requirements that apply to that source, and also provides for the creation of state and federal programs to issue such permits.

29. Section 501(a) of the CAA provides that the term “major source,” as used in Title V of the CAA, means any stationary source or group of stationary sources located within a contiguous area and under common control that is a major source as defined in either Section 112 of the Act or Section 302 of the Act or part D of subchapter I of the Act.

30. Section 502(a) of the CAA makes it unlawful to violate any requirement of a Title V Operating Permit and also makes it unlawful to operate a major source except in compliance with such a permit.

31. Section 502(b) of the CAA requires EPA to promulgate regulations establishing the minimum elements of a Title V Operating Permit program and sets forth the procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs.

32. Section 502(d) of the CAA requires each state to develop and submit to EPA a permit program meeting the requirements of Title V of the Act.

33. Section 502(e) of the Act provides that EPA retains the authority to enforce Title V Operating Permits issued by a state.

34. Section 503 of the CAA sets forth requirements for permit applications and provides that major sources are required to have Title V Operating Permits by the later of (i) the effective date of the permit program applicable to the source, or (ii) the date on which the source becomes a major source.

35. Section 503(b)(2) of the CAA provides that the regulations promulgated pursuant to Section 502(b) of the Act shall include requirements that the permittee periodically (but no frequently than annually) certify that its facility is in compliance with any applicable requirements of the Title V Operating Permit and that the permittee promptly report any deviations from the permit requirements to the operating authority.

36. Section 504 of the CAA specifies requirements and conditions that must be included in any Title V Operating Permit.

37. Consistent with Section 502(b) of the Act, EPA promulgated 40 C.F.R. Parts 70 and 71. 40 C.F.R. Part 70 sets forth minimum requirements for state Title V Operating Permit programs. 40 C.F.R. Part 71 contains the federal Title V Operating Permit program, including, among other elements, the procedures by which EPA will issue Title V Operating Permits.

38. EPA granted interim approval of the New Jersey Title V Operating Permit Program on June 17, 1996.

39. EPA granted full approval of the New Jersey Title V Operating Permit Program on November 30, 2001.

New Jersey Administrative Code

40. New Jersey Administrative Code (N.J.A.C.) N.J.A.C. 7:27-22.19(a), a provision in the State of New Jersey Title V Operating Permit program, requires the permittee to keep records of all source emissions testing or monitoring performed at the facility and required by the operating permit, and maintain those records for at least five years from the date of each sample, measurement, or report.

41. In accordance with Section 503(b)(2) of the Act, N.J.A.C. 7:27-22.19(f), a provision in the New Jersey Title V Operating Permit program, requires the permittee to submit an annual certification of the facility's compliance with the permit's conditions, and all other applicable requirements, to the New Jersey Department of Environmental Protection (NJDEP) and EPA.

Title V Operating Permit Requirements

The Facility's Title V Operating Permit Requirements

42. On June 11, 2002, the NJDEP issued Respondent a Title V Operating Permit, BOP 990001, under PID # 55788 (2002 Permit) for Johnson Matthey Pharmaceutical and Chemical Operations.

43. On August 13, 2007, the NJDEP issued Respondent a Title V Operating Permit, BOP 070004, under PID # 55788 (2007 Permit) for the Johnson Matthey Pharmaceutical and Chemical Operations.

44. On June 17, 2010, the NJDEP divided the facility's 2002 permit and 2007 permit into two Title V Operating Permits; one for their chemical operations and one for their pharmaceutical operations, BOP 090001, PID # 56153 (2010 Permit).

45. The 2002 Permit, 2007 Permit and 2010 Permit, incorporate by reference the applicable requirements contained in 40 C.F.R. Part 63 Subpart A (the General Provisions).

46. The 2002 Permit, 2007 Permit and 2010 Permit, incorporate by reference 40 C.F.R. Part 63 Subpart GGG.

47. The 2002 Permit, 2007 Permit and 2010 Permit, incorporate by reference 40 C.F.R. §63.1255.

48. The 2002 Permit, 2007 Permit and 2010 Permit, incorporate by reference N.J.A.C. 7:27-22.19(f), which requires the Facility to identify and report any noncompliance in an annual compliance certification to NJDEP and EPA.

FINDINGS OF FACT

49. Respondent is a corporation duly organized under the laws of Pennsylvania.

50. Respondent owned and/or operated a facility located at 2003 Nolte Drive, West Deptford, New Jersey (Facility) since at least June 11, 2002.

