

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	Docket No. FIFRA-07-2009-0041
	)	
Synisys, Inc.	)	ANSWER
Union, Missouri,	)	
	)	
Respondent	)	

ANSWER

COMES NOW Respondent Synisys, Inc. ("Synisys"), by and through its undersigned counsel, and for its Answer to the Complaint filed by United States Environmental Protection Agency ("EPA"), states the following:

Section I

Jurisdiction

1. Synisys admits the allegations contained in Paragraph 1.
2. Synisys denies the allegations contained in Paragraph 2.

Section II

Parties

3. Synisys admits the allegations contained in Paragraph 3.
4. Synisys admits that Synisys, Inc. is a company located at 50 and 60 Highline Drive, Union, Missouri, but denies the remaining allegations contained in Paragraph 4.

### Section III

#### Statutory & Regulatory Background

5-11. Title 7, U.S.C. §§ 136 quoted in Paragraphs 5 through 11 speak for themselves.

### Section IV

#### Factual Allegations

12. EPA registered CHLOR 1250 to FRM Chem, Inc. using EPA Registration Number 00366-20001. This registration was transferred in February, 1990 by EPA from FRM Chem, Inc. to Intercon Chemical Company and a new Registration Number was issued (48211-20001).

FRM Chem, Inc. retained supplemental distribution rights using EPA Registration No. 48211-2001-10366. Respondent Custom Compounders and FRM Chem, Inc. were never notified of any cancellation of 48211-20001 or 48211-20001-10366 by EPA or Intercon Chemical Company at any time prior to October, 2008. Respondent Custom Compounders denies the balance of Paragraph 12.

Moreover, Respondent and FRM Chem, Inc. filed EPA Pesticide Report Forms 3540-16 under the name of FRM CHEM, INC. with the EPA for the years 1995 through and including 2007. These forms were received from the EPA pre-stamped with FRM Chem's Registration Number and FRM Chem and EPA Registration Number 48211-20001-10366.

Respondent and FRM Chem, Inc. reported each and every year to EPA the amount of FRM CHLOR 1250 produced and sold during this entire period.

Additionally, during this period of time (1995 - 2007), EPA never notified FRM Chem, Inc. or Custom Compounders that the registration was cancelled even though EPA knew FRM Chem was producing and selling the product.

Further, in 2005, EPA, by and through its authorized representative, conducted an inspection of FRM Chem and Respondent's premises (set forth above). The inspector had a pre-printed EPA form listing the fact that FRM CHLOR 1250 was on the EPA preprinted list and the representative verified the amount sold and shipped. At no time during this inspection in 2005, or afterward, did the EPA or the Missouri Department of Agriculture (acting in its behalf) notify Respondent or FRM Chem that the registration had been canceled.

- 13. Synisys admits the allegations contained in Paragraph 13.
- 14. Synisys admits the allegations contained in Paragraph 14.
- 15. Synisys admits the allegations contained in Paragraph 15.
- 16. Synisys admits the allegations contained in Paragraph 16.
- 17. Synisys admits the allegations contained in Paragraph 17.
- 18. Synisys admits the allegations contained in Paragraph 18.
- 19. Synisys admits the allegations contained in Paragraph 19.
- 20. Synisys denies the allegations contained in Paragraph 20. Keith G. Kastendieck did make several written statements to a Pesticide Use Investigator on October 8, 2008.

21. Synisys denies the allegations contained in Paragraph 21. Keith G. Kastendieck did make several written statements to a Pesticide Use Investigator on October 8, 2008.

22. On October 8, 2008, Keith G. Kastendieck was served with two "Stop, Sale, Use, or Removal Orders" on behalf of FRM Chem, Inc. and Advanced Products Technology, Inc.

No representative of FRM Chem, Inc. or Advanced Products Technology, Inc. had ever been served with any similar "Stop Sale Order" for FRM CHLOR 1250 prior to October 8, 2008.

23. Synisys is without sufficient knowledge, information or belief as to the allegations contained in Paragraph 2 and, therefore, denies same.

Violations

24. Synisys denies the allegations contained in Paragraph 24.

Counts 1-3 - Sales/Distributions to Franklin County Humane Society

Count 1

25. As and for its Answer to Paragraph 25 of Count 1 of EPA's Complaint, Respondent Synisys restates, realleges and incorporates by reference its answers to Paragraphs 12 through 24 above as if more fully stated herein.

26-31. Synisys denies the allegations contained in Paragraphs 26 through 31. Further, Respondent Synisys denies ever selling or distributing FRM CHLOR 1250 to McFleeg, Inc. Respondent Synisys believes and states this product was sold and distributed by FRM Chem, Inc. and that the registration for this pesticide had not been cancelled and/or FRM Chem, Inc. had not been notified by EPA or Intercon of the cancellation. Further, Invoice Number 35522 is not a Synisys' invoice number.

