

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

OCT 15 PM 3:01

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTERS OF)	
)	
FRM Chem, Inc., <i>et al.</i>)	Docket Nos. FIFRA-07-2008-0035
Advanced Products Technology, Inc., <i>et al.</i>)	FIFRA-07-2008-0036
Synisys, Inc., <i>et al.</i>)	FIFRA-07-2009-0041
Custom Compounders, Inc., <i>et al.</i>)	FIFRA-07-2009-0042
)	
Respondents)	

CONSOLIDATED CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

This proceeding for the assessment of a civil penalty was initiated on June 6, 2009, pursuant to Section 14 of the of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 et seq, when Complainant issued Complaints and Notices of Opportunity For Hearing (“Complaints”) to FRM Chem, Inc., and Advanced Products Technology, Inc. Complainant subsequently issued Complaints on September 23, 2009, to Synisys, Inc. and Custom Compounders, Inc, also pursuant to Section 14 of the of FIFRA, 7 U.S.C. § 136 et seq. The four matters were consolidated by order of the Court dated December 2, 2009, and Amended Complaints adding additional respondents and/or additional counts were filed in the matter of FRM Chem, Inc. on November 17, 2009, and subsequently in each of the four above-captioned matters on June 3, 2009. The Complaints in each matter charged Respondents with violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling, on multiple occasions, a pesticide that is not registered under section 3 of FIFRA or whose registration has been cancelled. In addition, Respondents in the matter of FIFRA-07-2008-0035 were charged with violating Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), by violating a Stop

Sale, Use, or Removal Order issued under section 13 of FIFRA. The Complaints proposed a combined total civil penalty of Five Hundred Eighteen Thousand Five Hundred Dollars (\$518,500.00) against Respondents for these violations.

The parties subsequently entered negotiations in an attempt to settle the allegations contained in the Complaints; this Consent Agreement and Final Order (CA/FO) is the result of such negotiations.

CONSENT AGREEMENT

1. Respondents admit the jurisdictional allegations of the Complaints.
2. Respondents admit the factual allegations contained in the Complaints, except that Respondent Karlan C. Kastendieck neither admits nor denies any allegation in the Complaints pertaining to his employment by FRM Chem, Inc., Advanced Products Technology, Inc., Synisys, Inc., or Custom Compounders, Inc. on or after August 1, 2008.
3. Respondents consent to the assessment of the stated civil penalty in the Final Order and to the conditions specified in this Consent Agreement.
4. Respondents waive any right to contest the allegations and their right to appeal the proposed Final Order accompanying this Consent Agreement.
5. Respondents agree not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Final Order.
6. Respondents and EPA each agree to bear their own costs and attorney's fees.

7. Nothing contained in the Final Order shall alter or otherwise affect Respondents' obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. The undersigned representatives of Respondents certify that they are fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondents to it.

9. Each Respondent, by and through its undersigned representative, certifies that by signing this CAFO that it is currently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder. In addition, Respondents certify that payment of \$22,712.85 has been submitted to the EPA in satisfaction of the unpaid penalty amount in the matter of FRM Chem, Inc., a.k.a Industrial Specialties, Docket No. FIFRA-07-2004-0041, as upheld by the EPA Environmental Appeals Board in its June 13, 2006, decision, published at 12 E.A.D. 739. Respondents further certify that they have submitted advance payment in full to EPA of the \$51,850.00 civil penalty referenced in the Final Order. Payment of both penalty amounts has been submitted in accordance with the payment instructions referenced in Paragraph 1 of the Final Order.

10. Respondents consent to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

11. The effect of settlement described in Paragraph 12 below is conditioned upon the

accuracy of the Respondents' representations to EPA, as memorialized in Paragraph 9 above.

12. The settlement pursuant to this Consent Agreement shall resolve Respondents' liability for Federal civil penalties for the violations and facts alleged in the Complaints.

13. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136 et seq., (1976 and Supp. III 1979), and upon information contained in this Consent Agreement of the parties herein, IT IS HEREBY ORDERED THAT:

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

1. Respondents shall pay a mitigated civil penalty, in the amount of Fifty-One Thousand, Eight Hundred and Fifty Dollars (\$51,850.00). Payment will be due on or before thirty days following the execution of this CA/FO. Payment by Respondents shall identify the Respondents by name and docket number and shall be made by certified or cashier's check payable to the United States Treasury and remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or, if by express courier, to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, Missouri 63101

or, if by online payment in lieu of a certified or cashier's check, via:

www.pay.gov

2. A copy of the check or proof of online payment shall be forwarded to:

Chris Dudding
Attorney
Office of Regional Counsel
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

In the Matters of FRM Chem, Inc., *et al.*, Advanced Products Technology, Inc., *et al.*,
Synisys, Inc., *et al.*, and Custom Compounds, Inc., *et al.*
Docket Nos. FIFRA-07-2008-0035, FIFRA-07-2008-0036,
FIFRA-07-2009-0041, and FIFRA-07-2009-0042

3. The effective date of this Order shall be the date on which it is signed by the Regional
Judicial Officer.

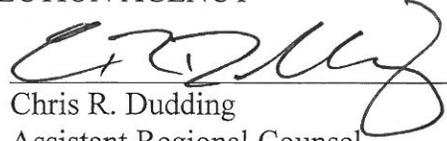
4. This executed CA/FO shall be filed with the Regional Hearing Clerk, U.S.
Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas, 66101.

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

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By:



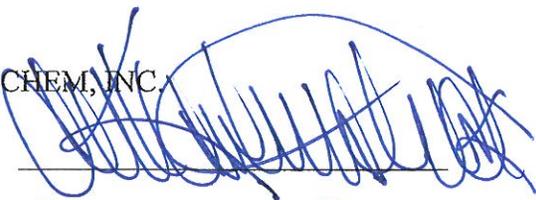
Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

Date:

10/15/10

RESPONDENT:

FRM CHEM, INC.

By: 

Title:

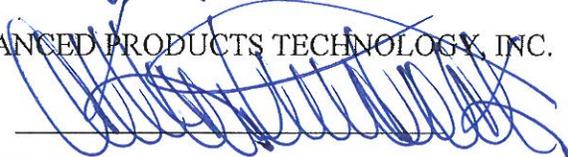
TREASURER

Date:

9/20/10

RESPONDENT:

ADVANCED PRODUCTS TECHNOLOGY, INC.

By: 

Title:

TREASURER

Date:

9/20/10

RESPONDENT:

SYNISYS, INC.

By: 

Title:

TREASURER

Date:

9/20/10

RESPONDENT:

CUSTOM COMPOUNDERS, INC.

By: 

Title:

TREASURER

Date:

9/20/10

In the Matters of FRM Chem, Inc., *et al.*, Advanced Products Technology, Inc., *et al.*,
Synisis, Inc., *et al.*, and Custom Compounders, Inc., *et al.*
Docket Nos. FIFRA-07-2008-0035, FIFRA-07-2008-0036,
FIFRA-07-2009-0041, and FIFRA-07-2009-0042

RESPONDENT:

KEITH G. KASTENDIECK

By: 

Date: 9-20-2010

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

RESPONDENT:

KARLAN C. KASTENDIECK

By:



Date:

9-17-10

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

IT IS SO ORDERED. This Order shall become effective immediately.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date: October 15, 2010

IN THE MATTER OF FRM Chem, Inc., et al.; Advanced Products Technology, Inc., et al.;
Synisys, Inc., et al.; and Custom Compounders, Inc., et al., Respondents
Docket Nos. FIFRA-07-2008-0035; FIFRA-07-2008-0036; FIFRA-2009-0041 and
FIFRA-07-2009-0042

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consolidated Consent Agreement
and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Chris Dudding
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Ronald E. Jenkins
Jenkins & Kling, Pc
150 N Meramec Avenue, Suite 400
St Louis, Missouri 63105

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Barbara A. Gunning
Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

Dated: 10/15/10


Kathy Robinson
Hearing Clerk, Region 7