51. On August 11 and 12, 2010, EPA personnel (EPA Inspectors) performed a duly authorized EPA inspection (EPA Inspection) of the Facility in order to determine among other things whether Respondent was in compliance with the LDAR requirements of the Pharmaceutical MACT leak detection and repair (LDAR) requirements set forth at 40 C.F.R. § 63.1255.

52. During the Inspection, EPA Inspectors among other things reviewed Facility LDAR records including standard operating procedures and discussed Facility LDAR operations with persons who were either employees of Johnson Matthey (Respondent Staff) or who were identified as contractors (Contractor Staff) employed by Johnson Matthey.

53. According to a sign-in sheet kept by EPA, the following Respondent Staff participated in August 11, 2010 phase of the EPA Inspection:

- a. Deidre Tate
- b. Peter Gottnold
- c. Chris Fitzpatrick
- d. Christopher Brookes

54. According to the sign-in sheet kept by EPA, the following Contractor Staff participated in August 11, 2010 phase of the EPA Inspection:

- a. Scott McCleery
- b. Michael Hahn

55. During the August 11, 2010 phase of the EPA Inspection, Deidre Tate informed EPA Inspectors that no weekly visual inspections are performed at pumps equipped with dual mechanical seals.

56. During the August 11, 2010 phase of the EPA Inspection, EPA determined that pumps with dual mechanical seals are located at the Facility and are subject to the LDAR requirements of the Pharmaceutical MACT.

57. During the August 11, 2010 phase of the EPA Inspection, Inspectors were informed that Scott McCleery works for Consertech Inc.

58. During the August 11, 2010 phase of the EPA Inspection, EPA Inspectors were informed that Consertech Inc. administers the Facility's LDAR program.

59. During August 11, 2010 phase of the EPA Inspection, EPA Inspectors were informed that LDAR monitoring is conducted by one Consertech Inc. employee.

60. The EPA Inspection included a "close-out" meeting held on August 12, 2010.

61. According to the sign-in sheet kept by EPA, the following Respondent Staff participated in August 12, 2010 phase of the EPA Inspection:

- a. Deidre Tate
- b. Peter Gottnold
- c. Christopher Brookes
- d. W. E. Hemp

62. According to the sign-in sheet kept by EPA, the following Contractor Staff participated in August 12, 2010 phase of the EPA Inspection:

- a. Scott McCleery
- b. Michael Hahn

63. During the “close-out” meeting, EPA Inspectors shared the results of the August 11th phase of the Inspection with Respondent’s representatives

64. During the close-out meeting, EPA Inspectors informed Respondent’s representatives of the weekly monitoring requirements of 40 C.F.R. § 63.1255(c) with respect to pumps with dual mechanical seals.

65. During the close-out meeting, EPA Inspectors requested Respondent to among other things comply with the weekly monitoring requirements of 40 C.F.R. § 63.1255(c) with respect to pumps with dual mechanical seals.

66. In response to the EPA Inspection, at 06:06 AM, on September 16, 2010, Deidre Tate sent EPA an email (September 16, 2010 email) containing a copy of a document called “JM Pharmaceutical Materials, West Deptford, NJ Standard Operating Procedures, Leak Detection and Repair Program” (LDAR SOP), prepared by Peter Gotthold, EHS-0063.

67. In the September 16, 2010 email, Respondent described the (LDAR SOP) as “updated LDAR procedures as requested.”

68. In the September 16, 2010 email Respondent also wrote: "We have ... created an inspection form to document weekly visual inspections..."

69. The weekly inspection form is titled "JM Pharmaceutical Materials, West Deptford, NJ EHS Approved Form, Visual Pump Leak Inspection Form," EHS_F-0017 Version 1.0, Prepared by P. Gotthold.

70. In the September 16, 2010 email, Respondent described the Visual Pump Leak Inspection Form as "the most recent visual inspection sheet."

71. According to the Visual Pump Leak Inspection Form, JM conducted the first inspection on September 15, 2010.

72. After the Inspection, EPA conducted a review of records (EPA Record Review) including the following records pertinent to the Facility.

- a. The Facility's Notice of Compliance Status (NOCS) report dated March 19, 2004.
- b. Facility Title V Operating Permits.
- c. Records of Facility Title V Operating Permit modifications.
- d. Respondent's certified Title V Annual Compliance Certifications for the periods 2007, 2008, 2009, and 2010.

