



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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)

ORDER GRANTING MOTION TO CONSOLIDATE MATTERS AND FOR THE ISSUANCE
OF A NEW PREHEARING ORDER WITH REVISED DATES AND ORDER GRANTING
MOTION TO FILE ANSWERS

On November 23, 2009, Respondents filed a Motion for Leave to File Answers to Amended Complaints and For the Issuance of a New Prehearing Order with Revised Dates. Complainant filed its Motion to Amend the Complaint in FRM Chem, Inc., on October 2, 2009. The undersigned granted that motion in an Order dated October 28, 2009. Respondents' counsel was engaged by Respondents on November 16, 2009, and filed an Entry of Appearance on November 23, 2009. During a teleconference held between the parties on December 1, 2009, Complainant waived any objection to the Motion to File Answers. For good cause shown, Respondents' Motion to File Answers is **GRANTED**. Respondents may file an Answer to the FRM Amended Complaint and the Advanced Products Technology, Inc., Complaint. Respondents have until **December 17, 2009**, to file the Answers.

On November 30, 2009, Complainant filed a Motion to Consolidate Matters and for the Issuance of a New Prehearing Order with Revised Dates. Complainant seeks to consolidate four cases against Respondents: In the Matter of FRM Chem, Inc., FIFRA-07-2008-0035, ("FRM"), In the Matter of Advanced Products Technology, Inc., ("Advanced Products"), FIFRA-07-2008-0036, In the Matter of Synisys, Inc., ("Synisys"), FIFRA-07-2009-0041 and

In the Matter of Custom Compounders, Inc., ("Custom Compounders") FIFRA-07-2009-0042. FRM and APT had been previously consolidated in an Order dated October 28, 2009. Now that Synisys and Custom Compounders have been referred to the Office of Administrative Law Judges, Complainant seeks to consolidate all four cases. Respondents do not object to the Motion to Consolidate. For good cause shown, the Motion to Consolidate is **GRANTED**.

The following requirements of this Order concerning prehearing exchange information are authorized by Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a). As such, it is directed that the following prehearing exchange takes place:

1. Each party shall submit:
 - (a) the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of each witness' expected testimony, or a statement that no witnesses will be called; and
 - (b) copies of all documents and exhibits which each party intends to introduce into evidence at the hearing. The exhibits should include a curriculum vitae or resume for each proposed expert witness. If photographs are submitted, the photographs must be actual unretouched photographs. The documents and exhibits shall be identified as "Complainant's" or "Respondents'" exhibit, as appropriate, and numbered with Arabic numerals (e.g., "Complainant's Exhibit 1"); and
 - (c) a statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case. In the Complaints, Complainant alleges that Respondents are Missouri and Georgia corporations located in Union and Washington, Missouri. In accordance with the Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under the Federal Insecticide, Fungicide, and Rodenticide Act, 40 C.F.R. § 22.35(b), the hearing shall be held in the county, parish, or incorporated city of the residence of the Respondent, unless otherwise agreed in writing by all parties. Thus, Respondents should state whether they wish the hearing to be held in Union

or Washington, Missouri, and/or otherwise the parties should designate the city as the place of hearing of this matter.

See Sections 22.19(a), (b), (d) of the Rules of Practice, 40 C.F.R. §§ 22.19(a), (b), (d); see also Section 22.21(d) of the Rules of Practice, 40 C.F.R. § 22.21(d).

2. Complainant shall submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty.
3. Respondents shall submit a statement explaining why the proposed penalty should be reduced or eliminated. If the Respondents intend to take the position that they are unable to pay the proposed penalty or that payment will have an adverse effect on their ability to continue to do business, Respondents shall furnish supporting documentation such as certified copies of financial statements or tax returns.
4. Complainant shall submit a statement regarding whether the Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. §§ 3501 *et seq.*, applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein and whether the provisions of Section 3512 of the PRA are applicable in this case.

See Section 22.19(a)(3) of the Rules of Practice, 40 C.F.R. § 22.19(a)(3).

Now that all four cases have been consolidated, a prehearing order with revised filing dates is appropriate. The prehearing exchanges delineated above shall be filed *in seriatim* manner, according to the following schedule:

January 15, 2010 - Complainant's Initial Prehearing Exchange^{1/}

^{1/} As Complainant has already submitted its Prehearing Exchange in APT, Complainant may supplement its exchange on or by January (continued...)

February 16, 2010 - Respondents' Prehearing Exchange,
including any direct and/or rebuttal
evidence

March 1, 2010 - Complainant's Rebuttal Prehearing
Exchange(if necessary)

If the parties cannot settle with a Consent Agreement and Final Order, a hearing will be held in accordance with Section 556 of the APA, 5 U.S.C. § 556. Section 556(d) of the APA provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Thus, Respondents have the right to defend themselves against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witnesses. Respondents are entitled to elect any or all three means to pursue their defense. If Respondents elect only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, Respondents shall serve a statement to that effect on or before the date for filing their prehearing exchange. Each party is hereby reminded that failure to comply with the prehearing exchange requirements set forth herein, including a Respondent's statement of election only to conduct cross-examination of the Complainant's witnesses, can result in the entry of a default judgment against the defaulting party. See Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

The original and one copy of all pleadings, statements and documents (with any attachments) required or permitted to be filed in this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that E-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

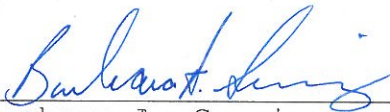
The prehearing exchange information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, shall be addressed as follows:

^{1/} (...continued)
15, 2010.

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-2001
Telephone: 202-564-6281

Hand-delivered packages transported by Federal Express or another delivery service which x-rays their packages as part of their routine security procedures, may be delivered directly to the Offices of the Administrative Law Judges at 1099 14th Street, NW, Suite 350, Washington, DC 20005.

Telephone contact may be made with my legal staff assistant, Mary Angeles at (202) 564-6281. The facsimile number is (202) 565-0044.



Barbara A. Gunning
Administrative Law Judge

Dated: December 2, 2009
Washington, DC

**In the Consolidated Matters of *FRM Chem, Inc.; Advanced Products Technology, Inc.; Synisys, Inc.; and Custom Compounders, Inc.*, Respondents.
Docket Nos. FIFRA-07-2008-0035; FIFRA-07-2008-0036; FIFRA-07-2009-0041 & FIFRA-07-2009-0042**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Granting Motion to Consolidate Matters and for the Issuance of a New Prehearing Order with Revised Dates and Order Granting Motion to File Answers**, dated December 2, 2009, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Hand Delivery to:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA, Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-2001

Copy by Pouch Mail to:

Chris R. Dudding, Esq.
Assistant Regional Counsel
U.S. EPA / Region VII
901 North 5th Street
Kansas City, KS 66101

Copy by Regular Mail to:

Ronald E. Jenkins, Esq.
Sarah J. Swoboda, Esq.
Jenkins & Kling, P.C.
10 S. Brentwood Blvd., Ste. 200
St. Louis, MO 63105

**Dated: December 2, 2009
Washington, D.C.**