

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
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BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. FIFRA-07-2009-0042
)	
Custom Compounders, Inc.)	ANSWER TO
Advanced Products Technology, Inc.)	FIRST AMENDED COMPLAINT
Keith G. Kastendieck and)	
Karlan C. Kastendieck,)	
)	
Respondents.)	

CORPORATE RESPONDENTS CUSTOM COMPOUNDERS, INC. AND ADVANCED PRODUCTS TECHNOLOGY, INC.'S ANSWER TO FIRST AMENDED COMPLAINT

COMENOW Corporate Respondents Custom Compounders, Inc. ("Custom Compounders") and Advanced Products Technology, Inc. ("APT")(collectively, "Corporate Respondents"), by and through their undersigned counsel, and for their Answer to the First Amended Complaint filed by United States Environmental Protection Agency ("EPA"), state the following:

Section I

Jurisdiction

1. Corporate Respondents admit the allegations contained in Paragraph 1.
2. Corporate Respondents are without sufficient knowledge, information or belief to admit or deny the allegations contained in Paragraph 2 and, therefore, deny same.

Section II

Parties

3. Corporate Respondents admit the allegations contained in Paragraph 3.

4. Custom Compounders admits that it is a company located at 50-60 Hi-Line Drive, Union, Missouri. APT admits that it is a company located at 50-60 Hi-Line Drive, Union, Missouri. Corporate Respondents deny 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. Custom Compounders, APT 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. Custom Compounders and APT deny the balance of Paragraph 12.

Moreover, Corporate Respondents 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.

Corporate Respondents 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 or APT 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 Corporate Respondents' premises (set forth above). The inspector had a preprinted 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. Corporate Respondents admit the allegations contained in Paragraph 13.

14. Corporate Respondents admit that they were "persons" at all times referred to in Paragraph 14. Corporate Respondents do not answer on behalf of Individual Respondents Keith G. Kastendieck and Karlan C. Kastendieck.

15. Corporate Respondents admit the allegations contained in Paragraph 15. Although to be 100% accurate, Corporate Respondents believe dates should be set forth in this Paragraph.

16-19. These allegations are not directed at the Corporate Respondents. Therefore, Corporate Respondents are not required to answer these allegations which are primarily directed at the Individual Respondents. To the extent, Paragraphs 16 - 19 are directed to Corporate Respondents, they deny same.

20. Corporate Respondents admit the allegations contained in Paragraph 20.

21. Corporate Respondents deny the allegations contained in Paragraph 21.

Violations

22. Corporate Respondents deny the allegations contained in Paragraph 22.

Counts 1-5 - Sales/Distributions to Franklin County Humane Society

Count 1

23. As and for their Answer to Paragraph 23 of Count 1 of EPA's First Amended Complaint, Corporate Respondents Custom Compounders and APT restate, reallege and incorporate by reference their answers to Paragraphs 12 through 22 above as if more fully stated herein.

24-30. Custom Compounders and APT deny the allegations contained in Paragraphs 24 - 30. Further, Invoice Number 22129 is not a Custom Compounders' invoice number.

Count 2

31. As and for their Answer to Paragraph 31 of Count 1 of EPA's First Amended Complaint, Corporate Respondents Custom Compounders and APT restate, reallege and incorporate by reference their answers to Paragraphs 12 through 30 above as if more fully stated herein.

32-38. Custom Compounders and APT deny the allegations contained in Paragraphs 32 - 38. Further, Invoice Number 22329 is not a Custom Compounders' invoice number.

Count 3

39. As and for their Answer to Paragraph 39 of Count 3 of EPA's First Amended Complaint, Corporate Respondents Custom Compounders and APT restate, reallege and incorporate by reference their answers to Paragraphs 12 through 38 above as if more fully stated herein.

40-46. Custom Compounders and APT deny the allegations contained in Paragraphs 40 - 46. Further, Invoice Number 22342 is not a Custom Compounders' invoice number.

Count 4

47. As and for their Answer to Paragraph 47 of Count 4 of EPA's First Amended Complaint, Corporate Respondents Custom Compounders and APT restate, reallege and incorporate by reference their answers to Paragraphs 12 through 46 above as if more fully stated herein.

48-54. Custom Compounders and APT deny the allegations contained in Paragraphs 48 - 54. Further, Invoice Number 22361 is not a Custom Compounders' invoice number.

Count 5

55. As and for their Answer to Paragraph 55 of Count 5 of EPA's First Amended Complaint, Corporate Respondents Custom Compounders and APT restate, reallege and incorporate by reference their answers to Paragraphs 12 through 54 above as if more fully stated herein.

56-62. Custom Compounders and APT deny the allegations contained in Paragraphs 56 - 62. Further, Invoice Number 22395 is not a Custom Compounders' invoice number.

Section V

Total Proposed Penalty

63. Custom Compounders and APT dispute the proposed penalty.

Appropriateness of Proposed Penalty

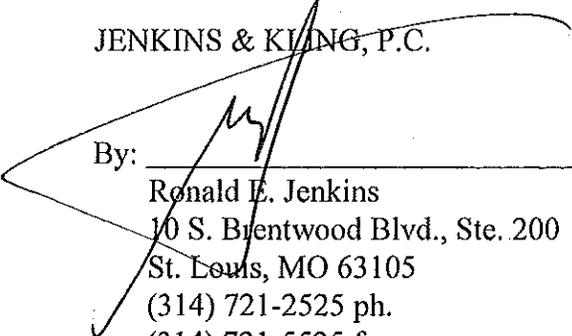
64-66. Corporate Respondents dispute the calculation method used, the size of the business used, and the gravity of the alleged violations. Corporate Respondents deny \$1,000,000.00 in revenues in 2007.

By way of further defenses as to Counts 1 through 5, Corporate Respondents Custom Compounders and APT assert that the penalty is disproportionate to the situation considering the

charged parties' inability to pay and the fact that no significant harm to health or environment occurred as a result of these alleged actions.

Respectfully submitted,

JENKINS & KLING, P.C.

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Attorneys for Respondents Custom Compounders,
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CERTIFICATE OF SERVICE

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

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this 9th day of August, 2010.