

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

10 AUG -9 PM 12: 28

BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF	)	
	)	
FRM CHEM, INC.,	)	DOCKET NO. FIFRA-07-2008-0035
ADVANCED PRODUCTS TECHNOLOGY, INC.,	)	DOCKET NO. FIFRA-07-2008-0036
SYNISYS, INC.,	)	DOCKET NO. FIFRA-07-2009-0041
CUSTOM COMPOUNDERS, INC.,	)	DOCKET NO. FIFRA-07-2009-0042
	)	
RESPONDENTS.	)	

**SUPPLEMENTAL REPLY OF CORPORATE RESPONDENTS' TO COMPLAINANT'S  
MOTION FOR ADVERSE INFERENCE AND TO EXCLUDE EVIDENCE  
OR, IN THE ALTERNATIVE,  
MOTION TO COMPEL AND MOTION FOR EXTENSION OF TIME**

COMENOW Respondents FRM Chem, Inc. ("FRM"), Advanced Products Technology, Inc. ("APT"), Synisys, Inc. ("SYN") and Custom Compounders, Inc. ("CCI") (collectively, "Corporate Respondents"), and for their Supplemental Reply to Complainant's Motion for Adverse Inference and to Exclude Evidence or, in the Alternative, Motion to Compel and Motion for Extension of Time, state as follows:

1. Complainant filed the aforementioned motion on July 30, 2010. In its motion, Complainant posited potential prejudice to its position due to an insufficient amount of time to review the evidence, an inability to engage its own expert in sufficient time to perform an analysis of the evidence, and an inability to prepare adequately for a September 28, 2010 hearing (See Complainant's Motion at Page 6).

2. Corporate Respondents filed their Reply to Complainant's Motion on or about August 5, 2010. This Reply disagreed with Complainant's position that it would not have adequate time to review the additional documentation to be produced. Nevertheless, Corporate Respondents stated

that they had no objection to an extension of time for Complainant's expert to review the new evidence. (See Corporate Respondents' Reply at Page 6, Paragraph 21).

3. This tribunal conducted a status call conference with the parties at 2:00 p.m. E.D.T. on August 5, 2010. The Court made it very clear that the September 28, 2010 date remained set. The Court asked Complainant about its position on this hearing date.

Complainant's counsel acknowledged receipt of the disclosure of additional documentation (Exhibit F to Corporate Respondents' Reply to Complainant's Motion). Complainant's counsel said he was able to contact his financial people and they would need a week or two before they could get to this project and two to four weeks to complete the review of the documents received as of August 5, 2010.

Therefore, Complainant would have adequate time for its expert to review the ordered disclosure and prepare for the hearing on September 28, 2010.<sup>1</sup>

4. As it presently stands, Complainant has acknowledged that it has sufficient time to review and prepare for a September 28, 2010 hearing on the basis of the production it has received from Corporate Respondents as of August 5, 2010.

WHEREFORE, Corporate Respondents respectfully submit to this tribunal that Complainant's Motion for Adverse Inference and to Exclude Evidence be denied and Complainant's Motion to Compel and for Extension of Time be denied as moot with Complainant reserving the right to file a further motion regarding the ordered discovery, if Complainant deems it necessary, after reviewing the discovery produced thus far.

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<sup>1</sup>Mr. Dudding, on behalf of Complainant, did state to the Court that it might be necessary to file an additional Motion to Compel or for other relief if Complainant believed the production was incomplete.

Respectfully submitted,

JENKINS & KLING, P.C.

By: \_\_\_\_\_

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Attorneys for Respondents

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served via Federal Express upon:

Sybil Anderson  
Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street NW  
Suite 350, Franklin Court  
Washington, DC 20005

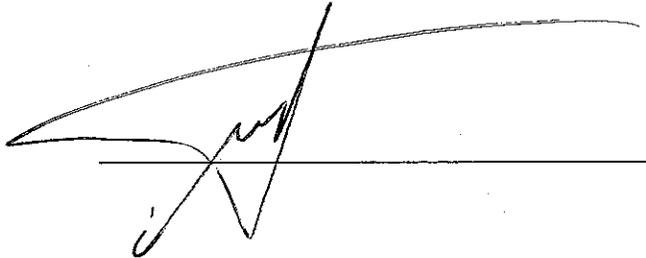
Honorable Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street NW  
Washington, DC 20005

Kathy Robinson  
Regional Hearing Clerk  
EPA - Region 7  
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Kansas City, KS 66101

Chris R. Dudding  
Assistant Regional Counsel  
EPA - Region 7  
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Kansas City, KS 66101

this 6<sup>th</sup> day of August, 2010.

\_\_\_\_\_



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

10 AUG -9 PM 12: 25

BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
)  
FRM CHEM, INC., et al. ) DOCKET NO. FIFRA-07-2008-0035  
ADVANCED PRODUCTS TECHNOLOGY, INC., ) DOCKET NO. FIFRA-07-2008-0036  
et al. )  
SYNISYS, INC., et al. ) DOCKET NO. FIFRA-07-2009-0041  
CUSTOM COMPOUNDERS, INC., ) DOCKET NO. FIFRA-07-2009-0042  
)  
RESPONDENTS. )

**REPLY OF FRM CHEM, INC.<sup>1</sup>, ADVANCED PRODUCTS TECHNOLOGY, INC.,  
SYNISYS, INC. AND CUSTOM COMPOUNDERS, INC.  
TO COMPLAINANT'S MOTION FOR DEFAULT LIABILITY**

COME NOW Respondents FRM Chem, Inc. ("FRM"), Advanced Products Technology, Inc. ("APT"), Synisys, Inc. ("SYN") and Custom Compounders, Inc. ("CCI") (collectively, "Corporate Respondents"), and for their Reply to Complainant's Motions for Default as to Liability state as follows:

1. Corporate Respondents APT, SYN and CCI have previously answered the Complaints in Docket Nos. FIFRA-07-2008-0036, FIFRA-07-2009-0041 and FIFRA-07-2009-0042. Corporate Respondent FRM has previously answered the First Amended Complaint in Docket No. FIFRA-07-2009-0035.<sup>2</sup>
2. The First Amended Complaint in Docket Nos. FIFRA-07-2008-0036, FIFRA-07-2009-0041 and FIFRA-07-2009-0042 combined contain approximately 180 separate paragraphs.