73. During the EPA File Review, EPA determined that according to the NOCS, the Facility produces pharmaceutical products.

74. During the EPA File Review, EPA determined that according to the NOCS, the Facility is a "major source" of "HAPs."

75. During the EPA File Review, EPA determined that according to the NOCS, Johnson Matthey has owned and operated the Facility since October 21, 2002.

76. During the EPA File Review, EPA determined that according to the NOCS, the original compliance date with respect to the Pharmaceutical MACT for the Facility was October 21, 2002.

77. During the EPA File Review, EPA determined that according to the NOCS, NJDEP extended the original compliance date with respect to the Pharmaceutical MACT for the Facility to October 21, 2003.

78. During the EPA File Review, EPA determined that according to the NOCS since October 21, 2003, the Facility LDAR provisions of the Pharmaceutical MACT set forth at 40 C.F.R. § 63.1255.

79. During the EPA File Review, EPA reviewed Table 5.1 of the NOCS which is titled "Summary of LDAR Affected Equipment and Methods of Compliance"

80. During the EPA File Review, EPA determined that Table 5.1 of the NOCS indicates that the method of compliance for pumps is set forth at 40 C.F.R. § 63.1255(c)(2).

81. During the EPA File Review, EPA determined that each of the Facility's Title V Operating Permits indicates that the Facility's potential to emit HAPs, in the aggregate, is greater than 25 tons per year.

82. During the EPA file review, EPA reviewed each of the Title V Annual Compliance Certifications submitted to EPA in accordance with N.J.A.C. 7:27-22.19(f) for each of the reporting years of 2007 through 2010.

83. During the EPA File Review, EPA determined that Respondent's 2007 Title V Annual Compliance Certification did not include its failures to conduct weekly visual inspections for pumps with dual mechanical seals during the calendar year 2007.

84. During the EPA File Review, EPA determined that Respondent's 2008 Title V Annual Compliance Certification did not include its failures to conduct weekly visual inspections for pumps with dual mechanical seals during the calendar year 2008.

85. During the EPA File Review, EPA determined that Respondent's 2009 Title V Annual Compliance Certification did not include its failures to conduct weekly visual inspections for pumps with dual mechanical seals during the calendar year 2009.

86. During the EPA File Review, EPA determined that Respondent's 2010 Title V Annual Compliance Certification did not include its failures to conduct weekly visual inspections for pumps with dual mechanical seals during the calendar year 2010.

CONCLUSIONS OF LAW

87. From the Findings of Fact as set forth above, Respondent, a "person" within the meaning of Section 302(e) of the Act, is subject to the assessment of administrative penalties pursuant to § 113(d) of the Act.

88. From the Findings of Fact as set forth above, Respondent is a "major source" within the meaning of Section 112(a)(1).

89. From the Findings of Fact set forth above, the Facility is an affected source within the meaning of 40 C.F.R. § 63.1250.

90. From the Findings of Fact as set forth above, Respondent and the Facility are subject to the conditions in each of the Facility Title V Operating Permits.

91. From the Findings of Fact as set forth above, at least since October 21, 2003, the Facility and Respondent have been subject to the General Provisions and the Pharmaceutical MACT, including 40 C.F.R. § 63.1255(c)(2)(iii), each promulgated pursuant to Sections 112 and 114 of the Act.

Count 1: Failures to conduct visual inspections for pumps equipped with dual mechanical seals.

92. Paragraphs 1 through 91 are repeated and re-alleged as if set forth fully herein.

93. Each of Respondent's failures to conduct weekly visual inspections for pumps with dual mechanical seals is a violation of 40 C.F.R. § 63.1255(c)(2)(iii).

94. Each of Respondent's violations of 40 C.F.R. § 63.1255(c)(2)(iii) is a violation of Sections 112 and 114 of the Act.

95. Each of Respondent's violations of the References in each of the Facility's Title V Operating Permits which incorporated 40 C.F.R. § 63.1255(c)(2)(iii) is also a violation of the New Jersey Title V Operating Permit program.

Count 2: Failures to identify noncompliance in the Facility's Title V Annual Compliance Certifications

96. Paragraphs 1 through 95 are repeated and re-alleged as if set forth fully herein.

97. Each of Respondent's failures to identify non-compliance and certify non-compliance with the Title V Operating Permits, specifically for the requirements of 40 C.F.R. § 63.1255(c)(2)(iii), in each of the Title V Annual Compliance Certifications for calendar years 2007, 2008, 2009 and 2010 is a violation of N.J.A.C. 7:27-22.19(f) and each of the Facility's Title V Operating Permits.

