

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 MATTERS OF)
)
FRM Chem, Inc.) Docket Nos. FIFRA-07-2008-0035
Advanced Products Technology, Inc.) FIFRA-07-2008-0036
Synisys, Inc.) FIFRA-07-2009-0041
Custom Compounders, Inc.) FIFRA-07-2009-0042
)
)
) COMPLAINANT'S MOTION TO
) CONSOLIDATE MATTERS AND
) TO STAY PREHEARING EXCHANGE
) SUBJECT TO RULING ON CONSOLIDATION
Respondent)

COMPLAINANT'S MOTION TO CONSOLIDATE MATTERS AND

FOR THE ISSUANCE OF A NEW PREHEARING ORDER WITH REVISED DATES

Pursuant to Rule 22.14(c) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Complainant, the United States Environmental Protection Agency, Region 7 (EPA) seeks leave of the Court to consolidate the four above-captioned matters pursuant to 40 C.F.R. § 22.12, and to stay the filing of Complainant's prehearing exchange due December 7, 2009 in the matter of FRM Chem, Inc., Docket No. FIFRA-07-2008-0035, until the court has ruled on this motion to consolidate the four matters. In support of this Motion, Complainant avers the following:

Background

- I. The Complaints in the above-captioned matters of FRM Chem, Inc. (FRM) and Advanced Products Technology, Inc. (APT) (with the respective Docket Numbers of FIFRA-07-2008-0035 and FIFRA-07-2008-0036) were filed June 26, 2009. The matters of FRM and APT were consolidated and the FRM Complaint amended in accordance with the October 28, 2009 Order granting in part Complainant's Motion for Leave to Amend the Complaint and to Consolidate Matters filed on October 2, 2009. The motion to consolidate was denied with regard to the matters of Synisys, Inc. (Synisys) and Custom Compounders, Inc. (CCI), which had been filed by Complainant with the EPA Region 7 Regional Hearing Clerk on September 23, 2009, because the matters had not yet been referred to the Office of Administrative Law Judges by the Regional Hearing Clerk.
- II. The FRM Amended Complaint contains fifty-eight counts, alleging multiple violations by Respondent, FRM, of Sections 12(a)(1)(A) and 12(A)(1)(E) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136j(a)(1)(A) and (E). Fifty-six of the fifty-eight counts allege that Respondent sold or distributed or held for sale or distribution one of two pesticides whose registration had been cancelled or which was misbranded. The pesticides alleged to have been sold or distributed were the products FRM CHLOR 1250 and STERI-DINE DISINFECTANT, both produced by FRM and the registrations for each which had been cancelled in 1995. Two counts allege that Respondent violated Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(1)(I), by selling or distributing a pesticide in violation of an order issued under Section 13 of FIFRA, 7 U.S.C. § 136k. The proposed penalty in the amended Complaint is \$377,000.

- III. The APT Complaint contains four counts, alleging that APT violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the four counts alleges that Respondent, APT, sold or distributed the cancelled product STERI-DINE DISINFECTANT, which was produced by Respondent FRM. The proposed penalty in the Complaint against APT is \$26,000.
- IV. A Complaint in the matter of Synisys, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0041, was filed September 23, 2009. This Complaint contains seven counts, alleging that the Respondent, Synisys, violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the seven counts alleges that Synisys sold or distributed the cancelled product FRM CHLOR 1250, EPA Reg. No. 48211-20001-10366. The proposed penalty in the Complaint against Synisys is \$45,500.
- V. A Complaint in the matter of Custom Compounders, Inc., Union, Missouri, Docket No. FIFRA-07-2009-0042, was filed September 23, 2009. This Complaint contains five counts, alleging that the Respondent, CCI, violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Each of the five counts alleges that CCI sold or distributed the cancelled product FRM CHLOR 1250. The proposed penalty in the Complaint against CCI is \$32,500.
- VI. Complainant's Prehearing Exchange in the matter of APT was filed with the Region 7 Regional Hearing Clerk on October 28, 2009.
- VII. Service of the Complaints in the matters of Synisys and CCI were effected on October 29, 2009 by in-person service on Keith Kastendieck, the manager and part owner of FRM, APT, Synisys, and CCI.

- VIII. Answers in the matters of Synisys and CCI were filed on or about November 20, 2009, and on November 24, 2009, the Region 7 Regional Hearing Clerk referred both matters to the Office of Administrative Law Judges for the assignment of an Administrative Law Judge in each of the two matters.
- IX. On or about November 23, 2009, counsel for Respondents FRM and APT filed a Motion for Leave to File Answers to Amended Complaints in those matters and for the Issuance of a New Prehearing Order with Revised Dates.

Allegations Relevant to Proposed Consolidation of Matters

- X. At least eight corporations, including FRM, APT, Synisys, and CCI, in addition to Industrial Specialties, Inc., Pool Solutions Midwest, Inc., V.L. Clark Chemical, Inc., and Chemicals, Pharmaceuticals & Intermediates, Inc. all list a facility located at 50 and/or 60 Highline Drive in Union, Missouri as their principal place of business.
- XI. Respondent FRM is a Missouri company incorporated on October 28, 1968 and administratively dissolved by the Missouri Secretary of State on July 1, 2008, for failure to file an annual report.
- XII. Corporate officers for FRM listed on the annual registration report filed January 30, 2007 with the Missouri Secretary of State, were: President, Raymond E. Kastendieck; Vice-President, Keith G. Kastendieck; Secretary, Ann P. Kastendieck; and Treasurer, Ann P. Kastendieck. Ann P. Kastendieck is the sole listed member of the Board of Directors on the annual registration report filed January 30, 2007. Karlan Kastendieck served as the sales manager of FRM, and Keith Kastendieck served as the plant manager of FRM.

