

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Consolidated Docket Nos.
FRM Chem, Inc.) FIFRA-07-2008-0035
and) FIFRA-07-2008-0036
Advanced Products Technology, Inc.,)
Respondents) MOTION FOR LEAVE TO FILE ANSWERS
TO AMENDED COMPLAINTS AND FOR
THE ISSUANCE OF A NEW PREHEARING
ORDER WITH REVISED DATES

**MOTION FOR LEAVE TO FILE ANSWERS TO AMENDED COMPLAINTS AND
FOR THE ISSUANCE OF A NEW PREHEARING ORDER WITH REVISED DATES**

COME NOW FRM Chem, Inc. and Advanced Products Technology, Inc. (hereinafter "Respondents"), and request an extension of time in which to answer Complainant's Amended Complaints and for relief from the Prehearing Order (time extensions at the discretion of the Administrative Law Judge) due to the belated entry of counsel in these proceedings. In support of Respondents' requests, they state as follows:

1. The Complaints in these matters were initially filed on or about June 26, 2009.
2. Complainant filed its Motion for Leave to Amend the Complaint and Consolidate Matters on or about October 2, 2009.
3. By Order of October 28, 2009, Complainant's Motion to Consolidate these two matters was granted. Consolidation of two additional matters (Synisys and Custom Compounders) was denied because these cases had not been received by the Office of Administrative Law Judges).

The Order also granted Complainant's Motion to Amend the Complaints.

4. Undersigned counsel was first engaged by Respondents on November 16, 2009.

5. Respondents *pro se* did not file any answers to the Complaints. Complainants filed a notice on or about July 28, 2009 construing two letters from Raymond E. Kastendieck (dated July 24, 2009) and Ann P. Kastendieck (also dated July 24, 2009) as the Respondents' "Answers". These letters are attached to this Motion as Exhibits "A" and "B", respectively, and incorporated herein by reference. Raymond E. Kastendieck also corresponded with this tribunal on or about September 18, 2009. A copy of that correspondence is attached to this Motion as Exhibit "C" and incorporated herein.

6. Respectfully, these letters by lay persons should not be construed as answers to these serious complaints. Undersigned counsel has initially investigated various allegations of material fact contained in these Complaints and there are defenses which should be averred to these allegations to adequately and competently defend these Respondents.

7. Amended Complaints were most recently ordered filed on or about October 2, 2009 so there is little (if any) prejudice to Complainant if Respondents are allowed to file Answers to these Amended Complaints.

8. As set forth in the Complainant's Motion for Leave to Consolidate, there are two more cases in the system which have not reached this tribunal (*In the Matter of Synisys*, Docket No. FIFRA-07-2009-0041 and *In the Matter of Custom Compounders*, Docket No. FIFRA-07-2009-0042). One must assume these matters will be received shortly by this office and should be consolidated with the two matters now at bar.

Undersigned counsel is also representing Synisys and Custom Compounders and he will agree on behalf of his clients to consolidate all four (4) matters to save judicial time and resources.

There will be a delay anyway before these matters are received by the Office of the Administrative Law Judge so no prejudice should occur in the meantime to the Administrative Law Judge, or any party to these proceedings.

9. Counsel has been apprised of the prehearing exchange dates in the Prehearing Order (December 7, 2009, January 8, 2010 and January 22, 2010).

10. Having just been engaged as counsel on November 16, 2009, he simply cannot meet these deadlines.

11. In the meantime, in the matters of *FRM Chem, Inc., Advanced Products Technology, Inc., Synisys*, and *Custom Compounders*, counsel has suggested all parties engage in settlement discussions.

WHEREFORE, Respondents FRM Chem, Inc. and Advanced Products Technology, Inc. request the opportunity to file a formal answer to the Amended Complaints on a date certain to be set by this Judge with no further extensions of time to be granted, and new dates in a revised Prehearing Order.

Respectfully submitted,

JENKINS & KLING, P.C.

By: _____

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Attorneys for Respondent FRM Chem, Inc. and
Advanced Products Technology, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one (1) copy of the foregoing were served via U.S. Mail, postage prepaid, upon:

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

and a copy was served via U.S. Mail, postage prepaid, upon:

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

United States Environmental Protection Agency
Office of Administrative Law Judges
Attn: Honorable Barbara A. Gunning
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460-2001

this 23rd day of November, 2009.

3007 Brighton Lane
Washington, MO 63090
July 24, 2009

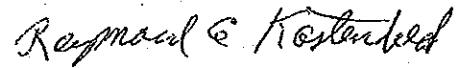
Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, KS 66101

Re: Docket No. FIFRA-07-2008-0035

Dear Mr. Dudding:

Frm Chem Inc. is no longer in business. I am 87 years old, retired and living on my Social Security Income.

Very Truly Yours,



Raymond E. Kastendieck

EXHIBIT A



7
ADVANCED PRODUCTS TECHNOLOGY INC.

P. O. BOX 1656 • WASHINGTON, MO 63090
PHONE: 636-583-4360 • FAX: 636-583-5218

July 24, 2009

Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, KS 66101

Re: Docket No. FIFRA-07-2008-0036

Dear Mr. Dudding:

Advanced Products Technology, Inc. has decided not to contest the validity of the allegations contained in Counts 1 through 4 of the complaint.

We do however contest the amounts of the proposed penalties contained in Count 1 through 4 of the complaint. As shown in the enclosed copy of the 2008 Corporate Income Tax Return filed with the IRS, the gross sales of Advanced Products Technology, Inc. for 2008 was only \$163,000. This amount is much less than the amount of \$1,000,000 cited in section 40 of the complaint. Also note that the Net Income of Advanced Products Technology, Inc. for 2008 was (\$55,000) due to the loss of our largest customer during the year. Enclosed also is a copy of the six month income statement for 2009, which shows annual projected sales of \$25,000 and a net loss of over (\$100,000).

Sincerely,

Ann P. Kastendieck

EXHIBIT B

3007 Brighton Lane
Washington, MO 63090
September 18, 2009

The Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket No. FIFRA-07-2008-0035

Dear Judge Gunning:

Frm Chem Inc. had sold the products in question for over 25 years and continued to file manufacturing reports to the EPA through 2006, when the company ceased doing business. Frm Chem was never notified by the EPA or anyone else that the registrations for any product had been cancelled and I have never been shown any evidence to the contrary. I feel that since FRM Chem notified the EPA of the manufacture and sale of these products on an annual basis and that the EPA took no action to inform FRM Chem that the registrations had been cancelled, the EPA should bear full liability in this matter.

Very Truly Yours,

Raymond E. Kastendieck

EXHIBIT C