98. Each of Respondent's violations of N.J.A.C. 7:27-22.19(f) is also a violation of Sections 114..

PROPOSED CIVIL PENALTY

EPA's CAA Penalty Authority and Overview of CAA Penalty Policy

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The Debt Collection

Improvement Act of 1996 (DCIA) requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, and January 7, 2009, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the maximum civil penalty per day should be adjusted up to \$27,500 for violations that occurred from January 30, 1997 through March 15, 2004, up to \$32,500 for violations that occurred after March 15, 2004 through January 12, 2009 and up to \$37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted 10% for violations that occurred on or after January 30, 1997, further adjusted 17.23% for violations that occurred March 15, 2004 through January 12, 2009, for a total of 28.95% and further adjusted an additional 9.83% for violations that occurred after January 12, 2009, for a total of 41.63%.

In determining the amount of penalty to be assessed, § 113(e) of the Act requires that the Administrator consider the size of the 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 violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require. EPA considered these factors and proposes a total penalty, for the violations alleged in this Complaint of \$195,760.

Respondent's violations alleged in Counts 1 and 2 result in Respondent being subject to the assessment of administrative penalties pursuant to § 113(d) of the Act. The proposed penalty has been prepared in accordance with the criteria in § 113(e) of the Act, and in accordance with the guidelines set forth in EPA's "Clean Air Act Stationary Source Civil Penalty Policy" (CAA Penalty Policy). The CAA Penalty Policy sets forth EPA's guidelines concerning the application

of the factors to be considered, under § 113(e) of the CAA, in proposing the penalty. In addition, in accordance with 28 U.S.C. § 2662, EPA is limited to seeking penalties to five years from the date when the first claim accrued.

Below are short narratives explaining the reasoning behind the penalties proposed in this Complaint, along with the reasoning behind various general penalty factors and adjustments that were used in the calculation of the total penalty amount.

Gravity Based Penalties

Count 1: Violations of 40 C.F.R. § 63.1255 and the corresponding References in the Facility's Title V Operating Permits.

The CAA Penalty Policy directs that a penalty of \$5,000 to \$15,000 be assessed for failing to perform a monitoring requirement. As there were very few components that were not monitored, EPA proposes a \$5,000 penalty for these violations. In addition, the CAA Penalty Policy directs that where a violation persists, a penalty be proposed for length of violation. Here, the evidence indicates that the violations began as early as October 2003, but in light of the five year limit on recovery of penalties found in 28 U.S.C. § 2462, EPA has determined that it will seek penalties only for the period between October 2007 and September 2010, when the facility came into compliance. Consequently, the violations alleged in this Count persisted for 35 months. The CAA Penalty Policy directs that a penalty of \$35,000 be proposed for violations that persist for 35 months. Therefore, EPA proposes an unadjusted gravity component penalty for these violations of \$40,000.

The CAA Penalty Policy allows for an upward adjustment, by as much as 100%, of the gravity component, for degree of willfulness or negligence and directs that EPA consider, among other things, the extent to which the violator in fact knew of the legal requirements that were violated. It is the Region's practice to upwardly adjust by 30% the gravity component of the

proposed penalty for violations of conditions other than those that are solely required by Title V. It does so because the violator's knowledge of the regulatory requirements is further enhanced through the application and permitting process. In this instance, Respondent's obligation to comply with the weekly monitoring requirements of 40 C.F.R. § 63.1255 was included in each of the Facility's Title V Operating Permits. The Title V Operating Permits were in effect throughout the entire period of time in which the violations alleged of 40 C.F.R. § 63.1255 occurred. In accordance with this practice, the \$40,000 penalty was upwardly adjusted by 30% resulting in a proposed penalty, unadjusted for inflation, of \$52,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring after March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. Therefore, EPA proposes a \$6,452 inflationary adjustment for the violations through January 12, 2009 and an \$12,370 inflationary adjustment for the violations after January 12, 2009. The total proposed penalty for the violations alleged in Count 1 is \$70,822.

Count 2: Violations of Title V Annual Compliance Certification Requirements.

The CAA Penalty Policy directs that a penalty of \$5,000 to \$15,000 be assessed for an incomplete report or notice. This Count alleges that Respondent did not identify violations of the 40 C.F.R. § 63.1255 in each of the Title V Annual Compliance Certifications for the years 2007, 2008, 2009 and 2010. EPA determined that the violations not identified in the certifications accounted for a small percentage of information that was required to be included in each of the certifications and proposes \$5,000 for each incomplete certification. Therefore, EPA proposes an unadjusted gravity component penalty for these violations of \$20,000.

