

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	Docket No. FIFRA-07-2009-0042
	)	
Custom Compounders, Inc.	)	ANSWER
Union, Missouri,	)	
	)	
Respondent	)	

**ANSWER**

COMES NOW Respondent Custom Compounders, Inc. (“Custom Compounders”), by and through its undersigned counsel, and for its Answer to the Complaint filed by United States Environmental Protection Agency (“EPA”), states the following:

Section I

Jurisdiction

1. Custom Compounders admits the allegations contained in Paragraph 1.
2. Custom Compounders is without sufficient knowledge, information or belief to admit or deny the allegations contained in Paragraph 2 and, therefore, denies same.

Section II

Parties

3. Custom Compounders admits the allegations contained in Paragraph 3.
4. Custom Compounders admits that Custom Compounders is a company located at 50 and 60 Highline Drive, Union, Missouri, but denies the remaining allegations contained in Paragraph 4.

### Section III

#### Statutory & Regulatory Background

5-11. Title 7, U.S.C. §§ 136 quoted in Paragraphs 5 through 11 speak for themselves.

### Section IV

#### Factual Allegations

12. EPA registered CHLOR 1250 to FRM Chem, Inc. using EPA Registration Number 00366-20001. This registration was transferred in February, 1990 by EPA from FRM Chem, Inc. to Intercon Chemical Company and a new Registration Number was issued (48211-20001).

FRM Chem, Inc. retained supplemental distribution rights using EPA Registration No. 48211-2001-10366. Respondent Custom Compounders and FRM Chem, Inc. were never notified of any cancellation of 48211-20001 or 48211-20001-10366 by EPA or Intercon Chemical Company at any time prior to October, 2008. Respondent Custom Compounders denies the balance of Paragraph 12.

Moreover, Respondent and FRM Chem, Inc. filed EPA Pesticide Report Forms 3540-16 under the name of FRM CHEM, INC. with the EPA for the years 1995 through and including 2007. These forms were received from the EPA pre-stamped with FRM Chem's Registration Number and FRM Chem and EPA Registration Number 48211-20001-10366.

Respondent and FRM Chem, Inc. reported each and every year to EPA the amount of FRM CHLOR 1250 produced and sold during this entire period.

Additionally, during this period of time (1995 - 2007), EPA never notified FRM Chem, Inc. or Custom Compounders that the registration was cancelled even though EPA knew FRM Chem was producing and selling the product.

Further, in 2005, EPA, by and through its authorized representative, conducted an inspection of FRM Chem and Respondent's premises (set forth above). The inspector had a preprinted EPA form listing the fact that FRM CHLOR 1250 was on the EPA preprinted list and the representative verified the amount sold and shipped. At no time during this inspection in 2005, or afterward, did the EPA or the Missouri Department of Agriculture (acting in its behalf) notify Respondent or FRM Chem that the registration had been canceled.

13. Custom Compounders admits the allegations contained in Paragraph 13.
14. Custom Compounders admits the allegations contained in Paragraph 14.
15. Custom Compounders admits the allegations contained in Paragraph 15.
16. Custom Compounders admits the allegations contained in Paragraph 16.

Violations

17. Custom Compounders denies the allegations contained in Paragraph 17.

Counts 1-5 - Sales/Distributions to Franklin County Humane Society

Count 1

18. As and for its Answer to Paragraph 18 of Count 1 of EPA's Complaint, Respondent Custom Compounders restates, realleges and incorporates by reference its answers to Paragraphs 12 through 17 above as if more fully stated herein.

19-25. Custom Compounders denies the allegations contained in Paragraphs 19 through 25. Further, Invoice Number 22129 is not a Custom Compounders' invoice number.

Count 2

26. As and for its Answer to Paragraph 26 of Count 2 of EPA's Complaint, Respondent Custom Compounders restates, realleges and incorporates by reference its answers to Paragraphs 12 through 25 above as if more fully stated herein.

27-33. Custom Compounders denies the allegations contained in Paragraphs 27 through 33. Further, Invoice Number 22329 is not a Custom Compounders' invoice number.

Count 3

34. As and for its Answer to Paragraph 34 of Count 3 of EPA's Complaint, Respondent Custom Compounders restates, realleges and incorporates by reference its answers to Paragraphs 12 through 33 above as if more fully stated herein.

35-41. Custom Compounders denies the allegations contained in Paragraphs 35 through 41. Further, Invoice Number 22342 is not a Custom Compounders' invoice number.

Count 4

42. As and for its Answer to Paragraph 42 of Count 4 of EPA's Complaint, Respondent Custom Compounders restates, realleges and incorporates by reference its answers to Paragraphs 12 through 41 above as if more fully stated herein.

43-49. Custom Compounders denies the allegations contained in Paragraphs 43 through 49. Further, Invoice Number 22361 is not a Custom Compounders' invoice number.

Count 5

50. As and for its Answer to Paragraph 50 of Count 5 of EPA's Complaint, Respondent Custom Compounders restates, realleges and incorporates by reference its answers to Paragraphs 12 through 49 above as if more fully stated herein.

51-57. Custom Compounders denies the allegations contained in Paragraphs 51 through 57.  
Further, Invoice Number 22395 is not a Custom Compounders' invoice number.

58. Custom Compounders disputes the proposed penalty.

59-60. Custom Compounders disputes the calculation method used, the size of the business used, and the gravity of the alleged violations.

Respondent Custom Compounders requests a hearing to contest material facts set forth in the Complaint and the appropriateness of the proposed penalty.

Respondent Custom Compounders suggests an informal settlement conference may be of benefit to the parties to this litigation.

Respectfully submitted,

JENKINS & KLING, P.C.

By: \_\_\_\_\_  
Ronald E. Jenkins, #23850  
Sarah J. Swoboda, #56769  
10 S. Brentwood Blvd., Ste. 200  
St. Louis, MO 63105  
(314) 721-2525 ph.  
(314) 721-5525 fax  
[rjenkins@jenkinsklings.com](mailto:rjenkins@jenkinsklings.com)  
[sswoboda@jenkinsklings.com](mailto:sswoboda@jenkinsklings.com)

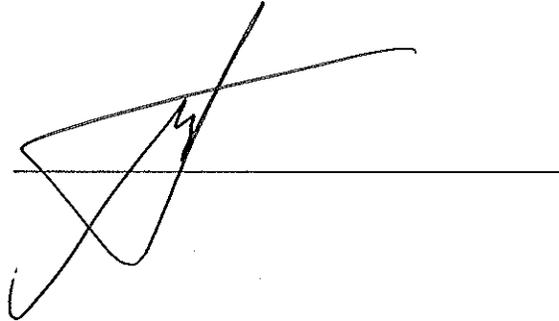
Attorneys for Respondent Custom Compounders, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served by U.S. Mail, postage prepaid, upon:

Chris R. Dudding  
Assistant Regional Counsel  
EPA - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

this 20<sup>th</sup> day of November, 2009.

A handwritten signature in black ink is written over a solid horizontal line. The signature is stylized and appears to be 'C. R. Dudding'.