

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

10 MAR 11 PM 1:53  
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  
)  
)  
Respondents )

MOTION FOR EXTENSION OF TIME TO FILE  
REBUTTAL PREHEARING EXCHANGE

The Administrator's Delegated Complainant (Complainant), by undersigned Counsel, hereby moves for an extension of time in which to file its rebuttal Prehearing Exchange, in response to Respondents' Prehearing Exchange.

By Order dated December 2, 2009 the Presiding Officer set a prehearing exchange schedule, with Complainant's Initial Prehearing Exchange due January 15, 2010, Respondents' rehearing Exchange due February 16, 2010, and Complainant's Rebuttal Prehearing Exchange due March 1, 2010. On February 12, 2010, Respondents' Counsel requested a 10-day extension of time in which to file its Prehearing Exchange, pushing the date

to February 26, 2010, and, also requesting that the date for Complainant's Rebuttal Prehearing Exchange be extended by 10 days, to March 11, 2010<sup>1</sup>. The Presiding Officer orally granted the motion.

In Respondents' Prehearing Exchange, filed February 26, 2010, and received by Complainant on March 1, 2010, Respondents formally raise for the first time a claim of inability to pay the penalty.<sup>2</sup> So that issues of ability to pay may be adequately addressed in its rebuttal Prehearing Exchange, Complainant requests an extension of time in which to file its Rebuttal Prehearing Exchange until March 15, 2010.

Complainant's counsel has attempted to contact Respondents' counsel to ascertain his position with respect to this extension request. Thus far, no contact has been made. However, in light of the complex issues raised by the claims of Respondents' inability to pay the penalty, Complainant respectfully avers that an extension of time from Thursday, March 11, 2010 until Monday, March 15, 2010, is a reasonable extension in which to address the issues raised. Moreover, since a hearing date has not yet been set in this matter, this brief delay in filing does not constitute an undue burden on Respondents.

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<sup>1</sup> Respondents requested "a ten (10) day extension in its deadline from February 16, 2010 to February 26, 2010," and in turn requested the Court to "continue Complainant's rebuttal for ten (10) days as well," which would extend the date from March 1 to March 11. However, it appears that Respondents' inadvertently misstated the date in the concluding line of its motion as "March 10, 2010," when a ten day extension would rightly be "March 11, 2010." Complainant has been working on its Rebuttal Prehearing Exchange with the expectation that it had the full ten days in which to file the document, until March 11, 2010.

<sup>2</sup> In Respondents' Answers to the filed Complaints, they each took issue with the appropriateness of the assessed penalty, but raised no claims of inability to pay. For a discussion of the distinction between the appropriateness of a penalty and whether or not a respondent has the ability to pay a penalty, see In re New Waterbury, Ltd., TSCA Appeal No. 93-2, 5 EAB 529, 539-540. On February 8, 2010, a week prior to the February 16, 2010 date Respondents' Prehearing Exchange was originally due, Respondents submitted to Complainant via counsel an "Financial Data Request Form" for each Respondent, included with this memorandum as Attachments J-M. On February 5, 2008, Respondents had submitted to Complainant unofficial tax returns for 2005-2009 for each Respondent,

WHEREFORE, Complainant respectfully requests an extension of time in which to file its Rebuttal Prehearing Exchange until March 15, 2010.

Respectfully submitted,



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U.S. Environmental Protection Agency  
Region 7  
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(913) 551-7524

CERTIFICATE OF SERVICE

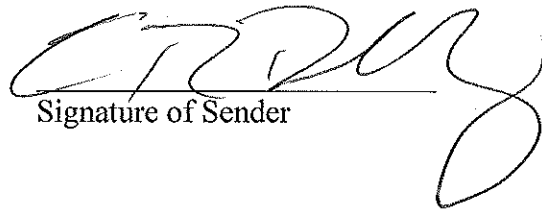
I hereby certify that on this 11 day of March, 2010, I hand-delivered the original and one true copy of this Motion to the Regional Hearing Clerk, and sent one true and correct copy:

via first class mail and email:

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

via first class mail and facsimile, to:

Judge Barbara Gunning  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900L  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460-0001

  
Signature of Sender