In addition, the DCIA and Part 19 direct EPA to adjust the gravity component 28.95% for violations occurring after March 15, 2004 through January 12, 2009 and 41.63% for violations occurring after January 12, 2009. Therefore, EPA proposes a \$2,895 inflationary adjustment for the 2007 and 2008 violations and a \$4,163 inflationary adjustment for the 2009 and 2010 violations. The total proposed penalty for the violations alleged in Count 2 is \$27,058.

Size of Violator

The CAA Penalty Policy directs that the penalty proposed takes into account the size of violator (SOV) determined by the violator's net worth for corporations or net current assets for partnerships. In this matter, EPA determined Johnson Matthey pharmaceutical operations function within the Fine Chemical Division of Johnson Matthey PLC (JM PLC). EPA evaluated JM PLC's "Annual Report and Accounts for 2011," and estimated that JM PLC's net worth to be approximately \$2,200,000,000. For the SOV component of the penalty, the CAA Penalty Policy directs that a penalty for a net worth over \$100 million be calculated as follows: \$70,000 plus \$25,000 for every additional \$30 million or fraction thereof. The SOV component in this case could have been \$1,820,000. However, in accordance with the CAA Penalty Policy, the Region exercised its discretion and reduced the SOV component of the penalty to 50% of the total preliminary deterrence amount. The SOV component of the penalty may be adjusted should information be discovered that indicates the Respondent's net worth is less than estimated or if the preliminary deterrence amount is adjusted. In this case the SOV is \$97,880.

Economic Benefit

In addition to the gravity component of the proposed penalties, the CAA Penalty Policy directs that EPA determine the economic benefit derived from noncompliance. The CAA Penalty Policy explains that the economic benefit component of the penalty should be derived by

calculating the amount the violator benefited from delayed and/or avoided costs. The CAA Penalty Policy indicates that it is EPA's goal to collect the violator's economic benefit and that EPA may elect not to assess an economic benefit component in enforcement actions where the violator's economic benefit is less than \$5,000. In this case, the Region determined the cost avoided was *de minimis*. Therefore, EPA did not assess an economic benefit component.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.* The procedures for this matter are found in EPA's Consolidated Rules of Practice, a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the Consolidated Rules of Practice.

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

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

filed in this matter, are to be served on EPA to the attention of EPA counsel at the following

address:

Evans J. Stamatakis
Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Evans J. Stamatakis, at (212) 637-3201 or at the address listed above, to discuss settlement. If Respondent is represented by legal counsel in this matter, Respondent's counsel should contact EPA.

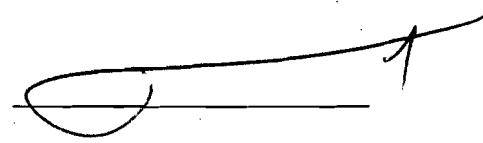
Payment of Penalty in lieu of Answer, Hearing and/or Settlement

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) which appear on the first page of this Complaint. The check must be mailed to:

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

simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: SEPTEMBER 20, 2012



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

To: Edward H. Ravert
Vice-President
Johnson Matthey, Inc.
435 Devon Park Dr.,
STE. 600
Wayne, PA 19087-1944

cc: Edward Choromanski, Director
Air & Hazardous Waste Compliance & Enforcement
NJ Department of Environmental Protection
401 East State Street
Trenton, NJ 08625

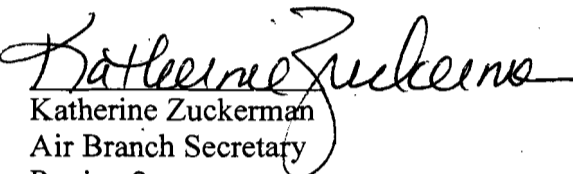
CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING, In the matter of Johnson Matthey, Inc., bearing the docket number CAA-02-2012-1222, a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, and copy of the Clean Air Act Stationary Source Civil Penalty Policy by overnight mail, to:

E. H. Ravert
Vice-President
Johnson Matthey, Inc.
435 Devon Park Dr.
STE. 600
Wayne, PA 19087-1944

I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: 9/21/12
New York, New York


Katherine Zuckerman
Air Branch Secretary
Region 2