



UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 BEFORE THE ADMINISTRATOR

NOV -3 AM 10:52
 ENVIRONMENTAL PROTECTION
 AGENCY-REGION VII
 REGIONAL HEARING CLERK

IN THE MATTER OF)
)
 FRM CHEM, INC.,) DOCKET NO. FIFRA-07-2008-0035
)
)
)
)
 RESPONDENT)

ORDER GRANTING COMPLAINANT'S MOTION TO AMEND THE COMPLAINT

ORDER GRANTING COMPLAINANT'S MOTION TO
 CONSOLIDATE MATTERS IN PART AND DENYING IN PART

On October 2, 2009, Complainant filed a Motion for Leave to Amend the Complaint and to Consolidate Matters. Respondent has not filed a response.^{1/}

Complainant seeks leave to amend the Complaint in the above-cited matter in order to add two counts alleging that Respondent FRM Chem, Inc. ("Respondent FRM" or "FRM") committed further violations of FIFRA. Complainant also seeks leave to amend the "Statutory & Regulatory Background" and "Factual Allegations" sections of the Complaint to incorporate law and factual allegations relevant to the proposed additional counts. Finally, Complainant seeks leave to amend its reference in the Complaint to Respondent FRM's address. Respondent has not filed a response to the Motion. See 40 C.F.R. 22.16(b). For good cause shown, Complainant's unopposed Motion for Leave to Amend the Complaint is GRANTED.

^{1/} Any party who fails to timely respond to a written motion waives any objection to the granting of the motion. 40 C.F.R. § 22.16(b).

Additionally, Complainant seeks to consolidate the above-cited matter (In the Matter of FRM Chem, Inc., Docket No. FIFRA-07-2008-0035) with three other cases: 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.

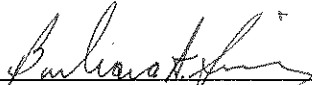
Section 22.12(a) of the Rules of Practice, 40 C.F.R. § 22.12(a), governs consolidation of matters at issue in two or more proceedings. Specifically, Section 22.12(a) of the Rules of Practice provides as follows:

The Presiding Officer or the Environmental Appeals Board may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice 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.

40 C.F.R. § 22.12(a).

In support of its motion, Complainant states that FRM, Advanced Products, Synisys, and Custom Compounders are all run by the same corporate officers, directors, and supervisors. All four Respondents share the same business address. Complainant further claims that the cases are related to the sale of one or both of the FRM-produced unregistered pesticides, to several common costumers, and therefore, the matters will involve many of the same witnesses and documents. Accordingly, Complainant argues that the cases should be consolidated in order to expedite and simplify consideration of the issues. Respondent has not filed a response objecting to the Motion to Consolidate. See 40 C.F.R. 22.16(b). For good cause shown, the FRM and Advanced Products matters are consolidated and the Motion to Consolidate is **GRANTED** in part.

No cases have been received by the Office of Administrative Law Judges in the Matter of Synisys, Inc., FIFRA-07-2009-0041 or in the Matter of Custom Compounders, Inc., FIFRA-07-2009-0042. Therefore, the Synisys and Custom Compounders matters cannot be consolidated with FRM and Advanced Products at this time. Accordingly, Complainant's Motion to Consolidate is **DENIED in part.**



Barbara A. Gunning
Administrative Law Judge

Dated: October 28, 2009
Washington, DC

**In the Matter of *FRM Chem, Inc.*, Respondent.
Docket No. FIFRA-07-2008-0035**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Granting Complainant's Motion to Amend the Complaint, Order Granting Complainant's Motion to Consolidate Matters in Part and Denying in Part**, dated October 28, 2009, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Kathy Robinson
Regional Hearing Clerk
ORC, U.S. EPA, Region VII
901 North 5th Street
Kansas City, KS 66101
Fx: 913.551.7925

Copy by Facsimile and Pouch Mail to:

Chris R. Dudding, Esq.
Assistant Regional Counsel
U.S. EPA / Region VII
901 North 5th Street
Kansas City, KS 66101
Fx: 913.551.7925

Copy by Facsimile / Regular Mail / and Certified Return Receipt to:

Raymond E. Kastendieck
Registered Agent for FRM Chem, Inc.
P.O. Box 1656
Washington, MO 63090
[Certified Return Receipt #7005 0390 0002 5028 8382]

Fx: 636.583.5218

Raymond E. Kastendieck
Registered Agent for FRM Chem, Inc.
3007 Brighton Lane
Washington, MO 63090
[Certified Return Receipt #7006 0100 0006 3594 2395]

**Dated: October 29, 2009
Washington, D.C.**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ADMINISTRATIVE LAW JUDGES
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WASHINGTON, DC 20460-2001
TELEPHONE 202-564-6255
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FAX TRANSMITTAL PAGE

Date: Thurs., 10/29/09

From the office of: Administrative Law Judge Barbara Gunning

To: Kathy Robinson, Reg. Hearing Clerk Fax: 913.551.7925
Of: U.S. EPA / Region VII

To: Chris R. Dudding, Esq. Fax: 913.551.7925
Of: Asst. Reg. Counsel, ORC, US EPA, Reg. VII

To: Raymond E. Kastendieck Fax: 636.583.5218
Of: Registered Agent for FRM Chem, Inc.

In Re: *FRM Chem, Inc.*
Docket No. FIFRA-07-2008-0035

Urgent For Review For Your Information /Files

No. of Pages (incl. cover): 5

Hard Copy To Be Mailed: Yes, by See Cert. of Serv. No

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 Raymond Kastendieck
 3007 Brighton Lane
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 3007 Brighton Lane
 Washington, MO 63090

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A. Signature X Agent

B. Received by (Printed Name) Addressee

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 Washington, MO 63090

2. Article Number
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2AOPR-03-P-4081