Count 2

32. As and for its Answer to Paragraph 32 of Count 2 of EPA's Complaint, Respondent Synisys restates, realleges and incorporates by reference its answers to Paragraphs 12 through 31 above as if more fully stated herein.

33-38. Synisys denies the allegations contained in Paragraphs 33 through 38. Further, Respondent Synisys denies ever selling or distributing FRM CHLOR 1250 to McFleeg, Inc. Respondent Synisys believes and states this product was sold and distributed by FRM Chem, Inc.

and that the registration for this pesticide had not been cancelled and/or FRM Chem, Inc. had not been notified by EPA or Intercon of the cancellation. Further, Invoice Number 35567 is not a Synisys' invoice number.

### Count 3

39. As and for its Answer to Paragraph 39 of Count 3 of EPA's Complaint, Respondent Synisys restates, realleges and incorporates by reference its answers to Paragraphs 12 through 38 above as if more fully stated herein.

40-45. Synisys denies the allegations contained in Paragraphs 40 through 45. Further, Respondent Synisys denies ever selling or distributing FRM CHLOR 1250 to McFleeg, Inc. Respondent Synisys believes and states this product was sold and distributed by FRM Chem, Inc. and that the registration for this pesticide had not been cancelled and/or FRM Chem, Inc. had not been notified by EPA or Intercon of the cancellation. Further, Invoice Number 35684 is not a Synisys' invoice number.

### Count 4

46. As and for its Answer to Paragraph 46 of Count 4 of EPA's Complaint, Respondent Synisys restates, realleges and incorporates by reference its answers to Paragraphs 12 through 45 above as if more fully stated herein.

47-52. Synisys denies the allegations contained in Paragraphs 47 through 52. Further, Respondent Synisys denies ever selling or distributing FRM CHLOR 1250 to McFleeg, Inc. Respondent Synisys believes and states this product was sold and distributed by FRM Chem, Inc. and that the registration for this pesticide had not been cancelled and/or FRM Chem, Inc. had not

been notified by EPA or Intercon of the cancellation. Further, Invoice Number 35539 is not a Synisys' invoice number.

Count 5

53. As and for its Answer to Paragraph 53 of Count 5 of EPA's Complaint, Respondent Synisys restates, realleges and incorporates by reference its answers to Paragraphs 12 through 52 above as if more fully stated herein.

54-59. Synisys denies the allegations contained in Paragraph 54. Further, Respondent Synisys denies ever selling or distributing FRM CHLOR 1250 to McFleeg, Inc. Respondent Synisys believes and states this product was sold and distributed by FRM Chem, Inc. and that the registration for this pesticide had not been cancelled and/or FRM Chem, Inc. had not been notified by EPA or Intercon of the cancellation. Further, Invoice Number 35690 is not a Synisys' invoice number.

Count 6

60. As and for its Answer to Paragraph 60 of Count 6 of EPA's Complaint, Respondent Synisys restates, realleges and incorporates by reference its answers to Paragraphs 12 through 59 above as if more fully stated herein.

61-66. Synisys denies the allegations contained in Paragraphs 61 through 66. Further, Respondent Synisys denies ever selling or distributing FRM CHLOR 1250 to McFleeg, Inc. Respondent Synisys believes and states this product was sold and distributed by FRM Chem, Inc. and that the registration for this pesticide had not been cancelled and/or FRM Chem, Inc. had not been notified by EPA or Intercon of the cancellation. Further, Invoice Number 35762 is not a Synisys' invoice number.

Count 7

67. As and for its Answer to Paragraph 67 of Count 7 of EPA's Complaint, Respondent Synisys restates, realleges and incorporates by reference its answers to Paragraphs 12 through 66 above as if more fully stated herein.

68-73. Synisys denies the allegations contained in Paragraphs 68 through 72. Further, Respondent Synisys denies ever selling or distributing FRM CHLOR 1250 to McFleeg, Inc. Respondent Synisys believes and states this product was sold and distributed by FRM Chem, Inc. and that the registration for this pesticide had not been cancelled and/or FRM Chem, Inc. had not been notified by EPA or Intercon of the cancellation. Further, Invoice Number 35782 is not a Synisys' invoice number.

Section V

Total Proposed Penalty

74. Respondent Synisys disputes the proposed penalty.

Appropriateness of Proposed Penalty

75. Respondent Synisys disputes the method of calculation of penalties, including the size of business, and the gravity of the alleged violation.

76. Respondent Synisys disputes the business revenue calculation used in calculating the proposed penalty.

Respondent Synisys requests a hearing to contest material facts set forth in the Complaint and the appropriateness of the proposed penalty.

Respondent Synisys suggests an informal settlement conference may be of benefit to the parties to this litigation.

Respectfully submitted,

JENKINS & KLING, P.C.

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

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Attorneys for Respondent Synisys, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served by U.S. Mail, postage prepaid, upon:

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

this 20<sup>th</sup> day of November, 2009.