- XIII. APT and Synisys are both Missouri companies incorporated by Ann Kastendieck on December 29, 2003. Corporate officers for both corporations are: President, Raymond E. Kastendieck, and Secretary, Ann P. Kastendieck. Ann P. Kastendieck is the sole listed member of the Board of Directors on the most recent annual registration report for each company, each of which was filed with the Missouri Secretary of State on April 29, 2009.
- XIV. Custom Compounders, Inc., is a Georgia company incorporated November 5, 1986. Corporate officers for CCI are: Chief Executive Officer, Raymond Kastendieck; Chief Financial Officer, Karlan Kastendieck; and Secretary, A. P. Kastendieck.
- XV. Keith G. Kastendieck is the manager and part owner of FRM, APT, Synisys, and CCI.
- XVI. Karlan Kastendieck is the sales manager for Respondents FRM and APT.
- XVII. The Complaints filed in each of the four (4) above-captioned matters each allege violations of FIFRA 12(a)(1)(A) for sales and distribution or holding for sale or distribution of one or both of the unregistered pesticides STERI-DINE DISINFECTANT and FRM Chlor 1250.
- XVIII. In the Motion for Leave to File Answers to Amended Complaints in those matters and for the Issuance of a New Prehearing Order with Revised Dates filed on behalf of Respondents FRM and APT on or about November 23, 2009, counsel for Respondents FRM and APT indicates that he also represents Synisys and CCI, and indicates that he will agree on behalf of his clients to consolidate all four (4) matters to save judicial time and resources.
- XIX. Based on the foregoing factual allegations, Complainant seeks to consolidate the matters of Synisys, Inc., Docket No. FIFRA-07-2009-0041 and Custom Compounders, Inc.,

Docket No. FIFRA-07-2009-0042, with the previously-consolidated matters of FRM Chem, Inc., Docket No. FIFRA-07-2008-0035, Advanced Products Technology, Inc., Docket No. FIFRA-07-2008-0036.

Controlling Legal Authority Relevant to Proposed Consolidation of Matters

- XX. Pursuant to 40 C.F.R. § 22.12, the Presiding Officer may consolidate any or all matters at issue in two or more proceedings subject to the Consolidated Rules where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.
- XXI. The four (4) above-captioned matters share common questions of fact and law. The four named corporate Respondents share common officers, directors, and supervisors, engage in substantially the same business operations, share the same principal place of business, and are charged with similar violations of selling one or both of the two FRM-produced unregistered pesticides, FRM CHLOR 1250 and STERI-DINE DISINFECTANT to several common customers.
- XXII. Furthermore, consolidation would not adversely affect the rights of the parties engaged in otherwise separate proceedings. As noted above, counsel for the four named Respondents has indicated, in the Motion for Leave to File Answers to Amended Complaints and for the Issuance of a New Prehearing Order with Revised Dates filed on behalf of Respondents FRM and APT on or about November 23, 2009, that he will agree on behalf of his clients to consolidate all four (4) matters.

XXIII. Accordingly, Complainant avers that consolidation of the four matters is in the public interest, will promote the efficient and expeditious disposition of this matter, and is unopposed by the Respondents in the four matters.

Motion for Issuance of New Prehearing Order with Revised Dates

XXIV. Complainant moves that the December 7, 2009 date for submission of Complainant's initial prehearing exchange in the matter of FRM Chem, Inc., FIFRA-07-2008-0035, be stayed pending the Court's ruling on the motion to consolidate the four above-captioned matters. In addition, should the motion for consolidation of all four matters be granted, Complainant supports the motion filed by counsel for Respondents for the issuance of a new prehearing order containing revised dates for the submission of the various prehearing exchanges in the several matters. A single prehearing order addressing the four consolidated matters will enable the Court to ensure coordination of the various parties' submissions of documents and will reduce the burden both on the Court and on counsel for the parties from adhering to a staggered submission schedule.

XXV. Furthermore, as regards the Motion for Leave to File Answers to Amended Complaints filed by counsel for FRM and APT, Complainant does not oppose the Respondent's motion to file an answer to the Amended Complaint in FRM, but notes that only the FRM Complaint has been amended, in accordance with the Court's October 28, 2009 Order. Complainant has not sought to amend the Complaint filed in the matter of APT on June 26, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CR Dudding", written over a horizontal line.

Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
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Kansas City, Kansas 66101
(913) 551-7524

CERTIFICATE OF SERVICE

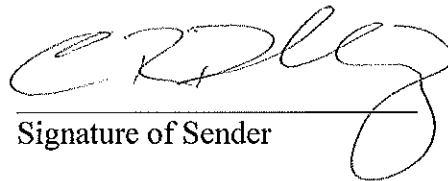
I hereby certify that on this 30th day of November, 2009, I hand-delivered the original and one true copy of this Motion to the Regional Hearing Clerk, and sent one true and correct copy:

via Certified Mail, return receipt requested, to:

Ronald E. Jenkins
Sarah J. Swoboda
10 S. Brentwood Blvd., Ste. 200
St. Louis, MO 63105

via Federal Express, to:

Judge Barbara Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street
Suite 350
Washington, D.C. 20005



Signature of Sender