

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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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.)	

**RESPONDENTS' REPLY TO COMPLAINANT'S MOTION TO AMEND
COMPLAINTS AND FOR OTHER DISCOVERY PURSUANT TO 40 C.F.R. § 22.19(e)**

COMES NOW Respondents FRM Chem, Inc., Advanced Products Technology, Inc., Synisys, Inc. and Custom Compounders, Inc. and hereby reply to the Complainant's Motion to Amend Complaints and For Other Discovery as set forth below:

1. Respondents do not object to the amendment of the Complaint in the matter of Custom Compounders, Inc., Docket No. FIFRA-07-2009-0042 to add as a Respondent Advanced Products Technology, Inc. and do not object to the amendment of the Complaint in the matter of Synisys, Inc. to add as a Respondent FRM Chem, Inc. Respondents concur with Complainant that these amendments are appropriate in light of Respondents' Prehearing Exchange.

2. Respondents object to the amendment of the Complaints to add Keith G. Kastendieck and Karlan C. Kastendieck. Complainant has been aware of the personal status of Keith G. Kastendieck and Karlan C. Kastendieck since at least October of 2008. The FRM and Advance Products Technology Complaints were filed first and have already been amended once on or about December 17, 2009. The Synisys and Custom Compounder Complaints were filed on September

23, 2009. Respondents are now “not objecting” to amendments to the Custom Compounder and the Synisys Complaints, so this matter is now ripe for a hearing on the underlying issue in the case.

Respondents were not notified of the cancellation of the registration of the products by the U.S. Environmental Protection Agency, the Missouri Department of Health or the Registrant from July 17, 1995 to October of 2008 when the Stop Sales Orders were served.

Adding Keith and/or Karlan Kastendieck will not aid in the determination of this threshold issue.

There is no liability on any corporation or individual if they were not notified that they could not distribute and sell these products.

3. Respondents object to the amendment of the Complaint in the Matter of Advanced Products Technology, Inc., Docket No. FIFRA 07-2008-0036 by adding five counts of selling the unregistered pesticide product “sodium hypochlorite solution.” Simply stated, this proposed amendment lacks the necessary allegation that Respondents “claimed the product was registered” which they did not.

4. Finally, Complainant seeks a sixty (60) day discovery hiatus while four (4) parties, six (6) non-party individuals and five (5) non-party entities submit extensive additional discovery to Complainant comprising three (3) pages of information set forth in the Complainant’s Rebuttal. This discovery request, at this late date, puts the cart before the horse. Complainant wants Respondents to show the Complainant who can pay the Agency if a FIFRA violation is proved by the Complainant. Once again, this reverts back to the underlying issue which is ripe for determination by this Tribunal.

Can Complainant prove liability against the Respondents by meeting its burden of proof that Respondents knew they were distributing products whose registration had been cancelled?

Requiring four parties, six individuals and five non-party entities to provide substantial financial data in advance of the determination of liability is an undue hardship on Respondents.

WHEREFORE, Respondents respectfully suggest that Complainant be allowed to amend its Complaints in part and the additional motions for amendment and discovery be denied.

Respectfully submitted,

JENKINS & KLING, P.C.

By: 

Ronald E. Jenkins, #23850
Sarah J. Swoboda, #56769
10 S. Brentwood Blvd., Ste. 200
St. Louis, MO 63105
(314) 721-2525 ph.
(314) 721-5525 fax
rjenkins@jenkinsklings.com
sswoboda@jenkinsklings.com

Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that: an original and two copies of the foregoing were served via Federal Express upon:

an original and two copies of the foregoing were served via Federal Express upon:

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

two copies were served via Federal Express upon:

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

this 29th day of March, 2010.

one copy was served via Federal Express upon:

Kathy Robinson
Regional Hearing Clerk
EPA - Region 7
901 North 5th Street
Kansas City, KS 66101

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

