

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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

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MOTION FOR LEAVE TO AMEND COMPLAINT THROUGH A CONSENT AGREEMENT

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, in accordance with the Section 22.14(c) of the Consolidated Rules of Practice, 40 C.F.R. Part 22, requests the Court grant leave for Complainant to amend the administrative complaint and notice of opportunity to request a hearing (Complaint) in this matter to include an allegation uncovered subsequent to the filing of Johnson Matthey Inc.'s (Respondent) Answer to the Complaint. The amendment will be made in a Consent Agreement resolving the litigation. Should the Court grant leave to amend the Complaint, Complainant will submit the Consent Agreement and an associated Final Order to the Region 2 Judicial Officer, whose authority to execute final orders falls within this matter.

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 this motion.

#### Background

Complainant commenced this proceeding on September 21, 2012, by filing the 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. So as to ensure that the settlement covers all claims discussed during their settlement negotiations, the parties have now agreed upon a Consent Agreement that includes language amending the original complaint

#### Reasons for Granting this Motion

Good cause exists to grant this motion.

The parties have agreed that their settlement should encompass all claims discussed during their settlement negotiations, and have prepared a Consent Agreement that does that. In particular, the Consent Agreement amends the complaint to add a claim related to additional information provided by Respondent in support of its defenses during the settlement discussions. However, because Respondent has already answered the Complaint, that complaint cannot be amended without leave of Court. Therefore, in order to effectuate the parties' settlement, EPA needs to obtain leave of Court to amend the original complaint.

Conclusion

For the reasons given above, EPA respectfully moves the Court for leave to amend the Complaint, by filing a Consent Agreement and proposed Final Order amending the complaint and resolving this litigation.

Dated: April 3, 2013  
New York, New York

Respectfully submitted,



Evans Stamatakis  
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**CERTIFICATE OF SERVICE**

I, Katherine Zuckerman, certify that the foregoing "Motion for Leave to Amend Complaint Through a Consent Agreement" 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. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm. M1200  
1300 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

One Copy  
Via Overnight Mail

To: Honorable M. Lisa Buschmann  
Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm. M1200  
1300 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

One Copy  
Via Overnight Mail

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

Dated: 4/3/2013  
New York, New York

  
Katherine Zuckerman  
Air Branch Secretary