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<sup>1</sup>Respondents have not received a similar Motion from Complainant in FIFRA-00-2009-0035.

<sup>2</sup>Other than the addition of Individual Respondents Keith G. Kastendieck and Karlan C. Kastendieck, there appears to be no additional substantive allegation that requires an answer from FRM to the Second Amended Complaint. Nevertheless, one will be filed.

Over ninety percent (90%) of these paragraphs are virtually identical to the original Complaints which have already been answered by these Corporate Respondents. By virtually identical, an example is the use of the plural in the Amended Complaints vs. singular in the original Complaints.

3. Of the remaining  $\leq$  less than 10% of the “amended paragraphs” in the three Amended Complaints, more than 90% of those deal with the addition of Individual Respondents Keith G. Kastendieck and Karlan C. Kastendieck.

4. The very small balance of the “amended paragraphs” in the three Amended Complaints deal solely with adding Corporate Respondents FRM and APT to Docket Nos. FIFRA-07-2009-0041 and FIFRA-07-2009-0042. This Court, in its Order of May 27, 2010 at Page 5 noted, “In fact, Respondents make it clear in their Initial Response that such an amendment would be appropriate in light of Respondent’s Prehearing Exchange.”

5. Therefore, while Corporate Respondents have not “officially” filed Amended Answers to the First Amended Complaints referenced in Complainant’s Motions for Default, they have, in fact, previously answered 99% of the substantive allegations in these pleadings that deal with the Corporate Respondents.

6. Complainant’s counsel for the most part correctly states the background dates concerning this motion.

7. When the Amended Complaints were filed, it became apparent that several conflicts of interest might present themselves both as to corporation v. corporation, individual v. individual and/or individual v. corporation. In that regard, Raymond Kastendieck (as shareholder) and Karlan C. Kastendieck (as an individual and shareholder) were unavailable to Corporate Respondents’ counsel. Very recently, they have made themselves available for this discussion of conflict issues.

8. The parties (Complainant and Corporate Respondents) reached an agreement that Corporate Respondents could have until July 28, 2010 to file their answers.

9. On July 25, 2010, after a flight from Chicago to St. Louis, undersigned counsel experienced a substantial medical issue/concern. On July 26, 27 and 29, 2010, undersigned counsel sought medical attention from Dr. William Benedict. When the medical issue did not improve during this span of time, Dr. Benedict ordered and a brain scan was performed at St. Luke's Hospital in St. Louis on July 30, 2010. A copy of this CD scan is attached hereto as Exhibit "A".

While not totally incapacitated during this week long treatment, counsel was very concerned and having difficulty concentrating.

Undersigned counsel is now responding to medication to treat the diagnosed illness.

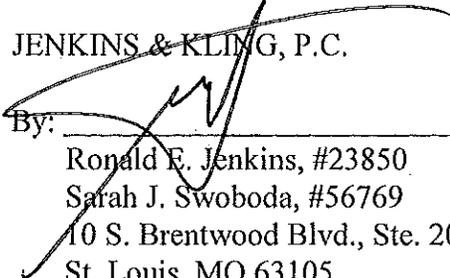
10. Undersigned counsel for Corporate Respondents believes this demonstrates to the Court good cause why a default should not be entered in these combined cases.

11. Undersigned counsel for Corporate Respondents will have Corporate Respondents' Answers in the mail, via overnight delivery, by August 9, 2010. The answers will be almost identical to the Corporate Respondents' prior answers with the exception of numbered paragraphs and the use of the plural.

WHEREFORE, Corporate Respondents respectfully request that Complainant's Motions for Default as to Liability be denied for good cause shown.

Respectfully submitted,

JENKINS & KLING, P.C.

By: 

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Attorneys for Respondents

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served via Federal Express upon:

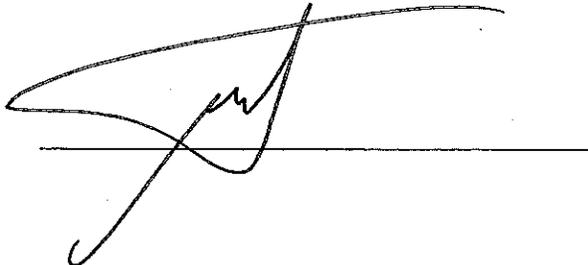
Sybil Anderson  
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Honorable Barbara A. Gunning  
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Kathy Robinson  
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Kansas City, KS 66101

Chris R. Dudding  
Assistant Regional Counsel  
EPA - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

this 6<sup>th</sup> day of August, 2010.





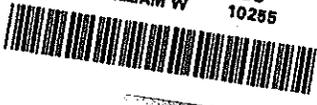
**JENKINS, RONALD**

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EXHIBIT A